T.Rowe Price
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Via Electronic Mail
August 5, 2016

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
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Re: Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions; Docket No. R—1538; RIN No. 7100 AE-52

Mr. deV. Frierson:

T. Rowe Price Associates, Inc. and its affiliates ("T. Rowe Price") serve as investment advisers to numerous individuals, institutions and investment funds, including mutual funds, common trust funds, UCITS, pension plans and other investment funds and products. As of June 30, 2016, T. Rowe Price managed approximately $776 billion in assets.

T. Rowe Price, on behalf of the funds and accounts that it manages, regularly enters into "qualified financial contracts" ("QFCs") that are the subject of the above-referenced proposal ("Proposal") and we appreciate the opportunity to comment. We support the Board's stated objective to improve the resolvability and resilience of systemically important banking institutions that it regulates ("GSIBs"). However, we are concerned with the Proposal's intent to achieve these objectives by constraining the counterparties to GSIBs, including the funds and accounts that T. Rowe Price manages (referred to as "investors" in this letter), from exercising long-standing rights to terminate QFCs that have been recognized in the United States Bankruptcy Code. We strongly believe that any changes to rights granted under the Bankruptcy Code should be implemented through the legislative process and not through contractual restrictions on investors, as the Proposal intends to do. We question the Board's reliance on Section 165(d) of Dodd-Frank as support for the proposed measures. We also disagree with the Proposal's assumption that the "single point of entry" approach, which most GSIBs have adopted in their resolution plans, warrants the imposition of significant risks associated with the implementation of those plans on investors.

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To further discuss the concerns stated above, this letter will be confined to one, and arguably the most problematic, aspect of the Proposal, which is the restriction on the exercise of cross-default rights in QFCs. On other aspects of the Proposal, we support the views expressed in the comment letters of the Investment Company Institute and SIFMA AMG.

Safe harbor provisions

The Proposal, if implemented, would prevent investors from exercising default rights under a QFC when the parent entity of the GSIB that is the direct party to the QFC enters into bankruptcy, resolution or another insolvency proceeding ("cross-default rights"). The rights in question are valuable and include the right to terminate, close out, calculate net termination payments, liquidate collateral and setoff amounts owed under terminated transactions. These rights have been an integral part of QFCs for the last 30 years. The "safe harbor" provisions of the Bankruptcy Code, which have been incorporated into the Code through numerous legislative amendments over that same time period, specifically recognize these rights in bankruptcy by excluding them from the automatic stay and other provisions. Even though cross-default rights are stated in contracts, they cannot be regarded as purely contractual, because in practice, their full realization depends on the exemption from the automatic stay granted by the safe harbor provisions. Therefore, cross-default rights are statutory in character and any changes to them should be done through the legislative process.

By restricting investors from exercising cross-default rights, the Proposal is indirectly taking away statutory rights granted by the Bankruptcy Code. This sets a troubling precedent where a regulatory agency can unilaterally annul long-standing statutory rights of numerous market participants simply by issuing a decree. The Proposal is nominally directed at the GSIBs and requires them to amend their QFCs. However, the investors, as counterparties to those same QFCs, are the true beneficiaries of the restricted cross-default rights and will bear most of the risk, cost and uncertainty that inevitably accompany substantial changes to long-standing market practice and legal regimes. Notably and as a testament to the value of cross-default rights, the Proposal does not take them away from the GSIBs - they can still exercise them freely if an affiliate of the investor were to file for bankruptcy.

Setting aside the question whether amending the Bankruptcy Code to make GSIBs more resolvable is good policy, we strongly believe that the appropriate manner to introduce and bring about those changes is through the legislative process and Congressional action. Because of the broad scope and impact of the proposed changes, they should be debated through the same legislative process through

which they originated. In the last few years, there have been several proposals in Congress to amend the Bankruptcy Code to make it more suited for successfully resolving large and systemically important financial institutions, at least in the view of the proponents of these amendments. We urge the Board to participate in that process.

