April 30, 2013

Robert deV. Frierson,
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: *Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies*
(Docket No. R–1438 and RIN 7100 AD 86)

Ladies and Gentlemen:

The Toronto-Dominion Bank ("TD") very much appreciates the opportunity to offer its comments to the Board of Governors of the Federal Reserve System ("Federal Reserve") concerning the Federal Reserve's proposal relating to enhanced prudential standards and early remediation requirements for foreign banking organizations doing business in the United States (the "Proposal") as required by the Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or the "Act"). TD is a member of the Institute of International Bankers and has worked with the Institute in the preparation of its comment letter concerning the Proposal and supports the matters discussed therein.

TD 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 $818 billion as of January 31, 2013. TD is also a financial holding company pursuant to the U.S. Banking Holding Company Act of 1956, as amended ("BHCA"). TD's intermediate U.S. holding company, TD Bank U.S. Holding Company ("Holdco"), headquartered in Portland, Maine is the tenth largest bank holding company in the United States, with total consolidated assets of $216 billion as of January 31, 2013 held primarily through its two U.S subsidiary insured depository institutions: TD Bank, N.A. and TD Bank, USA, National Association. TD is subject to the Basel II Capital Accord (the "Basel Accord") as implemented by its home country supervisor, the Office of the Superintendent of Financial Institutions Canada ("OSFI") and is an early adopter of the Basel III regime. Holdco, by virtue of having more than $10 billion in foreign exposure as of December 31, 2009 is in the process of qualifying both TD Bank, N.A. and TD Bank, USA, National Association for the U.S. Basel II Advanced framework.

Additionally, TD maintains a state-chartered branch in N.Y. and a banking agency in Houston. TD also maintains a broker-dealer subsidiary, TD Securities (USA) LLC, in New York City which is registered with the Securities and Exchange Commission ("SEC") and supervised by the Financial Industry Regulatory Authority ("FINRA"). TD also has various wealth management businesses including SEC registered investment advisers TDAM USA Inc. and Epoch Investment Partners Inc. and TD Private Client Wealth LLC, a dually registered SEC broker-dealer and adviser member of FINRA.

Overview

The Federal Reserve's recent Proposal regarding the regulation and supervision of foreign banking organizations ("FBOs") in the United States in our view marks a significant change in the approach taken historically by the Federal Reserve. The "one size fits all" mandate requiring FBOs to operate through an intermediate level holding company ("IHC") neither differentiates the risk profiles presented by the various FBOs doing business in the U.S. nor does it take into account the various forms of doing business in the United States that the Federal Reserve has long permitted FBOs to adopt. This requirement will also place FBOs at a competitive disadvantage to U.S. domestic banks doing business in the U.S. In addition, restrictions on capital and liquidity in the Proposal will make efficient and effective global risk management and funding much more difficult to accomplish and will also lead to inconsistent and conflicting standards. TD is not alone in making this observation[1].

We do not believe it is appropriate for bank-sponsored funds or vehicles to be treated as subsidiaries for purposes of the Proposal's single counterparty credit limits. In addition, requiring FBOs to place minority investments in U.S. companies that are deemed to be controlling interests under the BHCA within the IHC structure could result in the imposition of unwarranted capital charges under the Basel III framework, as well as other adverse consequences. We discuss each of these and related issues more fully below.

Structural and Leverage Issues

A. All FBOs should not be required to operate under one business model in the United States

The Proposal generally imposes a single operating mandate on all FBOs doing business in the United States regardless of their existing business model effectively trapping capital and making consolidated risk management and global capital allocation more difficult, especially among larger organizations. This structure will also make the resolution of multinational banking organizations more challenging. The Proposal opens the door for the Balkanization of capital regimes globally as other prudential regulators

[1] In an April 18, 2013 letter to Chairman Bernanke EU Commissioner Barnier noted "In my opinion, the NPR would seem to represent a radical departure from existing US policy on consolidated supervision of FBOs, in a way that may frustrate the efforts to ensure a consistent implementation of Basel III standards across jurisdictions". (p.2)

may feel obligated to either respond in a similar fashion, recalibrate the exposure their home country banks are permitted to have to the United States or require home country banks to increase their capital levels to compensate for capital that is trapped in the U.S. [2] This result stands in sharp contrast to the Basel Committee on Banking Supervision's ("BCBS") regulatory approach that emphasizes due regard be given to home country supervision, especially where the home and host regimes are substantially similar as is the case with Canada and the U.S. This approach also disregards the principles of national treatment and equality of economic opportunity that the Federal Reserve is mandated by the Act to consider when imposing enhanced prudential standards on FBOs.

