June 3, 2016

By Electronic Submission

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Proposed Rule on Single-Counterparty Credit Limits for Large Banking Organizations (Regulation YY) (Docket No. R-1534; RIN 7100 AE 48)

Ladies and Gentlemen:

Mitsubishi UFJ Financial Group, Inc. ("MUFG" or "we," as applicable) appreciates the opportunity to comment on the above-referenced proposed rule on Single-Counterparty Credit Limits for Large Banking Organizations (the "Proposed Rule") issued by the Board of Governors of the Federal Reserve System (the "Board").[1] MUFG is a non-U.S. banking organization chartered under the laws of, and with its principal place of business in, Japan, and has a number of direct and indirect subsidiaries (and investments in other entities) that are organized and/or have places of business in the United States.

MUFG's principal subsidiaries include: (*i*) The Bank of Tokyo-Mitsubishi UFJ, Ltd., which operates in the United States through a number of branches, agencies, representative offices, and direct and indirect bank and nonbank subsidiaries, including MUFG Union Bank, N.A. ("Union Bank"), a national bank headquartered in New York; (*ii*) Mitsubishi UFJ Trust and Banking Corporation, which operates in the United States through a branch, and (*iii*) Mitsubishi UFJ Securities Holdings Co., Ltd., which operates in the United States through a broker-dealer subsidiary. For purposes of the Board's Regulation YY, MUFG Americas Holdings Corporation ("MUAH") will serve as MUFG's U.S. intermediate holding company. MUAH is also a bank holding company ("BHC") as a result of its control of Union Bank.

Our comments below relate to those sections of the Proposed Rule applicable to foreign banking organizations ("FBOs").[2] Where appropriate, we have provided citations to the relevant section of the Proposed Rule and have noted when our comments are responsive to specific questions the Board poses in the Proposed Rule. Further, the Appendix to this letter includes a list of such questions and indicates where our responses may be found in this letter.

1 81 Fed. Reg. 14328 (March 16, 2016).

2 We note that, in addition to this comment letter, we have submitted a separate comment letter which relates specifically to the application of the Proposed Rule with respect to MUFG's Japanese joint venture with Morgan Stanley, which consists of two Japanese securities subsidiaries: (i) Mitsubishi UFJ Morgan Stanley Securities Co., Ltd. ("MUMSS") and (ii) Morgan Stanley MUFG Securities Co., Ltd. ("MSMS").

I. Background on the Proposed Rule

Section 165(e) of the Dodd-Frank Act requires the Board to promulgate regulations that limit the credit exposure certain financial institutions may have to any unaffiliated counterparty. In general terms, Section 165(e) responded to the concern that the failure or financial distress of one large, interconnected financial institution could cascade through the U.S. financial system and impair the financial condition of that firm's counterparties, including other large, interconnected firms. Section 165(e) seeks to mitigate this risk by limiting the aggregate exposure among such financial institutions and their counterparties.

In December 2011 and December 2012, the Board proposed single-counterparty credit limits as part of a broader proposal to establish a set of enhanced prudential standards for certain financial institutions (the "Original Proposal"). The Original Proposal, however, was met with significant criticism and, ultimately, the proposed rules regarding single-counterparty credit limits were not included in the final set of enhanced prudential standards for large BHCs and FBOs adopted by the Board in 2014.

The Proposed Rule would apply to the following categories of entities, in each case with $50 billion or more in total consolidated assets: (*i*) U.S. BHCs; (*ii*) FBOs; and (*iii*) U.S. intermediate holding companies established or designated by an FBO per Regulation YY ("IHCs" and, together with BHCs and FBOs subject to the Proposed Rule, "covered companies").[3] The Proposed Rule contemplates three tiers of credit limits that would apply to covered companies based on total consolidated assets and foreign exposures. The Proposed Rule would affect both the U.S. operations of MUFG (as an FBO) and MUAH (as an IHC).

II. Substantive Comments

Set forth below are our substantive comments on the Proposed Rule. Specifically, these comments relate to: (*i*) the Proposed Rule's compliance schedule; (*ii*) the economic interdependence and control relationship standards for counterparties; (*iii*) the treatment of registered funds which are sponsored or advised by counterparties; (*iv*) the treatment of U.S. and non-U.S. states, municipalities, other political subdivisions, state and local pension plans and state-owned enterprises; (*v*) retail exposures to natural persons; (*vi*) the ability of FBOs to use internal models to calculate derivatives exposures; (*vii*) the Proposed Rule's look-through and third-party exposure requirements; (*viii*) the proposed non-compliance cure period and the treatment of government-sponsored enterprises and short-term exposures related to payment, clearing and settlement activities; and (*ix*) ambiguity regarding the application of the Proposed Rule to an IHC that is also a BHC.

