BMO Harris Bank

May 12, 2019

Via Electronic Submission (comments@fdic.gov)

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Attention: Comments

RE: Notice of Proposed Rulemaking: Recordkeeping for Timely Deposit Insurance Determination, 12 CFR §370, RIN 3064–AF03

Dear Sir,

First we want to thank the FDIC for hearing the concerns of the Covered Institutions (CIs) regarding workability issues of FDIC Rule Part 370. We feel that the proposed changes are a good step towards a more workable approach to meeting the goal of Part 370 for a timely deposit insurance determination while considering the burden placed on the CIs to comply.

This letter responds to several of the FDIC's "request for comment" questions relating to the changes proposed to FDIC Rule Part 370. The Bank is generally in agreement with the proposed changes and has responded to the FDIC's proposed questions below.

B. Elective Extension of the Compliance Date

Questions: The FDIC invites comment on its proposal to allow insured depository institutions that became covered institutions on April 1, 2017 to extend their compliance date by up to one year. What are the advantages or disadvantages of extending the compliance date? Is this one-year extension too long or too short? Why? Should this extension option be available to all current covered institutions? What alternatives, if any, should the FDIC consider?

Our Response:

We appreciate the option of the one year extension. However, we believe the extension should be granted automatically to all CIs without the need to request an extension. Based on the timing of when the rule became effective (April 1, 2017) and when guidance was provided by the FDIC over a year later, CIs did not truly have 3 years to complete the work. Furthermore, the guidance continues to be modified. These proposed changes have broad impacts including to a CI's technology systems and business processes. We assume that the changes will not be finalized until July 2019 at the earliest.

Additionally, under the current proposal, not taking the extra year may create a competitive disadvantage regarding pass-through deposit insurance requirements. If a CI's customer is required to comply with pass-through deposit insurance requirements by April 2020, they may move their business to a different CI that has not yet imposed the requirements.

Given these factors, we expect that the majority of CIs will request an extension, and resources would be better allocated on compliance efforts than completing the steps to request an extension. We therefore recommend that the Rule be modified to reflect a new deadline of April 1, 2021 for all CIs.

C. Compliance

1. Part 370 Compliance Certification and Deposit Insurance Summary Report

Questions: The FDIC invites comment on its proposed amendments to § 370.10(a) (1). What level of certainty should a covered institution's executive have that the requirements of Part 370 are being met? Are the standards for the certification clear? Are they appropriate? If not, why not? What other changes to this certification requirement should the FDIC consider making, if any?

<u>Our Response:</u>

We appreciate the proposed change that the executive should have "knowledge and belief after due inquiry" of meeting the requirements of Part 370.

However, we disagree with the requirement that a senior executive certify a CI's compliance with the Rule. This certification is unnecessary to ensure that a CI will make compliance a priority. Compliance with all laws and regulations, including Part 370, is a priority for us and our senior executives. Additionally, bank supervision and examination, coupled with resolution planning, help to assure compliance. There is nothing within the direct purview of senior executives that warrants a requirement that a senior executive assert compliance with this Rule over other rules.

2. Effect of Changes to Law

Questions: The FDIC invites comment on its proposal to add a new paragraph (d) to §370.10 to allow a covered institution time to consider and address changes in law that alter the viability, or calculation of, deposit insurance and thereby would impact a covered institution's compliance with Part 370. Should a minimum period of time following change be added? Why? What alternatives, if any, should the FDIC consider?

<u>Our Response:</u>

We agree that a minimum time period should be included in Part 370 to allow CIs to consider and address changes in law that alter the viability, or calculation, of deposit insurance. The FDIC should retain the discretion to increase the minimum time period depending on the nature and impact of the change. The FDIC should seek feedback from

CIs and rely on industry associations to provide guidance for realistic timeframes for CIs to comply with the changes.

We believe twelve months is a realistic minimum time frame to include in Part 370, taking into consideration the need to establish a project team, evaluate the impact of the change, develop detailed requirement specifications, engage with technology vendors, and work with business subject matter experts to implement the requirements.

3. Effect of Merger involving a Covered Institution

Questions: The FDIC invites comment on its proposal to add a new paragraph (e) to §370.10 to provide a one-year grace period for instances of non-compliance following merger. Is a one-year grace period sufficient? If not, how much time would be sufficient and why? Should a grace period be considered for deposit assumption transactions as well? What alternatives, if any, should the FDIC consider?

Our Response:

We believe that one year is not a sufficient grace period. The grace period for FDIC Part 360.9 is 18 months. Part 370 is a much larger work effort than Part 360.9. Therefore, we recommend a grace period of 24 months for Part 370.

