State Street Corporation

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ATTN: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219
Docket ID: OCC-2018-0008, RIN 1557–AE34

Via e-mail: cra.reg@occ.treas.gov

Robert E. Feldman, Executive Secretary
ATTN: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AF22

Via e-mail: comments@fdic.gov

Joint Notice of Proposed Rulemaking: Community Reinvestment Act Regulations

Dear Sir/ Madam:

State Street Corporation ("State Street") welcomes the opportunity to comment on the joint notice of proposed rulemaking ("proposed rule") issued by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (or collectively the "agencies") regarding revisions to the regulations implementing the Community Reinvestment Act ("CRA"), which were last extensively updated in 1995. We are strong proponents of the CRA and its mandate, which is to encourage banks to actively support the credit and investment needs of the local communities in which they operate, with a particular emphasis on low and moderate income ("LMI") neighborhoods. We agree, in this respect, that it's appropriate for the OCC-FDIC to look for ways to modernize the CRA framework, and we support the various high-level policy goals described by the agencies in the introductory section of the proposed rule's preamble. This includes, among other: creating incentives for banks to do more; reducing CRA deserts and limiting CRA hotspots; reducing CRA activity uncertainty; improving the quality of CRA performance results; encouraging long-term commitments to community reinvestment; and preserving the voice of the community.[1] Nevertheless, we believe that the approach to CRA reform proposed by the agencies is insufficiently accommodative of the broad differences which exist in industry business models, and we strongly oppose the recommendation made by the OCC-FDIC to eliminate the existing CRA designation for wholesale banks.

Headquartered in Boston, Massachusetts, State Street is a global custody bank which specializes in the provision of financial services to institutional investor clients. This includes investment servicing, investment management, data and analytics, and investment research and trading. With $34.36 trillion in assets under custody and administration and $3.12 trillion in assets under management, State Street operates in 30 countries and in more than 100 geographic markets.[2] State Street is organized as a US bank holding company ("BHC"), with operations conducted through several entities, primarily its wholly-owned state-chartered insured depository institution subsidiary, State Street Bank and Trust Company ("SSBT"). Our primary prudential regulators, including for purposes of the CRA, are the Massachusetts Division of Banks and the US Federal Reserve System.

THE CUSTODY BANK BUSINESS MODEL

Custody banks, such as State Street, employ a highly specialized business model focused on the provision of financial services to institutional investor clients. These clients, which include asset owners, asset managers and official sector institutions, contract with custody banks to ensure the proper safekeeping of their investment assets, as well as the provision of a broad range of related financial services. These services include: access to the global settlement infrastructure to complete the purchase or sale of investment securities; various asset administration functions, such as the processing of income and other interest payments, corporate action events, tax reclamations and client subscriptions and redemptions; and the provision of banking services, notably access to deposit accounts used to facilitate day-to-day transactional activities. The importance of financial services to the custody bank business model can be seen in the large amount of revenue derived from fee-related activities. As an example, in Q4 2019, fee revenue comprised 77.8% of State Street's total revenue.

Custody banks, such as State Street, do not engage in the business of retail, commercial or investment banking. They do not accept deposits from retail clients, they make relatively few if any retail loans, and they do not engage in loan securitization or other wholesale lending

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[1] 'Joint Notice of Proposed Rulemaking: Community Reinvestment Act Regulations', Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation, Federal Register, Volume 85, Number 6 (January 9, 2020), pages 1207-1208.
[2] As of December 31, 2019.

activities. Furthermore, custody banks have balance sheets which are constructed differently than other banks with extensive retail, commercial and investment banking operations. Specifically, the custody bank balance sheet is liability driven and expands not through asset growth, but through the organic development of client servicing relationships with institutional investors that, over time, translate into increased volumes of highly stable deposits. These deposits, rather than various sources of wholesale funding, provide the largest part of the custody banks' liabilities. As such, custody banks do not rely on an extensive network of branches, or various sources of wholesale funding, to manage their balance sheets and their day-to-day business activities.