A. *The compliance schedule should be extended, at a minimum, to two years for all covered companies.*

The Proposed Rule contemplates a two-tiered compliance schedule. An FBO or IHC with total assets of less than $250 billion and less than $10 billion in total on-balance-sheet foreign exposures would be required to comply with the rule two years from its effective date.[4]

3 An FBO is required to form or designate an IHC if the FBO has $50 billion or more in U.S. non-branch assets. Thus, IHCs generally would be expected to have $50 billion or more in assets.

4 Sections 252.170(c)(1)(i) and 252.170(c)(2)(i) of the Proposed Rule.

On the other hand, an FBO or IHC with assets or foreign exposures above those thresholds is required to comply with the rule within one year from its effective date.[5] Question 41 of the Proposed Rule seeks comment on the adequacy of the proposed compliance schedule.

As a practical matter, due to the complexity of the Proposed Rule, covered companies will need to implement extensive systems, processes and other requirements necessary to comply with the Proposed Rule. We anticipate that the implementation of these systems and processes at MUFG will take a significant amount of time, resources and management attention, as it will require the integration of previously separate monitoring and reporting platforms. MUFG anticipates that it will take, at a minimum, two years to build out the infrastructure necessary to ensure compliance with the Proposed Rule. Accordingly, we request that the Board revise the Proposed Rule's compliance schedule to provide, at a minimum, a two-year compliance deadline for all covered companies.

Separately, and notwithstanding our comment above, we note that the Proposed Rule does not appear to contemplate that while an FBO, on a global basis, could meet the threshold for the one-year compliance deadline, its IHC may nevertheless be subject to the two-year deadline, as would be the case for MUFG and MUAH, respectively. As a practical matter, an FBO like MUFG that is subject to the one-year compliance deadline will need to implement systems and processes within the mandated one-year period that, in part, track and aggregate exposures for its IHC (despite the IHC being subject to the two-year compliance deadline). As a result, the extended compliance period for MUAH would be rendered meaningless under the Proposed Rule as written. Accordingly, if the Board is unwilling to extend the two-year compliance deadline to all covered companies, we urge the Board, at a minimum, to extend the two-year compliance period to an FBO that controls an IHC that qualifies for the longer implementation period, even if the FBO itself otherwise would be subject to the one-year compliance deadline. We think this approach leads to a more rational result, is the only way to provide the benefit of the longer compliance deadline for such an IHC, and would more appropriately base the implementation timeline on the FBO's U.S. footprint (as opposed to the size of its global operations). Moreover, IHCs – which in many cases compete with similarly sized U.S. BHCs – should not be subject to a de facto timeline that is more accelerated than the timeline that applies to their domestic counterparts; such a result would be inequitable and would not appear to advance any policy purpose.

B. *The obligation to identify economic interdependence and control relationships among certain counterparties should be revised and, at the very least, subject to a reasonable inquiry standard.*

If the total exposure to a single counterparty exceeds 5% of a covered company's eligible capital base, the Proposed Rule requires the covered company to aggregate its exposures to that counterparty with all its exposures to other counterparties that are "economically interdependent" with the first counterparty.[6] Under the Proposed Rule, two counterparties are economically interdependent if the failure, default, insolvency or material financial distress of one counterparty would cause the failure, default, insolvency or material financial distress of the other.[7] The

5 Sections 252.170(c)(1)(ii) and 252.170(c)(2)(ii) of the Proposed Rule.

6 Section 252.176(a)(1)(iii) of the Proposed Rule.

7 Section 252.176(a)(1)(ii) of the Proposed Rule.

Proposed Rule then lists a number of factors that a covered company should consider in determining whether economic interdependence exists between counterparties, including revenues and exposures between the entities, the presence of guarantees, production or output relationships, source of funds, and potential effects of financial distress of one company on the other.[8]

Similarly, under the Proposed Rule, a covered company must assess whether counterparties are connected by "control relationships."[9] The Proposed Rule directs covered companies to consider the following factors when assessing whether or not a control relationship exists: (*i*) the presence of voting agreements; (*ii*) the ability of one counterparty to influence the appointment or dismissal of another counterparty's governing body; and (*iii*) the ability of one counterparty to exercise a controlling influence over the management or policies of another counterparty.[10] If a covered company determines that counterparties are connected by such a control relationship, the covered company is required to aggregate its net credit exposure to the relevant counterparties.[11] Questions 5 through 7 seek feedback regarding these requirements.

