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February 18, 2016

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

Re: Comment Letter on the Notice of Proposed Rulemaking on External Total Loss Absorbing Capacity, Long-Term Debt and Related Requirements Applicable to U.S. G-SIBs[1]

Docket No. R-1523; RIN 7100 AE-37

Dear Mr. Frierson:

Wells Fargo & Company ("Wells Fargo" or "we") is a diversified financial services company with over $1.7 trillion in assets providing banking, insurance, trust and investments, mortgage banking, investment banking, retail banking, brokerage services and consumer and commercial financial services. We appreciate the opportunity to comment on the Federal Reserve Board's Notice of Proposed Rulemaking on External Total Loss Absorbing Capacity ("TLAC"), Long-Term Debt ("LTD") and Related Requirements Applicable to U.S. G-SIBs (the "Proposal").

We have worked closely with several trade organizations in reviewing the Proposal. We generally share the concerns identified in the joint comment letter filed by The Clearing House Association L.L.C., the Securities Industry and Financial Markets Association, the American Bankers Association, the Financial Services Roundtable and the Financial Services Forum (collectively, the "Associations"). Wells Fargo generally supports the Associations' comment letter.

Executive Summary

We support the policy objective of promoting financial stability by improving the resolvability and resiliency of large, interconnected U.S. bank holding companies ("BHCs") and ending "market perceptions that certain financial companies are 'too-big-to-fail' and would therefore receive extraordinary government support to prevent their failure."[2]

Since the 2007-2009 financial crisis, a number of regulatory reforms addressing capital, liquidity, leverage, resolvability and complexity have been either proposed or implemented to support this objective. We believe a suitable TLAC requirement combined with a credible resolution strategy

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[1] Notice of Proposed Rulemaking, *Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies* 80 Fed. Reg. 74926 (Nov. 30, 2015).
[2] See Proposal Section I. Introduction A. Addressing Too-Big-to-Fail, 80 Fed. Reg. at 74926

addresses the policy objective and would prevent the risk of U.S. taxpayers absorbing losses of U.S. based globally systemically important bank holding companies ("U.S. G-SIBs"). We feel it is important to note that a credible resolution strategy need not be a single-point-of-entry ("SPOE") strategy and we would take exception to any suggestion in the Proposal that a SPOE strategy should be the preferred strategy for resolving **all** U.S. G-SIBs. Depending on a particular BHC's operating model and structure and the reasons for its failure, other strategies may provide the best approach for rapid and orderly resolution of that company in the event of material financial distress or failure, including, in the case of Wells Fargo's Title II/bankruptcy resolution strategy, a strategy that assumes the creation of a bridge bank under the Federal Deposit Insurance Act for resolving Wells Fargo Bank, National Association, its principal insured depository institution[3].

Beyond the TLAC requirement, the Proposal also introduces a number of additional requirements. Specifically, the Proposal includes a separate LTD requirement to support a "capital refill" concept, which would provide sufficient LTD, such that the LTD could be converted to equity in resolution and allow the BHC to continue to meet its minimum capital requirements. The Proposal also includes Clean Holding Company ("Clean Holdco") requirements, which are designed to limit the activity of BHCs to ensure their resolvability. Lastly, the Proposal includes a potential regulatory capital deduction for banks holding certain debt instruments issued by other U.S. GSIB's. While introduced for future consideration, rather than expressly included in the Proposal, the Proposal also asks whether incremental Internal TLAC requirement should be added to the TLAC framework.

Our primary concerns with the Proposal, which are discussed in more detail below, are as follows:

- The proposed level of TLAC remains unjustified;
- The definition of instruments eligible as TLAC or LTD is too narrow;
- Grandfathering for items that do not qualify as eligible TLAC or LTD is necessary;
- Grandfathering for the Clean Holdco requirements will be separately required;
- The structure of the proposed requirements is overly complex; and
- A supplemental Internal TLAC requirement is wholly unnecessary

Failure to address these concerns coupled with the lack of grandfathering provisions for any aspect of the Proposal will require debt issuance that greatly exceeds the Board's estimates and could result in significant market disruption.

