January 31, 2020

Via Electronic Mail

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

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

Re: Regulatory Capital Treatment for Investments in Certain Unsecured Debt Instruments of Global Systemically Important U.S. Bank Holding Companies, Certain Intermediate Holding Companies, and Global Systemically Important Foreign Banking Organizations (Docket ID OCC–2018–0019 and RIN1557–AE38; FRB Docket No. R–1655 and RIN 7100 AF43; FDIC RIN 3064–AE79)

Ladies and Gentlemen:

The Bank Policy Institute, the Financial Services Forum and the Securities Industry and Financial Markets Association (the "Associations")[1] welcome the opportunity to supplement our comment letter dated June 7, 2019 (the "June Comment Letter") and submission dated October 9, 2019 (the "October Submission") on the agencies' proposal[2] addressing the regulatory capital treatment of advanced approaches firms' investments in certain unsecured debt instruments of

1 See Annex A for a description of each of the Associations.

2 84 Fed. Reg. 13814 (Apr. 8, 2019).

U.S. GSIBs, foreign GSIBs and the U.S. IHCs of foreign GSIBs, including debt that qualifies as total loss-absorbing capacity but does not qualify as regulatory capital ("TLAC-eligible debt").

The Associations appreciate the agencies' consideration of the June Comment Letter and the October Submission as well as the opportunity to discuss the June Comment Letter and the October Submission with the agencies in September and December 2019. In this letter, we respond to a number of the questions the agencies asked in December 2019.

I. Additional Information on Issuing TLAC-Eligible Debt.

Agency Staff asked us to explain the role of the issuer and its affiliated broker-dealer from underwriting through to market making and to give an explanation regarding what happens in the secondary market when the buyside wants to sell bonds and the market-maker steps in.

U.S. GSIBs are among the largest issuers of debt securities worldwide and their broker-dealer subsidiaries are also among the leading underwriters of debt securities worldwide. When a U.S. GSIB with a broker-dealer subsidiary conducts a syndicated, underwritten offering of TLAC-eligible debt, the U.S. G-SIB's subsidiary broker-dealer is typically the lead underwriter or among the lead underwriters for the offering. The offering typically commences during the morning and "prices" later the same day. When the offering "prices," the terms of the offering and securities that had not previously been determined are set, including the amount of debt securities to be issued and the interest rate for the debt. Consistent with market practice, these offerings of TLAC-eligible debt typically close three or five business days after pricing.

Between the commencement of the offering and pricing later in the same day, the underwriters contact prospective investors and build an "order book". The order book reflects the amount of debt securities that the prospective investors are interested in acquiring. Because investors' interest may vary depending on the interest rate of the debt, the underwriters use feedback from investors to arrive at a clearing price for the debt, allowing the underwriters to place all the debt with investors. Underwriters allocate the debt securities to investors in connection with pricing and confirm sales with investors shortly after pricing.

Because offerings are typically fully allocated to investors at pricing, U.S. GSIBs' offerings of TLAC-eligible debt typically close without incident, and the underwriters sell all the debt to investors on the scheduled closing date. As a general matter, institutional investors, such as investment funds[3] and insurance companies, are usually the most significant investors in the TLAC-eligible debt of U.S. GSIBs.

After a syndicated, underwritten offering of debt securities, including TLAC-eligible debt securities, has been completed the underwriters typically purchase and sell the securities in the secondary market to support the secondary market liquidity of the securities. For TLAC-eligible debt securities of U.S. GSIBs, the broker-dealer subsidiary of the issuing U.S. GSIB, as a lead underwriter of the offering, is usually the most active among the underwriters in buying and selling the debt securities in the secondary market. As a result, a U.S. GSIB's broker-dealer subsidiary is typically the primary market maker for the U.S. GSIB's debt securities. Secondary

---

3 These investment funds may include funds, such as mutual funds, managed by a U.S. GSIB's asset management business.

market liquidity is important. Greater secondary market liquidity makes the debt more attractive to investors, which, in turn, facilitates the ability of issuers to issue larger amounts of debt and allows issuers, including U.S. GSIBs, to obtain better pricing (that is, lower interest rates) when issuing debt.

II. Additional Information on Market-Making Activities.

Importance of Derivatives. Agency staff asked why it is important for investors to have access to derivatives related to their bond purchases. Market making in derivatives is important to the liquidity and depth of markets for debt securities, including TLAC-eligible debt. As discussed in the June Comment Letter, market making in derivatives can mitigate price volatility, in particular during stressed market conditions, by allowing investors to de-risk their positions without selling their holdings. More generally, the availability of derivatives referencing TLAC-eligible debt makes investing in the TLAC-eligible debt more attractive to investors. Derivatives provide investors with additional tools to hedge or otherwise alter their risk positions, which makes it easier and less expensive for them to achieve their desired risk positions and manage their exposures over time. A deep and liquid market for derivatives ultimately promotes the ability of GSIBs to issue TLAC-eligible debt: debt securities are more marketable when investors have access to derivatives to hedge or otherwise adjust their risk positions.