The information needed to make these determinations may not be readily available to a covered company, thus presenting material practical challenges to implementing the Proposed Rule as currently written. Further, the process of gathering information needed to evaluate economic interdependence and the presence of control relationships as contemplated by the Proposed Rule would not be able to be implemented through the type of automated system needed within a large organization. This problem is more acute in a jurisdiction, such as Japan, where industrial companies often have intertwined ownership stakes. Many Japanese industrial and financial companies are often horizontally or vertically integrated into large intercorporate networks centered around particular firms. The relationships between these "closely related parties" are often solidified by certain governance tools, including interlocking boards of directors and partial cross-ownership. As a result, many of the Japanese counterparties with which MUFG regularly deals are often part of complicated intercorporate networks with varying degrees of relations. The proposed economic interdependence and control relationship standards would present particular challenges for evaluating such relationships.

Moreover, although the Proposed Rule includes a 5% threshold for purposes of the economic interdependence test, no similar threshold applies to the control relationship test. As a result, under the Proposed Rule, a covered company would be required to analyze whether control relationships exist for each and every counterparty, regardless of the total exposure the covered company has to a particular counterparty. To avoid this result, we urge the Board to revise the Proposed Rule to extend the materiality threshold to the control relationship test. Further, we believe registered investment companies ("registered funds") should be excluded from the control relationship standard, given the robust regulatory regime that already applies to such vehicles.

8 Section 252.176(a)(2) of the Proposed Rule.

9 Section 252.176(b)(1) of the Proposed Rule.

10 Section 252.176(b)(1)(i)-(iii) of the Proposed Rule.

11 Section 252.176(b)(2) of the Proposed Rule.

More generally, we believe that covered companies may be hesitant to allow their exposure to any counterparty to exceed the 5% threshold due to the operational difficulties associated with identifying economic interdependence between counterparties. We believe that this would have a negative impact on the availability and cost of credit. To prevent such a result, we urge the Board to increase the applicable threshold to 10%. At the very least, we urge the Board to make determinations regarding economic interdependence and control relationships subject to a reasonable inquiry standard (i.e., good faith diligence into the relationship between a counterparty and other potentially related entities that is reasonable based on the transaction and other relevant circumstances).[12]

C. *Registered funds that a counterparty sponsors or advises should not be considered part of such counterparty for purposes of the rule's aggregation requirements.*

For purposes of determining credit exposures to counterparties that are companies, covered companies are required to aggregate exposures to a counterparty and to any entity with respect to which the counterparty (*i*) owns, controls or holds with power to vote 25% or more of a class of voting securities, (*ii*) owns or controls 25% or more of total equity, or (*iii*) consolidates for financial reporting purposes.[13] Question 4 specifically asks under what circumstances investment funds or vehicles that a counterparty sponsors or advises should be included as part of the counterparty for purposes of the Proposed Rule. We urge the Board to clarify that registered funds would not be deemed part of a counterparty for purposes of the Proposed Rule as a result of a sponsor or adviser relationship between a registered fund and such counterparty, including when a sponsor or adviser has an equity investment in a fund during a permitted seeding period.

In most cases, an adviser or sponsor would not hold a level of ownership in a registered fund high enough to trigger the Proposed Rule's mandatory aggregation requirement for counterparties. During a seeding period, however, the adviser or sponsor may have a 25% or greater stake in the fund's voting securities. Thus, during a seeding period, the Proposed Rule could be read to require a covered company to aggregate its exposures to a registered fund with exposures to the fund's sponsor or adviser. However, the Board has long been of the view that registered funds are independent from their sponsors and advisers, even during a temporary seeding period. As long-standing Board precedents recognize, a registered fund is owned by its shareholders and, except for shares in the registered fund that are held by the sponsor or adviser, the sponsor or adviser does not have any financial interest in the fund's assets or liabilities.[14] In

12 We recognize that national banks are required to engage in similar aggregation for purposes of the lending limit rules that have been promulgated by the Office of the Comptroller of the Currency (the "OCC"). However, the Proposed Rule's economic interdependence standards are broader than the corresponding standards in the OCC's lending limits. As a result, national banks that are subsidiaries of a covered company would be forced to adopt two sets of monitoring and reporting systems – one to comply with the Proposed Rule and another to comply with the OCC's lending limits – even though both regulations are meant to accomplish the same goals. National banks have invested significant time and resources in building out monitoring and reporting systems to ensure compliance with the OCC's lending limits and there is no evidence that these lending limits are in any way deficient. Accordingly, if the Board is unwilling to implement our suggested revisions to the Proposed Rule's economic interdependence standards, we urge the Board to replace the provisions in the Proposed Rule with the "combination" standards used in the OCC's lending limits.

13 Section 252.171(e)(2) of the Proposed Rule.

14 Even during a seeding period, when an adviser or sponsor may hold more 25% or more of the voting shares of a registered fund, the Board has recognized that the activities of the fund should not be attributed to the adviser

fact, as a fiduciary, the registered fund's adviser must manage the fund's assets in accordance with the registered fund's investment guidelines and may not use the registered fund's assets for its own purposes. In addition, the management of the fund is overseen by a separate board of directors, a majority of whom are required to be independent from the sponsor or adviser. For these reasons, registered funds should not be treated as controlled by a sponsor or adviser, even during a seeding period. We therefore urge the Board to clarify that a registered fund would not be included as part of a counterparty as a result of a sponsor or adviser relationship, including during a permitted seeding period.