Details Regarding Our Primary Concerns with the Proposed Guidance

- The proposed level of TLAC remains unjustified: While we agree that covered BHCs need to have enough usable TLAC at the time of failure to make resolution operationally feasible under a severely adverse scenario, we continue to believe that the proposed level of TLAC is excessive. The Board did not provide sufficient empirical data it used to inform the proposed level of TLAC. As previously communicated in our letter to the Financial Stability Board ("FSB")[4], our analysis of the losses observed during the financial crisis is substantially lower than the proposed level of TLAC. Consistent with our analysis, the Board states the proposed level of TLAC was based on an analysis of historical loss experience observed during the financial crisis. However, in the Board's analysis these observed historical losses were augmented to include losses that "would have likely been sustained in the absence of extraordinary government intervention in the financial system"[5] to arrive at a TLAC level that exceeds "a substantial majority of the loss-and-recapitalization experiences

[3] Available at http://www.federalreserve.gov/bankinforeg/resolution-plans/wells-fargo-2g-20150701.pdf
[4] Available at http://www.fsb.org/wp-content/uploads/Wells-Fargo-and-Company-on-TLAC.pdf
[5] 80 Fed. Reg. at 74932.

surveyed."[6] Key to this analysis is the empirical data supporting the assumption of losses that would have been incurred absent government intervention, which is not provided. We believe full disclosure of these data and assumptions is necessary to justify the seemingly high calibration. This high calibration is also exacerbated by the narrow definition of eligible TLAC and LTD.

- The definition of instruments eligible as TLAC or LTD is too narrow: Instruments eligible for TLAC and LTD, collectively referred to as eligible debt securities ("EDS"), are defined too narrowly, and in our view, will not produce results consistent with objectives of minimizing market disruption and ending "too-big-to-fail." We believe any capital structure liability, defined as an instrument available to absorb losses and which has a reasonably determinable claim in bankruptcy, should be considered EDS. We recognize the need to exclude short-term instruments and operating liabilities in order to reduce liquidity risk and ensure that resolution can occur in an orderly manner; however, the exclusions in the Proposal extend far beyond what is necessary to accomplish these objectives. To address these concerns, we believe the definition of EDS in the Proposal should be modified to permit inclusion of debt instruments with standard acceleration clauses, those issued under foreign law and any other debt instrument available to absorb losses in resolution[7]. Failure to address these issues would require debt issuance by U.S. G-SIBs far in excess of Board's estimate of $120 billion[8],[9].

  Nearly all of our long-term debt instruments include certain standard market covenants, whose breach, if not cured in a timely manner, constitute events of default that allow the holder the right to accelerate payment of principal and interest pursuant to the acceleration clauses in those instruments. Certain of these acceleration clauses would be prohibited by the Proposal. We believe the proposed restriction on acceleration clauses is unnecessary due to the nature of the covenants whose breach would permit acceleration. These standard market covenants are in place to ensure we maintain the infrastructure needed to service our debt to maturity. None of the covenants whose breach would permit acceleration pertain to our financial capacity to fulfill our debt obligations; rather, they are operational in nature and provide investors with comfort that we will maintain our operational infrastructure to ensure timely flow of payments. Under the Proposal, the specific covenants in our long-term debt whose breach could not trigger acceleration in order to qualify as EDS are as follows:

  - *Default in the performance or breach of any covenant or warranty and continuance for 90 days, which would include covenants regarding;*
    - *Maintenance of an office or agency for payment or registration of transfer or exchange*
    - *Holding money for payments on the debt securities in trust*
    - *Delivery of an annual officers' certificate as to compliance with covenants*
    - *Payment of additional amounts (tax gross up), if applicable*
    - *Calculation of original issue discount, if applicable.*

  Compliance with these covenants is part of the operating costs of the organization and necessary to access debt markets. All investment grade corporate debt (issued by BHC's or other corporate issuers) incorporates these or similar covenants and acceleration clauses. Annex 4 of the Associations' comment letter includes a diagram displaying the typical covenants and acceleration

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[6] Id.

[7] As discussed below, in the case of structured notes, such notes would be limited to those that provide the return at a minimum of their principal amount upon acceleration.