CRA WHOLESALE BANK DESIGNATION

In keeping with their specialized business model, custody banks rely heavily on the existing wholesale bank designation to shape their CRA compliance efforts, and each custody bank is robustly evaluated using the community development test, which assesses the scope and quality of a bank's qualified investments (including donations to non-profit entities), community development services, and in some cases community development lending. SSBT has been designated as a CRA wholesale bank since May 8, 1996, and under this designation we've maintained a comprehensive and high-quality CRA program that is deeply responsive to the needs of our local communities.

This program includes substantial investments in affordable housing initiatives, Small Business Investment Company programs, and qualified mortgage-backed securities ("MBS") supporting LMI borrowers. This also includes extensive community outreach, including the sponsorship, via the State Street Foundation, of local education and workforce development initiatives which seeks to prepare disadvantaged Boston youth for college and career success through grants, internships and employment opportunities.[3] Under our Executive Community Leadership Program, approximately three quarters of State Street's Executive Vice Presidents serve on the boards of non-profit organizations by providing their financial and professional expertise. We have achieved nine consecutive CRA ratings of 'outstanding' dating back to 2003, supported during the last examination period by $1.35 billion in financial commitments.[4] As such, we take great pride in our CRA efforts and believe that the existing wholesale bank designation provides an appropriate basis for ensuring our long-term commitment to the communities in which we operate, in a manner that is responsive to, and draws strength from, the unique characteristics of our custody bank business model.

In notable contrast to the approach taken by the OCC in the August 2018 advance notice of proposed rulemaking on the CRA, the OCC-FDIC now propose the outright elimination of the

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[3] This includes, in particular, our involvement in the Boston Workforce Investment Network (Boston WINs).

[4] As of last CRA evaluation date. For more information, please see 'Public Disclosure: Community Reinvestment Act Performance Evaluation – State Street Bank and Trust Company' Massachusetts Division of Banks (August 12, 2019).

wholesale bank designation.[5] This proposal is made without reference to any policy concern or performance shortfall that would warrant a review of the wholesale bank designation, and without consideration of the particular challenges that this substantive change would present for banks which have thoughtfully structured their CRA compliance efforts, in some cases for decades, using the prevailing framework.

As an alternative, specialized banks, such as State Street, would be forced to rely on the opaque and time limited strategic plan approach to structure their CRA compliance programs, including the submission of requests for at least some level of tailoring to reflect the unique characteristics of their client base and business activities. We strongly believe that this approach does not provide an appropriate basis for defining and managing the CRA obligations for wholesale banks. This reflects several considerations, which are more fully described below. As an initial matter, we note that the prevailing wholesale bank designation is specifically intended for banks that are 'not in the business of extending home mortgages, small business, small farm, or consumer loans to retail customers,' a clear acknowledgment by the US prudential agencies of the broad differences which exist in industry business models and the resulting implications of those differences for CRA compliance. [6] This includes the custody bank business model and its highly-specialized focus on the provision of financial services to institutional investor clients.

More practically, the strategic plan approach envisioned by the agencies is administratively complex and would require the deployment of significant internal resources to complete without any compelling benefit to the local communities in which State Street and other similar wholesale designated banks operate. This includes: the production of extensive data designed to explain the bank's existing business model; validating the methodological difficulties faced by a wholesale bank when applying various features of the proposed CRA framework; quantifying the disproportionate impact of the intended CRA evaluation measure and its reliance on a uniform 'general performance standard'; and defining appropriate alternative criteria for the assessment of the bank's compliance with CRA mandates. Moreover, the administrative demands of the strategic plan approach are likely to be further increased by the agencies' proposal to require such plans to be developed 'with public participation… (demonstrating) how the bank would meet the credit needs of its assessment area(s)…through qualifying activities', thereby introducing stakeholders into the process that may not be familiar with individual industry business models and the implications of those differences for CRA compliance.[7]

Furthermore, since strategic plans are limited under the proposed rule to a term of five years, banks which have relied for decades on the wholesale bank designation to structure their CRA