The "one size fits all" mandate requiring FBOs to operate through an IHC should take into account the various forms of doing business in the U.S. that the Federal Reserve has long permitted FBOs to adopt. In this regard, it is our understanding that subsidiaries of an FBO's branches will continue to be treated as part of the branch and will continue to remain outside of the IHC under the Proposal. While commentary in the preamble to the Proposal notes that any assets "associated" with the branch would not be required to be transferred to the IHC, the Proposal itself dos not specifically spell out this exception. TD believes this exception should be clarified in the Proposal so that assets associated with the U.S. branch can be held in the branch as currently permitted. This would be consistent with other provisions of the Proposal, such as in the debt-to-equity limitations described therein, that acknowledge that U.S. subsidiaries may be held outside the IHC.

B. Alternatives that recognize differences of both the levels of risk in institutions and differences in home country regulatory regimes should be considered

We believe that the Federal Reserve should consider alternatives to the Proposal that would not unduly restrict operations within the consolidated FBO, most notably by focusing on the risk profiles FBOs bring to their businesses operating in the U.S. and calibrating the requirements applicable to such FBOs accordingly. In particular, non G-SIB banks whose home country regulatory regimes are substantially similar to that which exists in the U.S., have a demonstrated record of strong supervision and will be full and early adopters of the Basel III capital and liquidity frameworks could be required on a case by case basis to organize their U.S. subsidiaries under an IHC structure. We believe that this approach would more directly address the concerns raised by the Federal Reserve in the Proposal and direct the Proposal's requirements at FBOs that already have been identified as increasing systemic risk.

C. It is inappropriate to establish a supplementary leverage ratio at the consolidated FBO level above and in advance of the date set by the Basel Accord

[2] See also, remarks by Bank of Canada Governor Mark Carney, "Rebuilding Trust in Global Banking" February 25, 2013. "Left unchecked, these trends could substantially decrease the efficiency of the global financial system. In addition, a more balkanized system that concentrates risk within national borders would reduce systemic resilience globally".

We also believe that it is inappropriate to require an FBO to adopt a leverage ratio above and in advance of the Basel Accord requirements. As noted above, Canadian banks are early and full adopters of the Basel III guidelines as required by their home country supervisor. OSFI has established an initial leverage ratio of three percent. The Proposal seems to imply that the Federal Reserve has a different view of the adequacy of that ratio. We respectfully suggest that the Federal Reserve consult with its G-20 counterparts to reach consensus on this point as the approach outlined in the Proposal has the potential to create international confusion by unilaterally imposing this requirement extraterritorially. Furthermore, imposing a Level 2 early remediation regime on the U.S. operations of an FBO that doesn't meet the Proposal's leverage requirement seems unnecessarily punitive and interferes with the home country supervisor's authority. This is a particularly confusing result when, in the case of Canadian banks, OSFI is imposing on its home country banks an internationally agreed upon standard.

Liquidity

A. FBOs that have adopted the Basel III liquidity framework should be permitted to manage their liquidity position on a consolidated basis

TD understands and supports the need for the Federal Reserve to establish clear liquidity guidelines and rules. Liquidity risk management is an important risk discipline and we agree with the concept of enhancing liquidity standards to ensure that a stable and robust framework is in place to support both U.S. and global banking systems. However, we also believe that liquidity guidelines should be proportional to the risk presented by an entity and consistent in their application and cost across jurisdictions. We would suggest that the Federal Reserve align U.S. requirements to the maximum extent possible with the requirements of the Basel III liquidity coverage ratio ("LCR") framework and only modify application in the U.S. to the extent necessary to either address specific U.S.-based issues and/or safeguard against unique situations or risks. Alignment with Basel III liquidity requirements would reduce the risk that the rules diverge from a global perspective and legal structure focus. The Proposal may result in an FBO being forced to modify its business model in order to mitigate the impact of the Proposal's requirements and possibly negatively impact U.S. wholesale investors by driving demand for wholesale funding offshore.

TD employs a robust liquidity risk management framework that is broadly aligned with the BCBS underlying liquidity risk management principles and the LCR test. The framework is managed on a consolidated basis and looks to secure the solvency of the enterprise in a severe stress scenario. It does not leave open reliance on U.S. funding markets both in the times of systemic or idiosyncratic stress in order to meet funding requirements, including repayment of maturing unsecured debt.