[8] See 80 Fed. Reg. at 74938

[9] See the Associations' letter for data collected from all eight U.S. G-SIBs, which shows $866 billion of currently outstanding LTD would not qualify as EDS, substantially all of which have impermissible acceleration clauses.

events of BHC's subject to the Proposal to further demonstrate the pervasiveness of such covenants in the market. Trigger of an acceleration clause would apply to substantially all of our debt at the same time, which would make repayment prior to entering resolution extremely unlikely. Regardless of the probability of exercise or whether LTD with acceleration ultimately qualifies as EDS, it will likely remain outstanding through its contractual maturity as there is no practical way to extinguish or modify the terms of such debt. As a result, while we believe debt instruments with acceleration clauses would be available to absorb losses in bankruptcy; such debt would also receive priority in bankruptcy over debt instruments without acceleration clauses. While this difference does not create contractual subordination, it would create ambiguity around the treatment in bankruptcy of instruments with acceleration rights versus those without, which is inconsistent with the Board's objective of "increasing the clarity of treatment for eligible external LTD holders relative to other creditors."[10] We believe acceleration clauses similar to those listed above should be permitted due to the operational nature of the related covenants, the limited risk presented to orderly resolution by these clauses and to avoid creating unnecessary ambiguity in the market. At a minimum, if we are required to change our covenants going forward, we believe existing debt should be grandfathered until maturity.

The Proposal only includes as EDS debt governed by the laws of the United States or States thereof. The Board's stated justification for excluding debt issued under foreign law is that such debt instruments could be at risk of legal challenge and unavailable to absorb losses or recapitalize the BHC. We note that the FSB Final Term Sheet would allow debt issued under foreign law, so long as the host country court's authority is considered effective and enforceable[11]. Regardless of the jurisdiction whose laws govern the debt issuance, principles of comity should cause host country courts to defer to home country resolution regimes in most cases. Further, under a bail-in ruling, a foreign jurisdiction would have difficulty proving a public policy violation that would allow them to overturn home country bail-in actions given the recent emphasis on bail-in provisions in most jurisdictions. Mandating U.S. G-SIBs' issuance to be governed by home jurisdiction law is unnecessary given the passive nature of bail-in under U.S. law whereby, in resolution, outstanding liability claims are exchanged for equity interest in the bridge bank holding company. As a result, we do not believe that any U.S. specific circumstances exist to justify a more restrictive rule on foreign issuance than exists under the FSB's Final Term Sheet.

In addition to issues described above, we support the Association's position that certain structured notes should be considered EDS. In particular, we believe that structured notes that provide for the return of at least the full principal amount upon early termination or acceleration (which we refer to as "Principal Protected Notes") and that otherwise meet the conditions necessary to qualify as EDS, should be included as EDS. We recognize the importance that covered BHCs have a minimum amount of loss-absorbing capacity whose value is easily ascertainable and believe that Principal Protected Notes meet this requirement, given that their minimum loss-absorbing value can be determined at any time. That is, the issuer is required to pay, at a minimum, 100 percent of the face amount of the note upon early termination or acceleration. Regarding the Board's concerns that imposing losses on investors in structured notes could pose obstacles to orderly resolution, in our experience, investors in Principal Protected Notes are similar to investors in other capital structure liabilities of the BHC, including LTD, and therefore should not pose unique concerns relating to orderly resolution.

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[10] 80 Fed. Reg. at 74937.

[11] See page 17 of FSB's Final Term Sheet issued November 9, 2015 (available at http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf).

- Grandfathering for items that do not qualify as EDS is needed to avoid market disruption: If our suggested modifications to broaden the definition of EDS are not accepted, grandfathering is critical as, nearly our entire outstanding LTD portfolio and that of our peer U.S. G-SIBs would not qualify as EDS. We believe the only reasonable solutions are modification of the Proposal, grandfathering or some combination thereof. We do not believe actions such as tendering and replacing or exchanging substantial portions of our debt, gaining consent to amend our existing indenture to remove acceleration clauses or inserting contractual provisions into foreign issued debt to unilaterally change to U.S. jurisdiction are reasonably possible. We believe these actions, though not set out, are implicit in the Board's analysis on the impact of the Proposal. As noted above, without changes such as those noted above, debt issuance by U.S. G-SIBs to comply with both the TLAC and LTD requirements would greatly exceed the Board's estimate of $120 billion and would incur significant market pressure and/or disruption.

