



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, DC 20551

December 12, 2023

Mr. Juan Carlos Alvarez de Soto  
Chief Financial Officer  
Santander Holdings USA, Inc.  
75 State Street  
Boston, Massachusetts 02109

Dear Mr. Alvarez de Soto:

This is in response to your correspondence dated November 24, 2023, on behalf of Santander Holdings USA, Inc. (“SHUSA”), Boston, Massachusetts, the parent of Santander Bank, N.A. (“Santander Bank”), Wilmington, Delaware, requesting relief under the Board’s Regulation Q (the “capital rule”).<sup>1</sup> Specifically, SHUSA requests authorization to treat the transactions by Santander Bank named “Santander Bank Auto Credit-Linked Notes, Series 2021-1” (the “2021 CLN transaction”) and “Santander Bank Auto Credit-Linked Notes, Series 2022-B” (the “2022 CLN transaction” and collectively, the “CLN transactions”) as synthetic securitizations for purposes of calculating SHUSA’s risk-weighted assets under the capital rule.

In the CLN transactions, Santander Bank has issued debt obligations, the principal and interest payments on which are calculated based on the performance of pools of loans held by Santander Bank. Specifically, payments on the obligations are calculated as if a financial guarantee were in place. Santander Bank has received cash from purchasers in consideration for the issuance of these debt obligations.

To be a securitization exposure under the capital rule, an exposure must arise from or reference a “traditional securitization” or a “synthetic securitization,” as defined in the capital rule.<sup>2</sup> If the transaction meets certain operational criteria, a Board-regulated institution may, in the case of a traditional securitization, exclude the underlying exposures from the calculation of its risk-weighted assets or, in the case of a synthetic securitization, recognize for risk-based capital purposes the use of a credit risk

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<sup>1</sup> 12 CFR part 217.

<sup>2</sup> 12 CFR 217.2 s.vv. securitization exposure, synthetic securitization, traditional securitization.

mitigant to hedge the underlying exposures.<sup>3</sup> A Board-regulated institution that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the securitization.<sup>4</sup> SHUSA requests that the Board permit it to compute its risk-weighted asset amount under the capital rule as if the CLN transactions were synthetic securitizations that met the operational criteria for synthetic securitizations.

For a transaction to be a synthetic securitization under the capital rule, at least a portion of the credit risk of one or more underlying exposures must be transferred to one or more third parties through the use of one or more “credit derivatives” or “guarantees,” as defined in the capital rule.<sup>5</sup> Moreover, to meet the operational criteria for a synthetic securitization, a Board-regulated institution must use a qualifying credit risk mitigant in the form of “financial collateral,” a guarantee that meets certain requirements, or a credit derivative that meets certain requirements.<sup>6</sup> SHUSA has not demonstrated that the CLN transactions satisfy each of these elements of the capital rule.

Under the CLN transactions, as represented by SHUSA, a portion of the credit risk of the underlying exposures is transferred to the obligation holders by use of contractual provisions that, in the opinion of counsel of SHUSA, create an enforceable obligation on those holders to absorb credit losses. In addition, Santander Bank receives the value of the purchased credit protection at issuance in the form of cash proceeds; the proceeds serve to mitigate credit risk of the protection providers. The amount of cash that Santander Bank owes to the obligation holders depends on the credit performance of the pools of reference assets. Thus, the credit protection is pre-funded rather than backed by collateral. SHUSA contends that the CLN transactions meet all other definitional requirements and operational criteria for synthetic securitizations under the capital rule.<sup>7</sup> It is expected that the risk weight produced under the securitization framework under the capital rule would be commensurate with the risk of the exposures that arise from the transactions if the CLN transactions as represented by SHUSA were treated as synthetic securitizations that meet the operational criteria for synthetic securitizations.

Based on all the facts of record, the Director of the Division of Supervision and Regulation, acting pursuant to section 217.1(d)(3) of the capital rule

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<sup>3</sup> 12 CFR 217.41(a) and (b); .141(a) and (b).

<sup>4</sup> Id.

<sup>5</sup> 12 CFR 217.2 s.vv. credit derivative, guarantee, synthetic securitization.

<sup>6</sup> 12 CFR 217.41(b)(1); .141(b)(1); see also 12 CFR 217.2 s.vv. eligible credit derivative, eligible guarantee, financial collateral.

<sup>7</sup> Under the CLN transactions, Santander Bank has the right to terminate each transaction early under certain circumstances. SHUSA has committed to cause Santander Bank not to exercise these early termination rights unless 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding. See 12 CFR 217.2 s.vv. clean-up call, eligible clean-up call.

under authority delegated by the Board,<sup>8</sup> and after consultation with the General Counsel, has determined that SHUSA may calculate its risk-weighted asset amount under the capital rule as if the CLN transactions were synthetic securitizations that met all the operational criteria for synthetic securitizations. This action also permits SHUSA to treat other credit-linked-note transactions as synthetic securitizations for purposes of calculating risk-weighted assets under the capital rule, so long as any such other credit-linked-note transactions are structured and documented in a substantially identical manner to the 2021 CLN transaction or the 2022 CLN transaction and do not deviate from the definitional requirements and operational criteria for synthetic securitizations in the capital rule other than with respect to the use of a “guarantee” and the presence of a qualifying credit risk mitigant. In addition, this action applies only to the CLN transactions and other substantially identical CLN transactions up to an aggregate outstanding reference portfolio principal amount of the lower of 100 percent SHUSA’s total capital or \$20 billion. SHUSA may not apply this treatment to less than the entirety of all the exposures arising out of any given CLN transaction.

This action is based on the specific facts and representations in the request and in communications with Board staff, as well as any commitments provided by SHUSA. Any change in these facts or representations should be communicated immediately to Board staff and could result in a different conclusion. This action also is limited to this transaction and like transactions as described above and does not apply to any other transaction.

Very truly yours,

*(Signed) Michele Taylor Fennell*

Michele Taylor Fennell  
Deputy Associate Secretary of the Board

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<sup>8</sup> 12 CFR 265.7(k)(1)(ii)(C).