D. *U.S. and non-U.S. states, municipalities, other political subdivisions, state and local pension plans and state-owned enterprises should be treated as separate counterparties.*

The Proposed Rule defines counterparty to include a U.S. state and "all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively."[15] A similar definition also exists for political subdivisions of foreign sovereign entities.[16] Accordingly, a covered company will be required to aggregate exposures to a U.S. state (or similar foreign political subdivision), its agencies and all municipalities within that state as a single counterparty regardless of whether there is any economic interdependency between these parties. In addition, the Proposed Rule does not provide any guidance on whether a covered company's exposure to a state or municipality must be aggregated with affiliated pension plans and state-owned or -controlled enterprises. The Board does not appear to articulate a particular basis for such a position or to have considered that municipalities located in the same state may have vastly different economies and creditworthiness from each other and the state in which they are located, rendering automatic aggregation unnecessary. Similarly, a pension plan's creditworthiness may be significantly different than the state or municipality with which it is affiliated and the credit risk of a sovereign can diverge significantly from the credit risk of an affiliated enterprise.

Therefore, we urge the Board to revise the Proposed Rule's definition of "counterparty" to treat U.S. and non-U.S. states, municipalities, other political subdivisions, related pension plans and state-owned or -controlled enterprises as separate counterparties. To the extent aggregation is required, it should be determined by the economic interdependence and control

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or sponsor. *See, e.g.*, 79 Fed. Reg. 5536, 5676-77 (Jan. 31, 2014) ("[C]onsistent with the Board's precedent regarding bank holding company control of and relationships with funds, a seeding vehicle that will become [a registered fund] would not itself be viewed as" subject to the Volcker Rule during the seeding period).

15 Section 252.171(e)(3) of the Proposed Rule.

16 Section 252.171(e)(5) of the Proposed Rule. The Proposed Rule presents some ambiguity insofar as it could be read to require a covered company to aggregate its exposure to all political subdivisions (and each political subdivision's agencies and instrumentalities) of a foreign sovereign entity, collectively. The ambiguity arises because the Proposed Rule's definition for FBOs refers to "any political subdivisions" (plural), *see* Section 252.171(e)(5) of the Proposed Rule, but the corresponding definition for BHCs refers to "any political subdivision" (singular), *see* Section 252.71(e)(5) of the Proposed Rule. Given that the Board has not put forward a rationale for treating U.S. states any differently than the political subdivisions of foreign sovereign entities, we urge the Board to revise the definition of "counterparty" to clarify that the aggregation of political subdivisions of foreign sovereign entities mirrors the aggregation requirements for U.S. states (i.e., foreign political subdivisions should not be aggregated on a collective basis) and that the definition is the same for the BHC and FBO versions of the rule.

relationship tests for counterparties and affiliated entities set forth in the Proposed Rule, revised as we suggest above in Section II(B).

E. *Natural persons should be excluded from the definition of counterparty or a de minimis exception should be included*

The Proposed Rule's definition of "counterparty" includes natural persons and their immediate family members.[17] As a result, retail exposures would need to be monitored and reported in the same manner as wholesale exposures. Monitoring and reporting these exposures would impose significant implementation and ongoing systems costs for limited (if any) benefit, as retail exposures would never approach the proposed credit exposure limit or be so great that they could threaten the financial safety and soundness of the covered company, let alone the stability of the U.S. financial system. We therefore urge the Board to revise the definition of "counterparty" to exclude natural persons.[18] In the alternative, we suggest that the Board adopt a de minimis exception for retail exposures to natural persons that need to be monitored and reported by a covered company. Specifically, we recommend that covered companies not be required to monitor and report any aggregate exposure to a natural person of less than 5% of a covered company's eligible capital base. The 5% threshold should be determined only with respect to direct lending exposures by the covered company to an individual and should not include exposures to an individual's immediate family members or entities connected by control relationships or economic interdependence. This approach would mitigate the need for extensive compliance systems that do not necessarily exist today.

F. *The Proposed Rule should be revised to create a process by which FBOs can seek permission to use the internal models methodology.*

Under the Proposed Rule, a covered company is permitted to calculate gross exposure to certain derivatives using any methodology that the covered company is entitled to use under the Board's regulatory capital rules, potentially including the internal models methodology (the "IMM").[19] FBOs, however, generally do not use the IMM in the United States. Question 52 asks whether there should be a separate process that allows FBOs to receive Board approval to use the IMM to value derivative transactions solely for the purpose of complying with the single-counterparty credit limits.