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[5] In parallel, the proposed rule also calls for the elimination of the existing limited purpose bank designation.
[6] 'Community Reinvestment Act – Community Development Test for Wholesale and Limited Purpose Designations', Federal Reserve System (October 7, 2019).
[7] 'Joint Notice of Proposed Rulemaking: Community Reinvestment Act Regulations', Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation, Federal Register, Volume 85, Number 6 (January 9, 2020), page 1223.

compliance efforts would now face substantial uncertainty in managing their CRA programs over the medium to long term. This uncertainty is compounded by the lack of guidance within the proposed rule as to the regulatory standard that would govern the approval of strategic plans, including for those banks that currently rely on the wholesale bank designation. Conversely, it is also unclear whether wholesale banks would have the necessary flexibility to modify their strategic plans, once approved, to address tax and other changes in fiscal policy that could dramatically alter the value of certain qualifying activities routinely used by wholesale banks, such as investments in low-income housing tax credits. We believe that these factors will inevitably undermine, rather than enhance, the ability of wholesale banks to develop, deploy and maintain complex CRA programs which are deeply responsive to the needs of the local communities in which they operate.

Finally, and perhaps most importantly, even if a specialized wholesale bank, such as State Street, were to successfully navigate the complexity of the intended strategic plan approach, they would still be subject to the proposed new uniform 'general performance standard', which is clearly intended for banks with traditional retail-focused business models. We are strongly opposed to this approach, which we believe does not adequately recognize the broad diversity of business models in the US banking system and the important ways in which these banks currently support the development needs of their local communities.

LIMITATIONS OF THE PROPOSED CRA FRAMEWORK

As previously emphasized, we do not support the proposed elimination of the existing CRA designation for wholesale banks, nor do we believe that the strategic plan approach envisioned by the OCC-FDIC provides an appropriate alternative for defining and managing our CRA obligations. We describe below several features of the proposed CRA framework, including in the context of the strategic plan approach, which are particularly problematical for wholesale banks, such as State Street.

Definition of Retail Domestic Deposits

As a threshold matter, the framework proposed by the OCC-FDIC relies on a highly problematical definition of the term 'retail domestic deposit', which is then used throughout the CRA framework to calibrate key performance criteria and evaluation measures. Specifically, the OCC-FDIC define 'retail domestic deposits' as 'total domestic deposits of individuals, partnerships and corporations', referring in turn to Federal Financial Institutions Examination Council ("FFIEC") Schedule RC-E, Line Item 1.[8] This approach contrasts with the use of the term retail throughout the remainder of the proposed rule where it is used to capture activities primarily intended for personal, household or family use. Under existing US prudential

[8] 'Schedule RC-E – Deposit Liabilities', Federal Financial Institutions Examination Council, Reporting Form 031- Consolidated Reports of Condition and Income.

standards, the term 'corporation', or 'corporate', extends well beyond traditional incorporated entities to include, among other, investment funds such as US mutual funds and public and private pension plans, which are central to the custody bank business model. Indeed, in the specific case of State Street, the definition proposed by the OCC-FDIC implies a retail domestic deposit base of $116.34 billion as of Q4, 2019 even though State Street has no retail clients and does not accept retail deposits.

While we surmise that this outcome was unintended, it has the very real effect of vastly overstating core benchmarks in the new CRA framework when applied to wholesale banks with highly-specialized business models. This includes required amounts of qualifying activities relative to the performance benchmarks cited by the OCC-FDIC (*i.e.* 11% for an 'outstanding' rating, 6% for a 'satisfactory' rating and 3% for a 'need to improve' rating), and the methodology used to establish 'deposit-based assessment' areas. This outcome could, however, be mitigated if the OCC-FDIC were to adopt the alternative approach cited in the proposed rule of defining the term 'retail domestic deposit' on the basis of FFIEC Schedule RC-E, Line Items 6.a, 6.b, 7.a(1) and 7.b(1).[9] In our view, the additional reporting burden that this might entail for some banks is far outweighed by the essential clarification that this would provide in the applicability of CRA metrics for wholesale banks.