  If the Board pursues grandfathering, we recommend the Board issue an interim final rule as soon as possible to eliminate the uncertainty surrounding the eligibility of current issuance. In the final rule, we recommend the effective date of grandfathering provisions include all instruments issued for up to 180 days after issuance of the final rule and extend to the contractual maturity as certain types of instruments cannot be called or otherwise modified to comply without incurring significant cost. Delaying the effective date of grandfathering will permit issuers sufficient time to modify indentures to include terms that are agreeable to investors. Absent this delay, BHCs' issuance would temporarily freeze while indentures are modified to comply with the final rule. We believe any such interruption would be highly disruptive, potentially costly and should be avoided. Similarly, grandfathering provisions should extend through the contractual maturity of the instruments outstanding as of the effective date of the grandfathering. Because it will be impractical to retire or otherwise eliminate certain types of LTD prior to the instrument's contractual maturity, we believe any grandfathering provisions should extend through the instrument's contractual maturity.

- Grandfathering for Clean Holdco requirements will be separately required: The interaction between the 5% cap on "unrelated liabilities" within the Clean Holdco requirement and definition of EDS for the TLAC and LTD requirements necessitates a second grandfathering provision for the Clean Holdco requirement. A capital structure liability, including any related dividend or interest payment, disqualified from EDS for reasons other than remaining maturity would be considered an unrelated liability. Therefore, LTD securities previously mentioned as requiring grandfathering for qualification as EDS would separately require grandfathering from the Clean Holdco requirements, if not made EDS through modification to the Proposal.

  Due to the significant amount of securities outstanding that would not qualify as EDS under the Proposal[12], we strongly recommend a secondary grandfathering from the Clean Holdco requirements irrespective of whether the proposed definition of EDS is modified. Any modification to the definition of EDS or inclusion of grandfathering for EDS will have a direct impact on the LTD subject to the Clean Holdco requirement. The Board stated that the 5% cap for unrelated liabilities was set with the intention that all U.S. G-SIBs would meet the requirement without modification to their existing activities.[13] Grandfathering for this requirement is necessary to remain consistent with that intention.

[12] See Associations' letter, which shows cumulative U.S. G-SIB unrelated liabilities projected at 8x over the 5% allowance absent changes to the definition of EDS or grandfathering.
[13] See 80 Fed. Reg. at 74947. In discussing the calibration of the 5% cap on unrelated liabilities, the Board mentions that several U.S. GSIBs might need to reduce the amount of structured notes outstanding in order to meet the requirement; implicit in this discussion is the notion that all of U.S. GSIBs' non-structured LTD would not need to be amended or replaced in order to meet the 5% cap.

The Proposal does not articulate the consequences of non-compliance with the 5% cap. As a matter of due process, it would be inappropriate to insert a consequence for non-compliance in the final rule; any consequence for non-compliance should be subject to prior notice and comment in accordance with the Administrative Procedure Act. If the Board pursues a consequence for non-compliance other than existing supervisory tools, we would recommend a reasonable cure period be provided to reduce the amount of unrelated liabilities below the 5% threshold.

In addition to grandfathering for unrelated liabilities, we recommend inclusion of grandfathering for prohibited activities. While we have already reduced or terminated many of the proposed prohibited activities at our BHC, we have identified an immaterial amount of existing contracts that have maturities that extend beyond the proposed effective date. In this case, we would suggest the effective date of grandfathering as of the date of final rule issuance.

- <u>The structure of the proposed TLAC requirements is overly complex:</u> The proposal includes four separate potential binding constraints, with TLAC and LTD requirements calculated using the more stringent of risk weighted or leveraged assets. Beyond these four minimums, certain holding company activities are prohibited or restricted via the Clean Holdco requirements and there is a new potential capital deduction for holdings of our own TLAC or that of other U.S. G-SIBs. There is a significant amount of complexity created through the inclusion of multiple related, but independent requirements.