Authority under the "living will" requirement

The Board states that it is issuing the Proposal "under that authority provided by section 165 of the Dodd Frank Act"[1].

We disagree that Section 165(d), also known as the "living will" requirement, supports the proposed restrictions. Section 165(d)(1), which lays out the basic requirements, states that financial institutions must submit plans "for rapid and orderly resolution in the event of material financial distress or failure." Notably, there is no reference to the Bankruptcy Code. The reference to the Bankruptcy Code comes only in section 165(d)(4), which is captioned "Notice of Deficiencies". That section requires the Board to review submitted plans and issue a notice of deficiency if it determines that the plans are "not credible" or "would not facilitate an orderly resolution of the company under title 11, United States Code." Along with a notice of deficiency, the Board has the authority to impose more stringent prudential requirements on the offending firm until it remediates the plan. The prudential requirements may include capital, leverage, or liquidity requirements, as well as restrictions on growth, activities, or operations of the firm or its subsidiaries. The Board can also require the offending firm to divest certain assets or operations to facilitate an orderly resolution of the firm in bankruptcy.

Based on the plain language of Section 165(d), the reference to the Bankruptcy Code is intended to provide a standard against which the Board is to review the submitted resolution plans of the GISBs. Put differently, the Bankruptcy Code, as it exists today or as amended through the legislative process in the future, is to act as a "reality check" on the submitted plans. Section 165(d) does not provide the authority to the Board to ensure that any future resolution actually takes place according to the submitted plans and to indirectly amend inconvenient statutory provisions that the Board regards as obstacles to the plans' realization. By preventing investors from exercising cross-default rights that fall within the Bankruptcy Code safe harbor provisions, the Board is in effect tailoring the Bankruptcy Code to fit the

[1] Proposal, 81 Fed. Reg. 91 (May 11, 2016) at 29174.

GSIBs' deficient plans[2] instead of requiring the submitting firms to change their resolution plans to be "credible" under the *existing* Bankruptcy Code.

This view is further supported by Section 165(d)(6) which states that a resolution plan submitted under section 165(d) "shall not be binding on a bankruptcy court, a receiver appointed under title II or any other authority that is authorized or required to resolve" a GSIB. If Congress intended to ensure that these plans would govern the resolution of GSIBs in bankruptcy, Congress would not have explicitly provided that such plans are not binding on any court or resolution authority.

The real authority and mandate of Section 165(d) is for the Board to manage the size and complexity of the institutions under its supervision while they are fully functional by requiring them to adapt their operations in order to control the systemic risk they bring to the financial markets. As mentioned earlier, the Board has numerous tools at its disposal for that purpose. The Proposal, on the other hand, does not require any adaptation from the GSIBs. Instead, it provides them an easy way out towards achieving "credible" resolution plans while placing significant cost and risk of the plans' outcomes on investors.

Single point of entry

Another justification given in the Proposal is that restricting cross-default rights of investors is necessary because "[m]any complex GSIB have developed resolution strategies that rely on the single-point-of entry resolution strategy."[3] We disagree with the Proposal's overreliance on this circumstance.

Broadly speaking, the "single point of entry" ("SPOE") strategy consists of placing only the bank holding company that sits at the top of the typical US GSIB structure into resolution. The shareholders and creditors of the holding company would bear the brunt of the losses. The subsidiaries that fall underneath would either be sold off or recapitalized and would continue to function without having to enter bankruptcy themselves. The idea is that this would minimize disruptions to the broader system and increase the likelihood that the failing firm could be restructured and continue operating in leaner form.

[2] The results of the Board's and FDIC's review of 2015 resolution plans were summarized in a press release dated April 2016. The agencies determined "that each of the 2015 resolution plans of Bank of America, Bank of New York Mellon, JP Morgan Chase, State Street, and Wells Fargo was not credible..."
[3] Proposal at 29172.