E. Transactional features

2. Proposed Amendments to the Definition of "Transactional Features"

Questions: The FDIC invites comment on the proposed definition of transactional features. Does the proposed definition improve the description of such accounts? Is the focus on whether or not transfers are reflected in the close-of-business ledger balance for the account a workable approach to defining the transfer capabilities of an account that do not result in it having transactional features? Should other transfers be included in that category? Is it reasonable for the FDIC to rely upon the CIs' and other industry representatives' representations regarding the necessity of funds availability in these accounts immediately after failure? Is it possible for the CIs to evaluate the potential hardship for broker dealer customers or prepaid cardholders when the programs are structured so that their transactions would settle at another IDI? Should the proposed rule simply remove the definition of transactional features and provide that any special requirements for certain types of deposit accounts be applicable without regard for whether the accounts do or do not have transactional features? What are the other advantages or disadvantages of the proposed amendments? What alternatives, if any, should the FDIC consider?

Our Response:

The proposed revised transactional features definition does not add clarity and does not improve the description of these accounts. The "transactional features" definition is used as a way to classify a pass-through deposit account that must provide data within 24 hours. This description must be customer friendly as CIs need to be able to clearly explain to customers why their account with this feature must comply with the 24 hour timeframe.

The true focus of the 24 hour requirement for pass-through customers with transactional features is to identify accounts that use their money on a regular basis (daily) so that they can gain access to their funds in the 48 hour time period after receivership, rather than weeks or months later. To the customer, that means a checking account. Therefore, this definition can be simplified to refer to "checking accounts" only and remove any mention of "transactional features".

Separately, we support the proposal to remove the concept of "transactional features" entirely and put the onus on customers to submit data more quickly if they want a speedier deposit insurance determination.

3. Actions required for Certain Deposit Accounts with Transactional Features under § 370.5(a)

Questions: The FDIC invites comment on its proposal to revise § 370.5(a) to clarify the actions a covered institution must take pursuant to that paragraph. Generally, would a contractual mechanism between a covered institution and an account holder that requires immediate submission of information needed for deposit insurance calculation help ensure that deposit insurance can be determined quickly for these accounts so that insured deposits can be made available as soon as possible? What are the advantages or disadvantages of adding this language? Does it provide greater clarity regarding the requirements and purpose therefor?

Should this requirement apply to all alternative recordkeeping accounts or should it be limited to only those accounts that meet the revised definition of transactional features? Is it more burdensome for covered institutions and account holders to draw a distinction between alternative recordkeeping accounts with transactional features and those without than it would be to simply apply the requirement to all alternative recordkeeping accounts?

What impediments, if any, prevent a covered institution from adding language to certain of its deposit account agreements to address means by which an account holder can submit information to the FDIC after failure of the covered institution so that the FDIC, using the capabilities of a covered institution's Part-370 compliant information technology system, can quickly and accurately calculate deposit insurance and provide access to the relevant deposit account(s)? Would account holders be more likely to supply information needed to calculate deposit insurance coverage in a format compatible with the covered institution's information technology system immediately after the covered institution's failure if they are contractually obligated to?

What impediments, if any, prevent a covered institution from providing notice to certain account holders that the account holders' delay in providing information to the FDIC after the covered institution's failure may delay access to deposits? Are covered institutions or their account holders receptive to the idea of using technology to expedite the process by which the FDIC determines deposit insurance? What alternatives, if any, should the FDIC consider if this approach is unworkable?

Our Response:
Updating customer contracts to include the 24 hour pass-through requirement is not overly burdensome to CIs as contracts change regularly and most CIs have a process for updating them. However, in many instances, CIs have a minimum number of contracts and multiple types of customers are governed under the same contract. Therefore, it is extremely important that the contract language describing which customers must abide by the new provision is clear. This is a key reason why having a customer friendly definition of "transactional features" is so important. If the definition is not clear, customers will be unsure if a provision in an account agreement applies to them.

4. Exceptions from the Requirements of § 370.5(a) for Certain Types of Deposit Accounts

Questions: The FDIC invites comment on its proposal to revise § 370.5(b) to add an exception for deposit accounts with transactional features that are insured on a pass-through basis, to the extent that the deposits in that deposit account are held for the benefit of a formal revocable trust that would be insured as described in 12 CFR 330.10, an irrevocable trust that would be insured as described in 12 CFR 330.12, or an irrevocable trust that would be insured as described in 12 CFR 330.13. In order to determine whether this exception would apply, are covered institutions able to identify the extent to which such an account is comprised of deposits that would be insured in one of the three deposit insurance categories that provide additional deposit insurance for trusts? What are the advantages or disadvantages of this proposed amendment? Generally, would delayed access to deposits in these accounts present hardship to the account holder or the beneficial owner(s) of the deposits? What alternatives, if any, should the FDIC consider?

