



BOARD OF GOVERNORS  
OF THE  
**FEDERAL RESERVE SYSTEM**  
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE  
GENERAL COUNSEL

January 26, 2018

Hector Becil  
Chief Legal Officer, U.S.  
The Bank of Nova Scotia  
250 Vesey Street  
New York, New York 10281

Dear Mr. Becil:

This responds to the request by The Bank of Nova Scotia (“Scotiabank”), Toronto, Canada, regarding compliance with the U.S. risk committee requirements for foreign banking organizations under section 252.155 of Regulation YY.<sup>1</sup>

Regulation YY requires a foreign banking organization with combined U.S. assets of greater than \$50 billion but U.S. non-branch assets of less than \$50 billion to comply with the requirement to maintain a U.S. risk committee either as a committee of the global board of directors, on a standalone basis, or as a joint committee with its enterprise-wide risk committee (“U.S. risk committee requirements”).<sup>2</sup> Among other requirements, a foreign banking organization of this size must also include at least one independent member on its U.S. risk committee.<sup>3</sup>

Regulation YY does not prescribe the manner in which a foreign banking organization’s risk committee must oversee the risks of its combined U.S. operations, providing a foreign banking organization with some flexibility in structuring its oversight function in a way that is efficient and effective in light of its broader enterprise-wide risk-management structure.<sup>4</sup> Regulation YY also

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<sup>1</sup> 12 CFR 252.155.

<sup>2</sup> 12 CFR 252.155(a)(3)(ii)(A).

<sup>3</sup> Specifically, the U.S. risk committee must include at least one member who is not an officer or employee of the foreign banking organization or its affiliates, and who is not a member of the immediate family of a person who is an executive officer of the foreign banking organization or its affiliates.

<sup>4</sup> See 79 FR 17284.

requires a foreign banking organization to take appropriate measures to ensure that its combined U.S. operations implement the foreign banking organization's risk-management policies and provide sufficient information to the foreign banking organization's risk committee to carry out its responsibilities.<sup>5</sup>

Scotiabank is a foreign banking organization that, as of July 1, 2015, had combined U.S. assets of greater than \$50 billion, but less than \$50 billion in U.S. non-branch assets. Accordingly, Scotiabank was required to comply with the U.S. risk committee requirements by July 1, 2016.

Scotiabank requested approval of a proposed approach to comply with the U.S. risk committee requirements under Regulation YY. Under the proposal, Scotiabank would establish a holding company that would be similar to the intermediate holding company structure required by Regulation YY for foreign banking organizations with \$50 billion or more in total U.S. non-branch assets.<sup>6</sup> Scotiabank proposes to establish Scotia Holdings (US) Inc. ("Scotia Holdings") as a holding company for Scotiabank's U.S. non-bank subsidiaries and has requested approval to have the risk committee of the board of directors of Scotia Holdings serve as its U.S. risk committee for Scotiabank's entire U.S. operations, rather than have a committee of the global board of directors, on a standalone basis, or as a joint committee with its enterprise-wide risk committee, for purposes of complying with the U.S. risk committee requirements under Regulation YY.

Scotiabank would consolidate its U.S. non-bank subsidiaries under Scotia Holdings and would establish the U.S. risk committee as a committee of the board of directors of Scotia Holdings. Scotia Holdings would have the authority to oversee Scotiabank's U.S. branch and agency operations as well as its U.S. non-bank subsidiaries.<sup>7</sup> The U.S. risk committee at Scotia Holdings would have at

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<sup>5</sup> See 12 CFR 252.155(c).

<sup>6</sup> A foreign banking organization subject to the requirement to establish an intermediate holding company and that has a branch or agency has the option of maintaining its U.S. risk committee at its global board of directors or at its intermediate holding company's board of directors. 12 CFR 252.155(a)(3)(ii). Because Scotiabank has less than \$50 billion in U.S. non-branch assets, it was not required to establish an intermediate holding company. 12 CFR 252.152(c)(1).

<sup>7</sup> Although Scotiabank does not plan to move its Puerto Rico bank subsidiary, Scotiabank de Puerto Rico, under Scotia Holdings as a corporate matter due to tax and other reasons, Scotiabank intends that the U.S. risk committee will have oversight over Scotiabank de Puerto Rico, and to effectuate that, has drafted a board resolution that would grant the U.S. risk committee the authority to oversee Scotiabank de Puerto Rico. In addition, Scotiabank would not move Scotia Waterous (USA) Inc., a merger and acquisition advisory business, under Scotia Holdings because it expects to dissolve the entity in the first half of 2018.

least four members, three of which would be independent members, and one senior management member. Scotiabank further represents that, at all times, the U.S. risk committee at Scotia Holdings will include at least one member who concurrently serves on the global risk committee of Scotiabank. Scotiabank asserts that the inclusion of a member of the global risk committee on the U.S. risk committee would ensure that U.S. risk concerns are directly escalated to and reflected at the global board level.

To ensure that Scotiabank is overseeing the risks of its combined U.S. operations, Scotiabank has provided the Board with commitments that it will amend its U.S. risk committee charter to enable each of its members to have the right and authority to escalate any issue to Scotiabank's global risk committee or global board of directors. In addition, Scotiabank has committed that it will not, without the prior approval of the Board, make any amendments or other alterations to the U.S. risk committee charter that would materially change or limit the U.S. risk committee's ability to carry out its risk-management responsibilities for Scotiabank's combined U.S. operations, including changing or limiting its ability to oversee Scotiabank de Puerto Rico.

Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations and commitments made in connection with the request, staff of the Legal Division has determined that, in consultation with the Division of Supervision and Regulation, this approach is consistent with the U.S. risk committee requirements under section 252.155 of Regulation YY. The representations and commitments made by Scotiabank constitute conditions imposed in writing in connection with the findings and decisions herein and, as such, may be enforced in proceedings under applicable law.

This opinion is based on the specific facts and representations in your letter and in communications with Board staff. Any change in the facts or

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Scotiabank represents that Scotia Waterous (USA) Inc. cannot be dissolved immediately because of certain client contract and deferred compensation complexities but that the entity will be subject to oversight by the U.S. risk committee until its planned dissolution.

representations should be communicated immediately to Board staff and could result in a different opinion.

If you have any questions about this matter, please contact Julie Anthony, Counsel (202-475-6682), Rachel Grundmeier, Senior Attorney (202-973-7426), or Asad Kudiya, Senior Attorney (202-475-6358), of my staff.

Sincerely,

A handwritten signature in blue ink that reads "Mark Van De Weide". The signature is written in a cursive style with a large, stylized initial "M".