We believe that the requirement for all FBOs to maintain a separate liquidity buffer that is held exclusively within the United States is not appropriate for those FBOs in jurisdictions that have fully adopted the Basel III liquidity coverage ratio. Maintaining multiple liquidity pools throughout an organization that manages liquidity on a consolidated basis is inefficient and creates operational risks and difficulties.

B. The Proposal's liquidity requirements should be broadly consistent with the Basel III requirements

Consistency between countries is key to ensuring that a level playing field can be established for the global banking community while at the same time recognizing the needs of individual government agencies and regulators to safeguard their respective markets. This consistency will ensure that particularly onerous rules are not imposed in any one jurisdiction disadvantaging institutions operating in the U.S. Application of specific rules around the tenor of debt or other specific measures in the U.S. is likely to only lead to market distortion and/or counterproductive outcomes. The Federal Reserve should instead rely on application of Basel III liquidity rules and monitoring of individual FBO liquidity risk management practices in accordance with existing regulatory requirements.

With respect to the liquid assets buffer we suggest that the Federal Reserve align the Proposal with the Basel III standards. This provides direction to the criteria and/or asset types for eligible Level 1 or Level 2 high quality liquid assets ("HQLA"), cash outflows and cash inflows when establishing liquidity stress testing requirements and the associated measurement of survival horizon periods. Additionally it would be helpful if the Federal Reserve were to publish guidelines for qualifying HQLA and clarify the standards the Federal Reserve would apply to reject an asset. These standards should be the same as those followed by U.S. domestic bank holding companies.

TD believes that liquidity restrictions related to remediation stages be revisited because they may be counter productive in certain scenarios. Basel III LCR rules permit a bank to utilize the HQLA buffer under specified conditions and an FBO should be permitted to take recovery actions including HQLA buffer utilization in accordance with its contingency funding plan ("CFP"). The Proposal requires that an FBO in Level 2 remediation maintain a HQLA buffer consistent with a 30-day survival horizon whereas a CFP may call for the use its HQLA buffer. Level 3 remediation proposals include operational requirements such as limits on eligible assets versus its external liabilities. The imposition of additional financial constraints at a time when an FBO is taking required recovery actions may exacerbate liquidity concerns, undermine the effectiveness of a firm's CFP and may increase operational complexity during an already challenging time.

In addition, we suggest that the Federal Reserve should not adopt limits on the use of short-term debt (i.e. debt with an initial term to maturity of 12-months or less) in addition to Basel III liquidity requirements. Basel III liquidity standards (i.e. final LCR and the soon to be finalized net stable funding rule) will further control the use of short-term debt funding.

C. FBOs should be permitted to tailor their stress testing scenarios to the nature of the organization's business risk and unique liquidity profile

We agree with the need for stress tests, and as noted above, TD already has a robust stress testing approach in place to monitor the liquidity status of the institution. However, the Proposal's liquidity requirements and associated stress testing will present a challenge to firms in adapting infrastructure to the new requirements. Large institutions typically monitor and review their liquidity positions on a global basis and will be challenged to segregate that monitoring into a specific U.S. regional perspective.

Liquidity stress tests endeavor to estimate the impact to a bank's balance sheet composition due primarily to changes in liability holder behavior either as a result of or in anticipation of other defined events. The paucity of relevant data especially related to idiosyncratic stress conditions makes estimating market behaviors and calibrating stress scenarios in an objective fashion a significant challenge. We therefore suggest that each FBO be allowed to tailor its scenarios to the nature of the bank's business mix and unique liquidity risk profile. Where possible the Federal Reserve should establish minimum standardized assumptions regarding market behaviors. These simplifications will ensure that liquidity stress results are more focused on the FBO's HQLA buffer.

Finally, we believe that the 14-day reporting timeline suggested in the Proposal provides insufficient time for aggregation, review and approval. As an alternative we propose that an FBO be permitted to establish management limits for different stress test results and report results to the Federal Reserve only when these limits are breached.

D. If a liquidity buffer must be maintained in the United States, the cash portion of that buffer should be maintained at the IHC or the branch, respectively, or at a Federal Reserve Bank.

The Proposal currently provides that the cash portion of the liquidity buffer for either the IHC or the branch must be maintained with an unaffiliated entity. If such a requirement means cash positions be deposited with another bank in the U.S. such a requirement would prevent the IHC or the branch from fully managing its own liquidity position. Additionally, depositing funds at another institution would require the funds to be segregated from that institution's other accounts and be demarcated as belonging to the depositing institution. Fees for such services would create unnecessary operational complications and expense. We also note that depositing monies between financial institutions in the U.S. may result in increased systemic risk. If the cash portion of the liquidity buffer must be maintained outside of the IHC or the branch, we request that the Federal Reserve banks should make such facilities available.