We urge the Board to adopt such a process that relies on deference to an FBO's approval to use IMM by home country authorities; otherwise, FBOs would be at an inherent disadvantage compared to U.S. banking organizations that may use IMM. Thus, an FBO that has been subject to a rigorous approval process in its home jurisdiction should be permitted to use IMM, just like a similarly situated U.S. BHC.

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17 Section 252.171(c)(1) of the Proposed Rule.

18 We note that a national bank's ability to lend to natural persons would still be limited by the OCC's lending limit rules. If the Board believes that exposures to natural persons outside of legal entities that otherwise are subject to lending limits should be subject to the Proposed Rule to further its policy objectives, we believe it would be useful for the Board to put forward an empirical analysis showing the exposures that would be subject to such limits and justify the burdens of the Proposed Rule in light of those exposures.

19 Sections 252.173(a)(11)(i)(A) and 252.173(a)(11)(ii)(A) of the Proposed Rule.

G. *The Board should revise the look-through and third-party exposure requirements to reduce unnecessary burden and complexity.*

Under the Proposed Rule, a covered company with at least $250 billion in total consolidated assets or $10 billion in total on-balance-sheet foreign exposures would be required to analyze its credit exposure to issuers of underlying assets in a securitization vehicle, investment fund or other special purpose vehicle in which the covered company invests.[20] Unless the covered company is able to demonstrate that its exposure to each underlying asset in such a fund or vehicle is less than 0.25% of its eligible capital base (considering only the exposure arising from the investment in the fund or vehicle), such covered company would be required to look through the fund or vehicle to recognize exposures to the issuer of the underlying assets rather than to the fund or vehicle itself.[21] If the covered company is unable to identify the issuer of underlying assets, the covered company would be required to attribute gross credit exposure to a single unknown counterparty, with the credit exposure limits required by the rule applying to that unknown counterparty.[22] Questions 34-36 seek comment on this requirement and specifically ask whether the proposed treatment of exposures related to special purpose vehicles is sufficiently clear.

We believe that the scope of this requirement as drafted is unclear, particularly because the Board did not propose to define the broad term "other special purpose vehicle." As a result, the look-through requirement conceivably applies to all securitization vehicles, investment funds and other special purpose vehicles regardless of their purpose or the nature of their underlying issuers. The rationale for applying the look-through requirement to some forms of special purpose vehicles, however, is not at all evident and does not appear to further the regulatory objectives of the Proposed Rule.

For example, the "issuers" of retail asset-backed securities held by certain special purpose vehicles are natural persons. As discussed above in Section II(E), it is highly unlikely that exposures to natural persons would ever approach the proposed credit exposure limit. The same point is true for exposures to small businesses. We therefore urge the Board to exclude retail asset-backed securities (including those funds or vehicles backed by credit card receivables, auto-loans and residential mortgages) and pools of finance receivables based on small business receivables (such as equipment loans and leases, trade receivables and loans to auto dealers) from the look-through requirement. In each case, a covered company would never have a credit exposure to the underlying retail or small business customer that approaches any level near the proposed limits. In addition, we urge the Board to exempt exposures to registered funds from the look-through requirement. Registered funds already are subject to diversification standards, asset quality requirements and robust regulatory oversight. These regulations mitigate the same risks that the Proposed Rule seeks to address and there is no evidence or suggestion in the Proposed Rule that this existing regulatory regime is insufficient. In all of these contexts, the

20 Section 252.175(a) of the Proposed Rule.

21 Section 252.175(a)(2)(ii) of the Proposed Rule.

22 Section 252.175(b)(2) of the Proposed Rule. We note that it is unclear as to whether the attribution to the single, unknown counterparty would be the covered company's entire exposure to a special purpose vehicle or merely the portion of the exposure that the covered company is unable to connect to a specific issuer of assets. We urge the Board to clarify that the Proposed Rule is meant to accomplish the latter rather than the former.

proposed look-through approach, which presents significant operational challenges and implementation costs, would not further any useful policy objectives.

Further, we also urge the Board to revise the Proposed Rule to use a "partial look-through" approach for all categories of special purpose vehicles. As proposed, when a covered company is required to use the look-through approach, the covered company must identify and monitor exposures to *all* issuers of underlying assets held by the special purpose vehicle. Under a "partial look-through" approach, a covered company only would be required to identify and monitor exposures to the issuers of underlying assets for which the covered company's exposure is equal to or above the 0.25% de minimis threshold. Such a revision would reduce the operational burden on covered companies in applying the look-through requirement and would be consistent with the Basel Large Exposure Framework.