Accounting and Systems-Related Matters. When a broker-dealer subsidiary of a U.S. GSIB acquires the U.S. GSIB's own debt, including TLAC-eligible debt, in connection with market-making activities, the debt is not necessarily extinguished immediately for accounting purposes. This accounting treatment is a common industry practice. Market-making positions in a U.S. GSIBs' own TLAC-eligible debt are reflected in the firm's books and records and recorded in the same manner as other market-making positions.

As explained in the June Comment Letter, the final rule should eliminate the proposed asymmetric application of the corresponding deduction approach, which would apply deductions for covered debt instruments to Tier 2 capital. The asymmetric application of the corresponding deduction approach would depart from the Basel Committee's standard and conflict with the Basel Committee's commentary on its standard: "A G-SIB's holdings of its own non-regulatory-capital TLAC must be deducted from its own TLAC resources. Own-funded TLAC would generally not appear to meet the TLAC eligibility criteria. However, to the extent that such positions are recognised, reducing TLAC resources would more accurately reflect a G-SIB's TLAC position than continuing to count such instruments in TLAC resources while deducting them from Tier 2 capital."[4] Here, such a departure from the Basel Committee standard would not further any supervisory or policy objective, nor would the departure reflect any unique aspects of the U.S. financial markets or regulatory system. Rather, the departure would make the proposed rule unnecessarily and excessively punitive. Accordingly, as described in the June Comment Letter, the final rule should include a symmetrical like-for-like treatment, with covered debt instruments deducted from TLAC-eligible debt for purposes of TLAC requirements.

---

[4] Basel Committee on Banking Supervision, TLAC Holdings Standard (Oct. 2016), at 2, available at https://www.bis.org/bcbs/publ/d387.pdf.

III. Creditor Hierarchies.

As discussed in the June Comment Letter and the October Submission, it would be impracticable for an advanced approaches firm to implement the proposed definition of covered debt instruments, in particular due to the requirement to identify debt that ranks pari passu with TLAC-eligible debt. Determining whether an instrument meets the proposed definition would entail a searching inquiry (potentially involving a review of hundreds and in some cases thousands of outstanding instruments) and complex analyses of foreign law with respect to, among other matters, insolvency regimes and creditor hierarchies. Making these determinations would represent an undue burden that would not offer a corresponding supervisory benefit. The European Commission recently published a report on differences in insolvency laws among European Union members, Switzerland and the United States.[5] As shown in this report, insolvency regimes and creditor hierarchies vary significantly from jurisdiction to jurisdiction, including among E.U. member states. Moreover, insolvency regimes and creditor hierarchies are subject to change, in particular as jurisdictions work to achieve greater consistency among their insolvency and resolution regimes.

For the reasons presented in the June Comment Letter and October Submission, we continue to believe that the agencies should revise the scope of covered debt instruments to include only TLAC-eligible debt, determined under applicable home-country standards, in order to avoid adopting a definition that would be overly broad and impracticable to implement and that would have the unintended consequences described in those materials.

* * * * *

5 European Commission, Study on the Differences Between Bank Insolvency Laws and on Their Potential Harmonisation: Final Report (2019), available at https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191106-study-bank-insolvency_en.pdf. A 2011 survey prepared by Clifford Chance, reflecting the work of many contributing law firms, provides additional information on depositor preference regimes among G20 countries. See Clifford Chance, Depositor Preference in the G20 (September 2011), available at https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2011/09/depositor-preference-in-the-g20.pdf.

The Associations appreciate the opportunity to supplement their June Comment Letter and October Submission. If you have any questions, please contact Lauren Anderson at +44 (0) 7535840383 (Lauren.Anderson@bpi.com), Kevin Fromer at (202) 457-8787 (kevin.fromer@financialservicesforum.org) or Carter McDowell at (202) 962-7327 (cmcdowell@sifma.org).

Respectfully submitted,

Lauren Anderson
Associate General Counsel
Bank Policy Institute

Kevin Fromer
President and Chief Executive Officer
Financial Services Forum

Carter McDowell
Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association

cc: Michael S. Gibson
Mark E. Van Der Weide
Board of Governors of the Federal Reserve System

Doreen R. Eberley
Nicholas Podsiadly
Federal Deposit Insurance Corporation

Jonathan Gould
Morris Morgan
Office of the Comptroller of the Currency

Annex A: The Associations

The Bank Policy Institute

The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

Financial Services Forum

The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace, and a sound financial system. https://www.fsforum.com/

The Securities Industry and Financial Markets Association

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.