June 10, 2011

By electronic submission

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

regs.comments@federalreserve.gov

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

comments@FDIC.gov

Re: Federal Reserve Board and FDIC Joint Notice of Proposed Rulemaking Regarding Resolution Plans and Credit Exposure Reports (Board Docket No. 1414; FDIC RIN 3064-AD 77

Dear Ms. Johnson and Mr. Feldman:

The Toronto-Dominion Bank (the "Bank") and TD US Holding Company ("TDHC") (collectively "TDBG") appreciate this opportunity to provide comments to the Board of Governors of the Federal Reserve System ("Federal Reserve") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the Agencies") regarding the joint Agencies proposal implementing the provisions of Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") [1] regarding resolution plans and credit exposure reports (the "Proposal").

The Bank is a chartered bank subject to the provisions of the *Bank Act* (Canada) and is the second largest banking organization in Canada with total consolidated assets of approximately C$ 630 billion as of April 30, 2011. The Bank is also a financial holding company pursuant to the Bank Holding Company Act of 1956, as amended. Its intermediate holding company, TDHC, is headquartered in Portland, Maine and is the 14th largest bank holding company in the United States with total consolidated assets of

[1] Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank").

approximately $ 184.2 billion, as of March 31, 2011, held primarily through its two insured depository institutions, TD Bank, N.A. and TD Bank USA, N.A. The Bank is subject to home country supervision by the Office of the Superintendent of Financial Institutions Canada ("OSFI"). TDHC is a registered bank holding company and is primarily supervised by the Federal Reserve. The primary regulator of each of the two national banks is the Office of the Comptroller of the Currency.

TDBG is supportive of recovery and resolution planning as part of an overall risk management process designed to assist the Agencies in their prudential regulation of systemically important firms. We also recognize the inherent value of closely examining a firm's corporate structure and governance in order to enhance operational efficiency. However, we also believe that in rushing to issue and implement the Proposal in advance of the other prudential standards that are required by the Act, the Agencies have created a process that is more cumbersome, if not burdensome, than is necessary both for the Agencies and the bank and non-bank entities being effected, is more far reaching than Congress intended and is more prescriptive in content than is necessary.

In our view, a better result would be gained if a principles-based approach for resolution planning were adopted by the Agencies whereby a final rule for the development of resolution plans outlined goals for the process and expectations for plan contents. Within that broad based mandate specific contents of the plan would be developed through the supervisory process. This methodology would have the benefit of developing an open dialogue between the regulators and the regulated and would result in a far superior product than that which would be obtained from financial firms making well intentioned assumptions, not about their businesses, but whether the circumstances leading to a need for their resolution will be deemed "credible". By eliminating a "one-size-fits-all" approach through open and honest dialogue among the parties, the likelihood of the need to invoke the punitive measures currently in the Proposal for resolutions plans found to be deficient would be lessened.

We also believe that this process will involve discussions about the most sensitive aspects of a firm's business. Therefore, these discussions, and the resolution plan that results from the discussions, should at all times be treated as matters being prepared as part of the supervisory process and be treated as confidential supervisory information for the use of the Agencies. While we recognize that this information is available under the Act to the Financial Stability Oversight Council ("Council), at its request, we would hope that Council members would develop written protocols or memoranda of understanding regarding the confidential treatment of this information and limit the access to and the dissemination of the material accordingly.

Additionally, there is widespread recognition among all participants in the process that the development of recovery and resolution plans will be an arduous and novel process. Accordingly, we believe that the Agencies should allot as much time as is statutorily permitted to finalize the rulemaking process in this regard. The Act grants the Agencies authority until January 21, 2012 to do so[2]. Aside from the obvious advantage of allowing more time for financial firms to prepare resolution plans, there are a number of other benefits to not rushing to finalize the rule. First, the Federal Reserve will be issuing additional rules that will apply enhanced prudential standards to systemically important bank and non-bank financial institutions ("SIFIs") going forward and the resolution planning process should take into account what additional capital, liquidity and other requirements will be part of these enhanced standards. Second, as you are aware, there are currently a number of initiatives being undertaken globally to develop standards applicable to the recovery and resolution planning process. The Financial Services Authority, the European Commission, the Financial Stability Board and the Basel Committee's Cross-border Bank Resolution Group are in various stages of completing pilot programs or studies with reports due out over this summer regarding their results. In Canada, OSFI has been working with that country's largest banks to develop crisis management plans in a two-step process involving the development of a recovery and then a resolution plan. It is important that these initiatives be harmonized much in the same way that capital standards are being adopted globally so that global firms can create one resolution plan that rightly satisfies the requirements of home and host country regulators.

On a related note, we would observe that the application of the $50 billion asset test to the global assets of any foreign bank holding company with a presence in the United States has the anomalous result of including within the purview of the Proposal more foreign owned entities than U.S. based bank holding companies. This seems contrary to the mandate of Section 165 that requires prudential standards for bank holding companies with total consolidated assets equal to or greater than $50,000,000,000 that... "are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that *do not present similar risks to the financial stability of the United States*[3] (emphasis added). Recognizing that TDBG would still be deemed a SIFI under the Proposal if the consolidated asset standard were applicable to U.S. assets only, we believe that reducing the number of entities covered by the Proposal from the 124 entities noted [4] to what, by our estimation, would be a more manageable number of 35 U.S. based and foreign owned bank holding companies with $50 billion or more in total consolidated assets would both ease the burden on the Agencies in implementing the final rules and make more likely the opportunity for the fulsome discussion between the agencies and SIFIs discussed above.

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[2] Dodd-Frank Section 165(d)(8).
[3] Dodd-Frank Section 165(a)(1)(A).
[4] 76 Fed. Reg. at 22654.

If, however, it is determined that the asset test is to be applied globally and that the number of institutions will be as set forth in the Proposal (plus the number of yet to be named non-bank SIFIs), we suggest that the Agencies consider staggering the process of submitting resolution plans with those entities having the greatest asset size and experience with the preparation with of recovery plans being the first out of the gate with other groups to follow based on transparent metrics to be determined by the Agencies.

TDBG very much appreciates this opportunity to share its views on the Proposal with the Agencies. Please feel free to contact either Ned Pollock at 856-470-5964 or James Reilly, Senior Vice President and Director of Dodd-Frank Act Implementation at 856-470-5551 if you have any questions regarding this submission or if we can be of any further assistance.

Very truly yours,

Edward B. Pollock
Head, U.S. Regulatory Relations
and Government Affairs