Deposit-Based Assessment Areas

In order to capture broad-based changes in the structure of the US banking system over the past 25 years, notably the emergence of internet banks that accumulate retail deposits in large geographic regions, the OCC-FDIC propose the introduction of new 'deposit-based assessment areas' designed to identify geographic regions where such banks have significant concentrations of retail domestic deposits. Specifically, any bank that receives 50% or more of its 'retail domestic deposits' from geographic areas outside of its 'facilities-based assessment areas' (essentially the existing retail branch-based assessment areas), would be required to delineate additional CRA assessment areas in any location where the bank receives 5% or more of its total 'retail domestic deposits', defined on the basis of the physical address of its depositors. This approach is profoundly unworkable for custody banks, such as State Street, and if implemented, would result in the proliferation of highly arbitrary CRA assessment areas in locations where we have no community presence or expertise, to the detriment of our existing retail branch-based assessment area (i.e. the cities of Boston and Quincy, Massachusetts) where we have deep and long-standing community relationships and a record of innovative, complex and responsive community development activities.

This outcome is the result of several inter-related factors: (i) the substantial over-statement of the custody bank's 'retail domestic deposit' base that results from the definitional considerations noted earlier in our letter; (ii) the structural inability of a custody bank to

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[9] 'Schedule RC-E – Deposit Liabilities', Federal Financial Institutions Examination Council, Reporting Form 031- Consolidated Reports of Condition and Income.

ascertain the physical address of persons that make investments in, or benefit from, assets placed within an investment fund or vehicle beyond the physical address of the institutional investor complex; (iii) the prevalence within the custody bank business model of very large institutional investor clients that could readily breach the 5% deposit test; and (iv) the profound illogic of establishing a CRA obligation based upon the physical address of the institutional investor complex. As an example, there is no practical way for a custody bank to determine the underlying persons investing in a US mutual fund, let alone their physical address, and it would make little sense to force the creation of 'deposit-based assessment areas' in CRA hotspots, such as Newport Beach, California, Valley Forge, Pennsylvania, New York, New York and Westport, Connecticut, based solely on the physical location of the underlying asset manager.

In our view, this highly unreasonable outcome could be mitigated if the OCC-FDIC were to clarify in any final rule that strategic plans for wholesale banks can incorporate broad exemptions from the core requirements of the new CRA framework, such as the obligation to identify 'deposit-based assessment areas', in instances where the bank neither takes retail deposits nor engages in material retail lending activities.

Performance Evaluation Metric

In the hopes of achieving greater consistency in performance outcomes, the OCC-FDIC propose to eliminate all existing CRA lending, investment, service and community development tests (except for the small bank performance test), in favor of a uniform 'general performance standard' based on three metrics. The first of these metrics, the CRA evaluation measure, is intended to assess the value of a bank's CRA qualifying activities, including retail loans to LMI individuals, small business loans in LMI geographies, and community development loans, services and investments, relative to a bank's total 'retail domestic deposits.' The second of these metrics, the 'retail lending distribution measure', is intended to assess the distribution of a bank's lending activities by major retail product line, using both a geographic distribution test and a borrower distribution test. The numerator, in this context, are empirical benchmarks to be set by the agencies.

While these two metrics may be relevant in the context of a traditional bank with extensive retail lending operations, they are of little to no value in the assessment of the CRA performance of a wholesale bank, such as State Street, which specializes in the provision of financial services to institutional investor clients. Indeed, since these metrics are predicated, either directly or indirectly, on an inaccurate definition of the term 'retail domestic deposit', they produce highly skewed outcomes that distract from, rather than contribute to, the provision of high-quality, innovative and responsive CRA community development activities. As an example, since State Street makes no retail or small business loans, and yet is assumed under the proposed rule to have in excess of $116 billion in total 'retail domestic deposit', we estimate that we would be unable to achieve an 'outstanding' rating using the 11% CRA evaluation measure benchmark specified in the proposed rule barring a <u>nine-fold increase</u> in our qualifying community development activities.