While SPOE may be a reasonable strategy for complex GSIBs to adopt in their current resolution plans, that fact alone does not justify removal of important statutory rights for a broad range of market participants that enter regularly into QFCs. There is no telling whether SPOE will always be the preferred bankruptcy strategy. Even today, while most GSIBs have adopted it, not all of them have. Business models may change over time and different legal and operational structures may spur the need to reevaluate bankruptcy strategies. This should counsel against taking away important statutory rights from investors based on any particular bankruptcy strategy.

In addition, it is questionable whether SPOE is workable as a bankruptcy strategy. SPOE is a relatively novel concept that has never been tested in practice. It first came into existence in 2013 when the FDIC proposed it as the approach to conduct resolutions under Dodd-Frank's Orderly Liquidation Authority ("OLA"). As of the date of this writing, the FDIC's proposal is still in the review stage and has not been finalized. Many influential commentators and regulators, including the FDIC Vice Chairman Thomas Hoenig, have pointed out the dangers of treating SPOE as a panacea. As Vice Chairman Hoenig has stated on SPOE, "the FDIC also recognizes that there are many challenges to its implementation."[4] He further expressed concern about several aspects of SPOE, including its assumptions that parent companies will have sufficient levels of debt and equity to ensure the creation of a viable bridge company, the assumption that operating companies will remain open and the assumption that foreign subsidiaries will continue to operate and that ring fencing of assets in foreign jurisdictions will not occur.

While SPOE first came into being as the FDIC's strategy to carry out its mandate under OLA, a special resolution regime, the Proposal implicitly endorses it as a bankruptcy strategy without any analysis as to whether it is viable in a bankruptcy setting. This is an important question to ask as bank resolutions and bankruptcy are fundamentally different proceedings. In a resolution proceeding, the regulator has practically unlimited discretion to conduct the process as it sees fit. It can decide which entity within the banking group to place into resolution and which subsidiaries should continue with operations. The OLA, a Federal statute, already provides for a short stay of termination rights and thus the market is on notice that their contractual rights may be affected by statute if the counterparty is being resolved in this way. Because of these characteristics, it is feasible to conduct resolution under the OLA or another similar special resolution regime in accordance with a pre-conceived plan such as SPOE, as there exists a central authority that both created the plan and has broad authority to carry it out.

[4] Statement of Vice Chairman Thomas M. Hoenig on Single Point of Entry Strategy, December 10, 2013.

On the other hand, bankruptcy is a complex and contentious process where bank regulators have limited authority. The majority of actions in a bankruptcy require agreement between the debtor and its creditors, with the bankruptcy judge having to review and approve any decision. The ability of creditors to file an involuntary petition could jeopardize any plan to place only the holding company in bankruptcy. This is especially true with respect to today's GSIBs which have thousands of subsidiaries in many jurisdictions across the world. Bankruptcy proceedings of large financial institutions have taken years to complete. Because of the many competing interests involved, it is highly likely that a bankruptcy proceeding will not go according to any pre-conceived plan, let alone a resolution plan that is explicitly not binding on the court that is administering the proceedings.

The appeal of SPOE to the GSIBs is obvious, as it allows them to produce "credible" resolution plans while continuing their operations with minimal restructuring. However, because of the serious questions that remain with respect to SPOE, some of which were discussed above, we disagree with the Proposal's assumption that the adoption of SPOE in GISBs' resolution plans justifies the imposition of significant costs and risk on the rest of the market participants.

To summarize, we urge the Board to remove the restriction on investors' cross-default rights in QFCs. Instead, the Board should take part in the ongoing legislative initiatives to advocate for any changes it deems necessary in the implementation of its statutory mandate.

We appreciate your consideration of our views on this significant topic. If you have any questions or would like to discuss our letter, please do not hesitate to contact me at (410) 345-4999 or at predrag_rogic @troweprice.com.

Sincerely,

/s/ Predrag Rogic

Predrag Rogic
Vice President and Senior Legal Counsel
T. Rowe Price Associates, Inc.