Single Counterparty Credit Limits-Advised Funds

A. Bank sponsored or advised funds or special purpose vehicles should not be deemed to be "subsidiaries" for purposes of this portion of the Proposal

By operation of the proposed definition of "subsidiary" in the Proposal, a fund or vehicle that is sponsored or advised by an IHC or any part of the combined U.S. operations would not be considered a subsidiary of the IHC unless it was "controlled" by that entity. A special purpose vehicle would not be a subsidiary of the IHC or the combined U.S. operations unless it was similarly controlled. The Federal Reserve contemplates in the Proposal that it may use its reservation of authority to look through a special purpose vehicle either to the issuer of the underlying assets in the vehicle or to the sponsor. In the alternative, the Federal Reserve may require an IHC or any part of the combined U.S. operations to look through to the underlying assets of a special purpose vehicle, but only if the special purpose vehicle failed certain discrete concentration tests (such as having fewer than 20 underlying exposures).

At an early stage of its operations, before a fund vehicle attracts a substantial number of third party investors, a fund may be wholly or partially owned by its sponsor, adviser or other bank affiliate while it is being marketed to prospective investors. A sponsor, adviser or other bank affiliate typically views these investments as temporary seed capital investments pending subscriptions from third party investors. A seed capital investment is necessarily short term given that Regulation Y requires the investment to be less than 25 percent of the fund's equity within one year of sponsorship, unless an extension is granted by the Federal Reserve. This Regulation Y restriction applies to funds registered for public sale in the United States ("40 Act Funds") under the Investment Company Act of 1940, as amended (the "40 Act") and funds offered in the United States that are exempt from registration under the 40 Act ("non-40 Act Fund").

The Volcker Rule, as proposed, permits a "banking entity", as principal, to directly or indirectly acquire or retain any ownership interest or sponsor in a 40 Act Fund primarily due to the separate regulatory and compliance regimes imposed on the entity as a result of registration under the 40 Act. Furthermore the Volcker Rule also recognizes the short-term nature of temporary seed capital investments by permitting a banking entity's unrestricted ownership in a non-40 Act Fund during its first year of ownership. The 40 Act contains many prohibitions and restrictions on a 40 Act Fund's operations with a view to substantially reducing the potential for loss. Such funds and their advisers are also subject to ongoing, substantial regulatory oversight under the 40 Act.

Accordingly, TD believes that both 40 Act Funds and non 40 Act Funds should be excluded as "subsidiaries" under the proposed definition contained in the Proposal given that the investments are temporary in nature and restricted as to equity ownership by Regulation Y, and in the case of 40 Act Funds, permitted by the Volcker Rule. Likewise, we do not believe it would be useful or appropriate for the Federal Reserve to exercise its authority to look through funds to their underlying assets for the purpose of treating those funds as "subsidiaries".

Minority Interests

A. "Subsidiarizing" minority interests in U.S. companies that are deemed to be controlling interests under the BHCA is unwarranted

The Proposal requires that FBOs must place any minority interests they own in U.S. companies that are deemed to be controlling interests as defined by the BHCA within the IHC structure. The rationale for this requirement appears to be the need to have adequate capital available to be used as necessary if that investment does not turn out to be sound and the firm in which the FBO has invested fails. However, this requirement could result in the imposition of unwarranted capital charges under the Basel III framework, placing pressure on the business model of lower risk FBOs and putting them at a competitive disadvantage to U.S. banks with higher risk profiles. Under the

Basel III guidelines, the capital requirements for minority interests ratchet up dramatically once the prescribed 10 percent individual and 15 percent aggregate limits are reached. The Basel Accord views these limits on an enterprise-wide basis. To require an investment previously held at the parent level to now be held at the subsidiary IHC that has a significantly smaller capital base than its parent would result in the IHC holding capital that would be far in excess of that which is warranted. Such unwarranted higher capital requirements place pressure on the business models of lower risk banks and place FBOs at a competitive disadvantage to U.S. domestic banks that would have their capital requirements for U.S. minority interests calculated on their consolidated capital base. We believe this to be contrary to the intentions of the Federal Reserve. This pressure is exacerbated if holding a minority interest within an IHC has significant adverse tax consequences on the FBO from the imposition of withholding taxes on dividends and earnings. In other areas of the Proposal, the consolidated FBO's assets are considered in the calculation of limits. For example, in calculating the single counter-party credit limit for an FBO's entire operations in the United States the FBO's consolidated assets are used as the denominator of that equation. In the case of minority investments in U.S. companies that are deemed to be controlling interests under the BHCA it is the asset base of the consolidated FBO and not that of the IHC that should be used in making the calculation. If the minority interest must be held in the IHC, the FBO's consolidated capital base should be considered in the capital calculation as it is for U.S. bank holding companies.