In addition, given that covered companies will face significant difficulty in accessing information needed to identify all the issuers of a special purpose vehicle's underlying assets, covered companies may very well be forced to attribute all of their exposures to securitization vehicles, investment funds and special purpose vehicles to a single, unknown counterparty. For covered companies that have exposures to a wide range of such funds and vehicles, it is indeed possible that exposures to such a single, unknown counterparty could approach the credit exposure limits. Such an outcome could result in covered companies ceasing to invest in securitization vehicles, investment funds and special purpose vehicles (such as asset-backed commercial paper conduits ("ABCP Conduits")), which in turn would have a detrimental effect on credit markets including the potential elimination of this important source of financing for U.S. corporations and consumers. For this reason, we again urge the Board to incorporate the revisions discussed in this Section II(G). In the event the Board is unwilling to incorporate these proposed revisions, we would urge the Board, at a minimum, to revise the Proposed Rule's unknown counterparty requirement to avoid this result. For example, the Board could permit covered companies to assign exposures to certain securitization asset classes or certain types of underlying issuers to one of several unknown counterparties.

The Proposed Rule also would require a covered company to recognize exposure to any "third party that has a contractual or other business relationship" with a securitization vehicle, investment fund and special purpose vehicle and whose failure or distress would likely result in a loss in the value of the covered company's investment in or exposure to the fund or vehicle.[23] As examples of such third parties, the preamble to the Proposed Rule cites providers of credit support and "originators of assets" held by the fund or vehicle.[24] As noted above, it is inconceivable that a covered company could have material exposure to any single natural person that is the underlying creditor in a retail asset-backed security. Moreover, the failure or distress of a company (such as a manufacturer) that originates the underlying loans or other receivables would likely not correlate to the performance of the retail credits. In addition, covered companies will have significant difficulty in identifying such third parties and the exact nature of the relationship between such third party and the fund or vehicle. These difficulties are exacerbated because a covered company would seemingly be required to monitor the fund's or vehicle's relationship with such third parties on a real-time basis for so long as the covered company has an investment in such fund or vehicle. Thus, we request that the Board eliminate

23 Section 252.175(c) of the Proposed Rule.

24 81 Fed. Reg. at 14343.

this third-party exposure requirement or, in the alternative, limit the scope of the requirement to (*i*) third parties that provide a credit or liquidity facility to the fund or vehicle and (*ii*) fund or vehicles in which the covered company's investment exceeds the 0.25% threshold that applies to the look-through requirement.

If the Board declines to eliminate the third-party exposure requirement, we urge the Board to revise the Proposed Rule so that the amount of required counterparty exposure to any such third party is no more than the amount of the potential loss that the covered company could suffer as a result of the relevant third party's distress. As currently written, the Proposed Rule requires a covered company to recognize an exposure to a third party in an amount equal to the covered company's exposure to the associated securitization vehicle, investment fund or special purpose vehicle itself, even if the third party's failure would result in a de minimis loss to the covered company.[25] As a result, there is no correlation between the amount of exposure to the third party that a covered company must recognize and the amount of potential loss that could result from the third party's failure or financial distress. Such a result is inconsistent with the purpose of the Proposed Rule; therefore, we urge the Board to tie the required counterparty exposure to any such third party to the expected loss that would result from such third party's failure or distress. Even with these limitations, however, we request that the Board require covered companies to comply with this requirement on a "best efforts" basis in light of the significant difficulties covered companies will have in gathering the information necessary for compliance.

We further urge the Board to clarify the general scope of the look-through requirement. Although the preamble to the Proposed Rule and certain sections of the Proposed Rule itself suggest that the look-through requirement is triggered by credit exposures to a fund or vehicle,[26] other portions of the Proposed Rule suggest that the look-through requirement only is required for those funds or vehicles in which the covered company invests.[27] The application of the look-through rule to securitization vehicles, investment funds or special purpose vehicles to which a covered company has exposure would encompass a wide range of activities and relationships, most of which do not implicate the same credit concerns regarding exposures to underlying issuers that are present when a covered company invests directly in such a fund or vehicle. For example, covered companies may engage in certain fiduciary, agency or custodial activities that may result in small and temporary exposures to a fund or vehicle. Such temporary exposures, however, do not lead to the significant and ongoing exposures to an underlying issuer that the Proposed Rule's look-through requirement is meant to address. Moreover, the practical difficulties associated with gathering information needed to comply with the Proposed Rule are exacerbated in this context as a covered company may not even have the limited information that is available to investors in such a fund or vehicle. Therefore, we urge the Board to revise the Propose Rule so as to clarify that the look-through rule applies only to those securitization

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25 Section 252.175(c) of the Proposed Rule.

26 81 Fed. Reg. at 14342 ("Under the proposed rule, covered companies that have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to analyze their credit exposure to the issuers of the underlying assets in an SPV in which the covered company invests or to which the covered company otherwise has a credit exposure.") (emphasis added); *see also* Section 252.173(b) of the Proposed Rule (referencing "investments in and exposures to a securitization vehicle, investment fund, and other special purpose vehicle").