  Specifically, the definition of EDS differs between the TLAC and LTD requirements based upon the remaining maturity of the instrument. The 50% haircut for instruments with remaining maturity of 1-2 years in the LTD requirement is not included in the TLAC requirement. This difference creates unnecessary complexity and provides little value to the Proposal. These securities would be available to absorb losses and therefore should remain within the definition of EDS for both TLAC and LTD requirements. Consistent with existing balance sheet management practices, we stagger the maturities of our LTD to create the desired balance sheet maturity profile. We do not expect the 50% haircut to require us to alter our balance sheet management practices, nor do we currently expect the LTD requirement to be our binding constraint. In an effort to reduce the complexity of the requirements, we feel the 50% haircut can be eliminated with little practical consequence to the loss absorbency goal of the Proposal.

  Another area of unnecessary complexity is within the proposed cross holding requirements. The Proposal is not fully consistent with the existing corresponding deduction approach in the Final U.S. Basel III Rule[14] and lacks symmetry with TLAC and LTD requirements due to the differences between EDS and "covered debt instruments". Specifically, a U.S. G-SIB subject to the corresponding cross holding deduction would not follow that logic for its holdings of TLAC instruments issued by other U.S. G-SIBs; rather this component of the deduction would be taken from Tier 2 capital. The Proposal explains that this change to the corresponding deduction approach was included because the cross holding requirements extend beyond U.S. G-SIBs to BHCs that are not subject to the Proposal. It is not necessary to create this disconnect in the corresponding deduction approach as the logic already includes a mechanism to take the required deduction from the next highest level of capital if a given level is fully depleted via deduction. Likewise, the proposed deduction for holdings of our own covered debt would be taken from Tier 2 rather than TLAC. It should be noted that the technically correct U.S. GAAP accounting treatment would be to extinguish

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[14] 12 CFR Parts 208, 217 and 225 [Docket No. R – 1442; Regulations H, Q and Y]

the debt on the BHC's balance sheet. Consequently, we believe the treatment of holdings of our own debt should result in a reduction in EDS rather than Tier 2 capital.

The definition of "covered debt instrument" subject to the cross holding test is inconsistent with the definition of EDS. This represents another unnecessary complexity and the cross holding test should simply rely on the definition of EDS. If an instrument is not available to absorb losses, then there should be no penalty under the cross holding logic. We also feel it would be prudent to increase the current 10% deduction threshold for holdings of unconsolidated financial institutions due to the inclusion of debt instruments in a test that was previously limited to equity instruments. Despite the risk of loss in resolution, EDS have a substantially different risk profile than equity instruments and it is inappropriate to continue measuring this risk using the same threshold. We recommend increasing the level to 15%, particularly given the lack of a market making exception and expected increase in trading volumes due to TLAC and LTD requirements.

- <u>A supplemental Internal TLAC requirement for U.S. G-SIBs is wholly unnecessary:</u> In the Proposal, the Board indicates that it is considering an additional Internal TLAC requirement for U.S. G-SIBs and invites comment on whether such a requirement should be imposed on U.S. G-SIBs. We believe that imposing an Internal TLAC requirement will add further complexity to the TLAC framework without providing incremental value to the resolution process. Agencies should be seeking maximum flexibility to use BHC TLAC as needed. Rather than explicit requirements to identify assets held at the BHC that would be available to contribute down to a subsidiary or to preposition intercompany debt or equity to push losses up to the BHC, the more critical task is for a BHC to have a credible resolution plan specific to the its structure and risks. If a credible plan with adequate external TLAC is in place, a separate requirement for BHC's to hold contributable assets would be redundant and prepositioning debt and equity would risk trapping resources at lower level subsidiaries that may be needed elsewhere in resolution, thereby undermining the resolution plan.

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In summary, we believe that TLAC can be an important and useful tool to ensure no taxpayer support is needed to resolve G-SIBs, but that it needs to be implemented carefully to prevent negative impacts to national and global financial markets. We believe that the calibration for external TLAC in the Proposal is too high. Proper calibration, along with the instrument eligibility, grandfathering and complexity issues outlined above should be addressed prior to final issuance to provide a suitable and understandable requirement.

We appreciate the opportunity to comment on the issues contained the Proposal. If you have any questions, please contact me.

Sincerely,

Neal Blinde
Executive Vice President and Treasurer