In addition, the requirement to hold a minority interest within an IHC structure does not accommodate practical issues and could have adverse downstream impacts on the investee entity's other investors. Minority interests owned by an FBO may be governed by pre-existing contractual arrangements that could not reasonably have anticipated the Proposal's requirements. For example, the investee entity would have to comply with restrictions on capital distributions, among other things, if the FBO entered early remediation under the Proposal. The requirement may also increase the complexity and uncertainty of the FBO's global recovery and resolution planning. In a stress scenario, there may be consequential delays in the FBO's ability to act quickly, with unpredictable impacts to both the FBO and investee entity.

Accordingly, we do not believe that minority interest should be required to be held within an IHC structure. In the alternative, we urge the Federal Reserve to be willing to consider alternative organizational structures for holding such investments that do not give rise to unduly adverse capital consequences and accommodate minority interests' particular characteristics while still ensuring that the FBO has sufficient capital should the investment fail. Alternatively, and in the interests of fairness, we would urge the Federal Reserve to apply this requirement prospectively so that FBOs would be put on notice of this requirement going forward and plan accordingly and not be penalized for having made investments that they could not have reasonably anticipated would be subject to the requirements of the Proposal. Even in this case, we encourage the Federal Reserve to make changes to the approach to minority interests in recognition of these issues. In particular we believe that the FBO's consolidated capital base should be considered in the IHC's required capital calculation with respect to minority interests and that early remediation provisions regarding limitations on capital distributions should not apply to minority investments held within an IHC structure.

Conclusion

TD believes that the Proposal represents a marked change in the regulatory approach the Federal Reserve has adopted historically regarding the supervision of FBOs in the U.S. As with any major change of this magnitude, entities should be given adequate time to fully understand and respond to these changes. Given that the Federal Reserve will need to digest comments received regarding the Proposal and reconcile the final rule emanating from the Proposal with a final rule for U.S. domestic bank holding companies, it is likely to be an extended period of time before FBOs will fully know the new rules of engagement. As proposed, these new rules would take effect on July 1, 2015. We submit that given the scope and magnitude of these changes that FBOs be given sufficient time to come into compliance once the rules have been finalized. We therefore respectfully request that a period of at least three years from the effective date of the final rule be granted for FBOs to conform to the final requirements.

We also believe that other alternatives to those proposed should be explored. One such alternative would be to apply the requirements of the Proposal to those entities that have been determined to be the largest and most complex institutions and presumably represent greater risk to the U.S. financial system than do the remaining FBOs. Imposition of these requirements on such entities could be done on a pilot basis over a number of years before being imposed on a broader FBO population, and then only if determined by the Federal Reserve to be necessary. In this regard, we suggest that the Federal Reserve should give credit to FBOs whose home country regulatory regimes are substantially similar to that which exists in the U.S., have a demonstrated track record of strong supervision and are full and early adopters of the Basel III capital and liquidity frameworks. We believe this alternative represents a very fair balance between the need of a global organization to manage its operations on a consolidated basis and the responsibility of a host country regulator to assure itself that all entities operating within its jurisdiction will continue to have the requisite capital and liquidity levels to support those operations.

Finally, we believe that bank sponsored funds and special purpose vehicles should not be deemed to be subsidiaries for purposes of the Proposal. We also submit that forcing minority interests in U.S. entities to be held in an IHC could result in a number of adverse consequences both for the FBO and the investee company and therefore urge the Federal Reserve to consider alternatives for the treatment of minority interests under the Proposal. These include alternative organizational structures for holding such investments and prospective application of the requirement to hold such investments in an IHC.

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TD very much appreciates the opportunity to provide these comments on the Proposal to the Federal Reserve and would be very interested in discussing them further with you. Please feel free to contact John Penhale, Vice President Capital Finance Management at 416-308-7309 or the undersigned at 416-307-6588 if you have any questions or comments.

Very truly yours,

Riaz Ahmed
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Copies to:

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Ministry of Finance

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Superintendent Julie Dickson
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