27 Section 252.175(a)(2)(i) of the Proposed Rule

vehicles, investment funds and special purpose vehicles in which the covered company directly invests. Alternatively, we recommend that the Board limit the look-through requirement to those synthetic positions that mirror the economics of a direct cash investment (e.g., the extension of credit or a liquidity facility). We believe that these are the only situations that may possibly generate the material exposures that the Proposed Rule seeks to address.

In addition, the nearly real-time compliance requirements under the Proposed Rule present practical challenges. Covered companies face various limits on their ability to access the information regarding securitization vehicles, investment funds and special purpose vehicles. For example, managers of such funds or vehicles may not make information available on a frequency that coincides with the proposal's daily compliance requirements. In the case of ABCP Conduits, the underlying clients provide monthly reporting on asset level details that takes time to prepare after month end. In addition, because covered companies generally track exposures to top-level fund vehicles, building systems that could track portfolio level information would require a significant change in operations and resources. Such costs are unjustified given the underlying assets may change dynamically and, therefore, daily asset levels could be stale the following day. Accordingly, the Board should revise the Proposed Rule to allow a covered company to rely on a prospectus or periodic reports provided by a fund manager for purposes of the look-through provisions (even if the covered company itself is subject to daily compliance under the Proposed Rule or compliance that otherwise is more frequent than the availability of information regarding underlying assets from the fund manager).

H. *The cure period should be extended to 180 days and revised so as to allow covered companies additional time to comply in certain circumstances; the rule should include a transition period to permit covered companies to adjust to sovereign downgrades and changes in status of government-sponsored enterprises; the rule should grant exemptions for certain PCS-related exposures.*

The Proposed Rule generally provides for a 90-day cure period for certain breaches provided that the covered company uses reasonable efforts to return to compliance during that period.[28] Question 56 asks whether the Proposed Rule should contain such a cure period and, if so, how long the cure period should last and under what circumstances should it be provided. Question 57 similarly asks whether the Board should consider any temporary exceptions and in what situations such an exception would be appropriate.

As a general matter, we believe the cure period is important, as it permits covered companies to engage in the required analysis of their exposures to determine the most prudent means of returning to compliance. We urge the Board, however, to lengthen the cure period to 180 days, as the process of analyzing and safely and soundly responding to a potential limit breach very well may require more than 90 days. We also ask the Board to provide guidance on how it would evaluate whether a company was using "reasonable efforts" to return to compliance during the cure period. Specifically, the Board should clarify that a covered company would not be required to reduce exposures if, under prevailing market conditions, the reduction may lead to significant losses that could be avoided. In addition, although the Proposed Rule notes that the cure period can be shortened or lengthened by the Board in order to maintain the safety and soundness of the covered company, the Proposed Rule is silent as to how such an extension would be requested. We urge the Board to include a mechanism by which a covered company

[28] Section 252.178(c) of the Proposed Rule.

can formally request an extended cure period, and to commit to responding to such requests within 10 days.

In addition, the definition of "counterparty" in the Proposed Rule excludes non-U.S. sovereigns that are assigned a 0% risk weight under the Board's capital rules.[29] Although we believe that these non-U.S. sovereigns are properly excluded from the definition of counterparty, the change in the status of a non-U.S. sovereign's country risk classification, which generally is reviewed annually, could result in a covered company violating the rule's limits. The same issue could arise if a U.S. government sponsored enterprise ("GSE") exits conservatorship (under the Proposed Rule, GSEs only are exempt while they are under conservatorship).[30]

We recommend that the Board revise the Proposed Rule to provide a temporary exception after any non-U.S. sovereign's risk-weighting changes or after a GSE exits conservatorship. Specifically, the rule should permit a covered company at least 180 days to analyze, assess and, if necessary, reduce exposure to such an entity before being deemed noncompliant. This time period also should benefit from a formalized extension process, as noted above for the Proposed Rule's cure period.

Finally, we recommend that the Board establish an exemption for short-term exposures related to payment, clearing and settlement ("PCS") activities. Such exposures are typically resolved over a very short period of time and, accordingly, are not the type of longer term exposures that the Proposed Rule is meant to address. In addition, many covered companies already have internal systems and procedures in place to monitor these PCS-related exposures and, when necessary, identify those PCS-related exposures which persist longer than expected.

I. The Proposed Rule should be revised to clarify that IHCs that are also BHCs are only subject to those provisions of the Proposed Rule applicable to FBOs.

Lastly, we note that the Proposed Rule is structured to include one set of requirements for BHCs and another for FBOs and IHCs. The proposal does not make clear that an IHC that also is a BHC, like MUAH, is subject only to the provisions of the Proposed Rule applicable to FBOs (subpart Q). The Board should clarify that an IHC that also is a BHC is subject only to subpart Q of the Proposed Rule. To make this clarification, the Board could revise the definition of "covered company" in subpart H to specifically exclude those companies that are both FBOs and IHCs and subject to subpart Q of the Proposed Rule.