Not only is this outcome clearly disproportionate, but it also falls well-outside of the policy goals of the OCC-FDIC proposed rule, which is to modernize the existing CRA framework to account for changes in the structure of the banking industry over the past 25 years, while also enhancing the CRA framework's overall objectivity, transparency, consistency and accessibility. In no case, we believe, should changes to the CRA framework lead to the broad-based re-distribution of CRA obligations and therefore the implicit emergence of either 'winner' or 'loser' banks. Furthermore, we are also deeply concerned that these sorts of unreasonable outcomes will serve to confuse rather than enhance the ability of specialized banks, such as State Street, to serve the needs of the local communities in which they operate to the substantial detriment of our long-standing community relationships.

These concerns could be mitigated by: (i) revising the definition of the term 'retail domestic deposit' in the proposed rule to only capture those deposits which actually originate from retail clients; and (ii) clarifying in the final rule that strategic plans for wholesale banks can be customized to reflect specific industry business models, including the outright eliminate of the 'retail lending distribution test' when it is inappropriate for use in evaluating a bank's CRA performance.

General Performance Standard

As currently designed, the CRA 'general performance standard' proposed by the OCC-FDIC includes several features which favor banks with retail-focused business models at the expense of wholesale banks, such as State Street, with business models that focus on the provision of financial services to institutional investor clients. First, the proposed CRA evaluation measure incorporates a special factor designed to reward banks which maintain a high proportion of branches within LMI census tracts and other underserved or distressed areas, worth as much as 1% of a bank's total CRA evaluation measure score. While we understand the policy rationale behind this approach, we note that this incentive provides no benefit to custody banks, such as State Street, that do not have retail clients and that do not require an extensive network of branches to support the financial needs of their clients. In effect then, this approach increases even further the disadvantages which wholesale banks, such as State Street, would face when seeking to meet the minimum performance standards for CRA activities set out by the OCC-FDIC.

Second, the proposed rule envisions the use of a multiplier of two to calculate the volume of a bank's CRA qualifying activities for certain types of community development investments and affordable housing loans, an approach which specifically excludes both MBS and municipal bonds. In practical terms, this has the effect of favoring those banks that engage in loan origination, at the expense of investor banks such as State Street that monetize their balance sheets through the purchase of large portfolios of investment assets, even when the underlying financial activity has the same CRA benefit. We believe that this is unwarranted and that the OCC-FDIC should instead seek to preserve the fundamental parity between CRA credit for primary and secondary market activities.

STATE STREET.

In view of the underlying policy goals which we believe the OCC-FDIC are trying to achieve through these and other similar design features of the 'general performance standard', we believe that it is most appropriate for wholesale banks, such as State Street, to continue to be assessed for CRA performance on the basis of the prevailing community development test.

CONCLUSION

Thank you once again for the opportunity to comment on the important matters raised within the proposed rule. To summarize, State Street strongly opposes the OCC-FDIC's decision to eliminate the wholesale bank designation from the CRA framework since this approach is insufficiently accommodative of broad differences in industry business models. This includes highly specialized custody banks, such as State Street, which have no retail clients or retail lending product lines, and which instead focus on the provision of financial services to institutional investor clients.

In this respect, we draw the OCC-FDIC's attention to various features of the proposed CRA framework which are unsuitable for the assessment of wholesale banks and which lead to highly disproportionate outcomes. This includes: the inaccurate definition of the term 'retail domestic deposit'; the unworkability of the 'deposit-based assessment area' concept for banks with institutional investor clients; the inapplicability of core features of the proposed 'general performance approach' for wholesale banks, notably the retail lending distribution measure; and the structural advantages which the 'general performance approach' affords to banks with retail-focused business models at the expense of banks with wholesale-focused business models.

We therefore strongly urge the OCC-FDIC to adjust the CRA proposed rule by maintaining the existing wholesale bank designation and the use of the community development test for highly specialized banks, such as State Street, which focus on the provision of financial services to institutional investor clients. Despite our highlighting of the most critical flaws of the proposed approach for custody banks and our suggestion of possible adjustments to mitigate these flaws, our overall view is that the intent of the CRA and the benefits that we provide to the communities in which we operate are best served by retaining the current wholesale bank designation, rather than adopting narrow mitigating adjustments to the intended approach.

Please feel free to contact me at jjbarry@statestreet.com should you wish to discuss the contents of this submission in greater detail.

Sincerely,

[redacted]

Joseph J. Barry