Should other types of deposit accounts be included in the list of exceptions set forth in §370.5(b)? Why should those types of deposit accounts be excepted? What would be the consequences of delayed access to the deposits in those types of deposit accounts if the account holder does not supply information needed for deposit insurance calculation immediately upon a covered institution's failure?

Our Response:
We agree with the proposed changes and believe that they add clarity to the Rule. We believe removal of the three identified types of trust accounts from processing during the first 24 hours of resolution of a CI would not present hardship to the account holder or beneficial owners.

Although these accounts may have transactional features for the benefit of beneficiaries, a CI may not be able to identify the beneficiary. If a CI fails, trying to process these accounts within 24 hours would be difficult-to-impossible, given the number of parties (such as trustees and beneficiaries) that may be required to submit information.

F. Recordkeeping Requirements

2. Recordkeeping Requirements for Deposits resulting from Credit Balances on an Account for Debt owed to the Covered Institution

Questions: The FDIC requests comment on this proposal to allow recordkeeping for deposits reflected as credit balances on a debt account pursuant to a different procedure. Can covered institutions produce the file set forth in Appendix C to this part 370 to be used by the covered institution's information technology system to calculate deposit insurance coverage within the first 24 hours after the covered institution's failure? Should this timeframe apply to all credit balances on any type of debt account – regardless of whether the debt is open-ended or closed-ended? What are the approximate costs and IT challenges of developing the capabilities to restrict access to credit balances as reflected on the loan account platforms? Are there other examples of either closed-end or open-end loan products that should be explicitly recognized or mentioned?

Our Response:

We agree with the proposed change to remove the requirement of merging loan account systems with deposit account systems as this change would simplify the technology work for CIs. We would like to highlight that it is very rare for a credit balance on a loan to be over the SMDIA.

However, we disagree with the need for an automated report from our loan account systems as provided in Appendix C of the proposed changes. Since it is rare to have a credit balance on a loan system, and the amount of work effort to produce an automated report is large, we recommend a manual review of credit balances at the time of failure. Additionally, a more reasonable approach would be to focus on only the larger credit balances at the point of failure, which is a small subset of an already small population. Therefore, we would request that the automated report requirement be removed from the Rule.

Additionally, as credit balances on closed-end loans would not be available to customers immediately following a bank failure, there would be ample time for deposit insurance determinations on these accounts. We recommend that there be no mandate for systems to freeze access to credit balances for closed-end loans.

G. Relief

1. Exception Requests Generally

Questions: The FDIC invites comment on its proposal to revise § 370.8(b)(1). Would this proposed clarification reduce burden for covered institutions generally? Would covered institutions coordinate to submit joint exception requests?

Our Response:

We agree with the proposed change and believe that the ability for CIs and industry associations to submit exception requests jointly for multiple parties or for the industry overall would reduce the burden for CIs. Today, CIs coordinate to discuss workability issues through industry associations and would likewise coordinate on joint exception

requests. Additionally, this approach enables efficiency for CIs and the FDIC as it will minimize the number of exception requests submitted and requiring review.

2. Publication of FDIC's Response to Exception Requests

Questions: The FDIC invites comment on its proposal to revise § 370.8 by adding a new paragraph (b)(2). Should the FDIC publish notice of all exceptions requested? Should the FDIC publish only exceptions that are granted and not those that are denied? Is there a reason that the FDIC should not publish notice of its response to exceptions requested by covered institutions?

Our Response:

We believe all exception requests should be published anonymously with the status and decision clearly listed. This publication should include an explanation of denied exceptions so that other CIs understand why an exception was denied.

3. Certain Exceptions Deemed Granted

Questions: The FDIC invites comment on its proposal to revise § 370.8 to add this new paragraph (b)(3). Is "substantially similar facts and same circumstances" a reasonable basis for deeming an exception granted? Is the 120-day timeframe for FDIC to notify a covered institution to the contrary sufficient? Is this timeframe too long or too short? What alternatives, if any, should the FDIC consider?

Our Response:

We believe that "substantially similar facts and same circumstances" is a reasonable basis for deeming an exception granted. However, the 120 days' time period to notify a CI is too long. The FDIC should respond to all exceptions within 60 days, as a longer time frame would jeopardize a CI's ability to meet the compliance deadline if an exception is denied.

We suggest, and respectfully request, that the FDIC amend Part 370 by incorporating the additional clarifications and recommendations stated above into the proposal.

Thank you once again for the opportunity to provide input on this important matter. Please do not hesitate to contact me if you have any questions or would like to discuss the above.

Sincerely,

Daniela O'Leary-Gill
Chief Operating Officer
BMO Financial Corp.