[*Signature page follows.*]

29 Section 252.171(e)(4) of the Proposed Rule.

30 Section 252.177(a)(1) of the Proposed Rule.

Proposed Rule on Single-Counterparty Credit Limits for Large Banking Organizations (Regulation YY) (Docket No. R-1534; RIN 7100 AE 48).

III. Conclusion

Once again, we thank you for the opportunity to comment on the Proposed Rule and we appreciate your consideration of our comments.

Please contact Robert E. Hand, Managing Director and Head of Regulatory Affairs Office, Deputy General Counsel, Americas Legal Division at (212) 782-4630 (e-mail: rhand@us.mufg.jp) or Michael A. Tselnik, Director and Assistant General Counsel, Americas Legal Division at (212) 782-4784 (e-mail: mtselnik@us.mufg.jp) with any questions about our comments.

Very truly yours,

Donna Dellosso

Donna Dellosso
Chief Risk Officer for the Americas
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APPENDIX

The Board has posed a number of questions in connection with the Proposed Rule. The table below identifies the questions which our comment letter addresses and indicates the location of our responses.

	Questions Posed in Revised Rule	MUFG Response
4	Under what circumstances should funds or vehicles that a counterparty sponsors or advises be expressly included as part of the counterparty for purposes of the proposed rule?	Section II(C)
5	Should covered companies be required to aggregate exposures to entities that are economically interdependent? Are the criteria for determining whether entities are economically interdependent sufficiently clear, and if not, how should the criteria be further clarified? Should covered companies only be required to identify entities as economically interdependent when exposure to one of the entities exceeds five percent of the covered company's capital stock and surplus, in the case of a covered company that does not have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, and tier 1 capital, in the case of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures? Should only covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures be required to identify entities as economically interdependent? What other threshold(s) would be appropriate and why?	Section II(B)
6	What operational or other challenges, if any, would covered companies face in identifying companies that are economically interdependent? Will covered companies have access to all of the information needed to complete the analysis of economic interdependence? Is this type of information collected by covered companies in the ordinary course of business as part of underwriting or other, similar processes?	Section II(B)
7	Should covered companies be required to aggregate exposures to entities that are connected by certain control relationships? Should covered companies only be required to aggregate exposures to entities that are connected by certain control relationships if the exposure exceeds five percent of the covered company's capital stock and surplus, in the case of a covered company that does not have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, and tier 1 capital, in the case of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures? Should only covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures be required to aggregate exposures to entities that are connected by certain control relationships? Are the criteria for determining whether entities are connected by control relationships sufficiently clear, and if not, how could the criteria be further clarified? Are there additional criteria that the Board should consider?	Section II(B)

34	Is the proposed treatment of a covered company that has less than $250 billion or more in total consolidated assets and less than $10 billion or more in total on-balance-sheet foreign exposures with respect to its exposures related to SPVs appropriate? What alternatives should the Board consider?	Section II(G)
35	Is the proposed treatment of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures with respect to its exposures related to SPVs appropriate? Are there situations in which the proposed treatment would result in recognition of inappropriate amounts of credit exposure concerning an SPV? What alternative approaches should the Board consider?	Section II(G)
36	Is the proposed treatment of exposures related to SPVs sufficiently clear? Would further clarification or simplification be appropriate? What modifications should the Board consider? For example, should the Board modify the approach such that a covered company would only be required to use the look-through approach with respect to particular underlying exposures rather than all underlying exposures in the event that the covered company is able to demonstrate that its credit exposure to some of the underlying assets in an SPV is less than 0.25 percent of the covered company's tier 1 capital but not able to make this demonstration with respect to all the underlying assets?	Section II(G)
41	Should the Board consider a longer or shorter phase-in period for all or a subset of covered companies? Is a shorter phase-in period for covered companies with $250 billion or more in total consolidated exposures, or $10 billion or more in total on-balance-sheet foreign exposures, compared to firms below these thresholds, appropriate?	Section II(A)
52	Should the rule provide a separate process that allows foreign banking organizations to receive Board approval to use internal models to value derivative transactions solely for the purpose of complying with this rule?	Section II(F)
56	Should the rule provide a cure period for covered entities that are not compliant? Under what circumstances should such a cure period be provided, and how long should such a period be?	Section II(H)
57	If a cure period is provided, would it be appropriate to generally prohibit additional credit transactions with the affected counterparty during the cure period? Are there additional situations in which additional credit transactions with the affected counterparty would be appropriate? What additional modifications or clarifications should the Board consider with respect to any cure period?	Section II(H)