January 16, 2024

Via Electronic Submission

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attention: Anne E. Misback, Secretary

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429
Attention: James P. Sheesley, Assistant Executive Secretary, Comments/Legal OES

Office of the Comptroller of the Currency
Chief Counsel's Office
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Attention: Chief Counsel's Office, Comment Processing

Re: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity (Federal Reserve Docket No. R-1813, RIN 7100–AG64; FDIC RIN 3064-AF29; Docket ID OCC-2023-0008)

To Whom It May Concern:

Santander Holdings USA, Inc. ("SHUSA") appreciates the opportunity to comment on the federal banking agencies' ("Agencies") joint proposed rulemaking ("Proposal" or "the Proposal") amending the capital requirements applicable to large banking organizations.[1]

Santander US (defined below) supports the implementation in the United States of a balanced Basel III endgame framework that seeks to promote safety and soundness and resolvability, bolster financial stability, align with international standards and domestic tailoring requirements, and mitigate unintended impacts to the financial markets, the broader economy and consumers. We appreciate the Agencies' consideration of our comments on the Proposal.

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[1] Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity, Insert (September 18, 2023).

Santander US Background

Company Overview

SHUSA, which is headquartered in Boston, MA, is a wholly-owned subsidiary of Madrid-based Banco Santander, S.A., a global banking group with 166 million customers in the United States Europe and Latin America. As the intermediate holding company for Santander's U.S. businesses (collectively, "Santander US"), SHUSA is the parent company of financial companies with approximately 13,700 employees, 4.5 million customers, and $168 billion in assets, as of December 2022. These companies include Santander Bank, N.A., Santander Consumer USA Holdings Inc., Banco Santander International, Santander Securities LLC, Santander US Capital Markets LLC and several other subsidiaries.

Santander US is recognized as a top 10 auto lender, a top 10 multifamily lender, and a top 20 commercial real estate construction lender, and has a growing wealth management business. Santander US consistently receives top rankings as a leader in renewable project finance and received "Deal of the Year" awards in 2021 for Vineyard Wind, at the time the largest offshore wind farm in the U.S.

Comments and Recommendations

Santander US has collaborated with and is supportive of the comment letters on the Proposal submitted by trade associations, including the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Institute of International Bankers, Securities Industry and Financial Markets Association, and Structured Finance Association. These letters outline important perspectives that are broadly shared among banks, including the importance of more closely aligning the Basel III endgame rule with international standards and domestic tailoring requirements.[2]

While the positions advocated for in this comment letter are addressed in other industry comment letters, SHUSA, on behalf of Santander US, would like to emphasize the following issues and recommendations designed to mitigate unintended impacts to the financial markets, the broader economy, and most importantly, consumers.

I. Unintended Consequences of Proposed Risk Weights for Credit Risk

a. The Proposal's definition of "defaulted exposures" would negatively impact institutions' ability to provide loan term extensions to customers in need.

The Proposal makes a number of changes to risk weights applicable to various types of assets. SHUSA wishes to highlight one change in particular that we believe could have unintended consequences for consumers, especially auto loan borrowers.

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[2] Under the Agencies' regulatory framework, SHUSA is designated as a Category IV FBO, subject to tailored "capital, liquidity, and risk management requirements that reflect their more limited risk profile." SHUSA believes this categorization is appropriate in light of our current systemic risk indicators, size, and business model, and is consistent with the principles of national treatment and equality of competitive opportunity between foreign and domestic banking organizations.

Specifically, the Proposal expands the definition of "defaulted exposure" for risk-weighting purposes. As defined in the Proposal, "defaulted exposure" would include a loan term extension, resulting in all loans for which credit-related term extensions are granted being risk-weighted at 150%. Term extensions are one tool used by lenders to help customers, particularly low- and moderate-income (LMI) borrowers, stay in their loan and, in the case of auto loans, minimize repossessions. A 150% risk weight thus would have the effect of punishing lenders that are banks, or operate within bank holding companies for using well-established tools to help support customers.

Santander Consumer, a full-spectrum auto lender, leverages extension practices to provide relief to customers, particularly LMI borrowers, experiencing a temporary setback and who demonstrate the willingness to pay and ability to repay moving forward. Extensions provide a grace period for principal and interest payments, and interest continues to accrue. Once the grace period ends, previous installments resume (each payment will be the same amount as before, but the interest portion of each installment will be higher than before the extension). These terms are clearly disclosed to borrowers.

Unlike other consumer portfolios, in which extensions are typically six months (e.g. Mortgage), auto extensions tend to be short term—typically up to two months per extension.

We believe, accordingly, that treating all loans for which there has been a credit-related term extension as "defaulted exposures" and applying 150% risk weight to those credits would result in punitive treatment for borrower-friendly measures and lead to a reduction in attempts to help borrowers by offering such extensions. This could have an especially large and disproportionate impact on auto lending, where access to transportation is often a critical priority for borrowers.

Regulators and policymakers have long recognized the important role that short-term relief can play in helping borrowers who "may face a temporary hardship in making payments on financial obligations such as mortgages, student loans, car loans, credit cards and other debt."[3]

The Proposal would make efforts to keep customers in their vehicles by offering term extensions more difficult. Moreover, this expanded definition of "defaulted exposure" was not included in the EU's proposed implementation of the Basel III "endgame" standards.[4]

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[3] *See* Board of Governors of the Federal Reserve System, et. al, "Regulators Encourage Institutions to Work with Borrowers Affected by Government Shutdown" (January 11, 2019); *See* Consumer Financial Protection Bureau, "Worried about making your auto loan payments? Your lender may have options that can help" by Nhu-Han Duong and Damion English (February 12, 2020); *See* Board of Governors of the Federal Reserve System, et. al, "Interagency Statement on Loan Modifications and Reporting for Financial Institutions: Working with Customers Affected by the Coronavirus," (March 22, 2020).

[4] EUR-Lex, European Union, Document 52021PC0664 (Oct. 27, 2021)

Question 13: How does the defaulted exposure definition compare with banking organizations' existing policies relating to the determination of the credit risk of a defaulted exposure and the creditworthiness of a defaulted obligor? What additional clarifications are necessary to determine the point at which retail and non-retail exposures should no longer be treated as defaulted exposures?

Question 16: What alternatives to the proposed treatment should the agencies consider while maintaining a risk-sensitive treatment for credit risk of a defaulted borrower? For example, what would be the advantages and disadvantages of limiting the defaulted borrower scope to obligations of the borrower with the banking organization?

Recommendation: To avoid unintended harm to consumers experiencing financial hardship, particularly LMI borrowers, we request that the Agencies revise the definition of defaulted exposure to allow for short-term relief, including auto loan term extensions of up 60 days per extension, subject to reasonable caps on the number of extensions, in each case after a banking organization makes an assessment of the obligor's ability and willingness to eventually repay the exposure.

b. The Proposal's changes to risk weighting could harm clean energy tax equity markets.

The Proposal's expanded simple risk-weight approach ("ESRWA") could have significant consequences for the tax equity market and clean energy goals.

Under existing regulatory capital rules, tax equity investments may be risk-weighted at 100%, so long as a bank's total equity investments are below 10% of its capital. The excess equity investments exceeding 10% of a bank's capital are assigned a 400% risk weight. Under the Agencies' Proposal, the 10% threshold test would be removed. Instead, the proposed rules provide a 100% risk weight for public welfare investments, such as low-income housing tax credit investments. All other non-publicly traded equity investments, including renewable energy tax equity investments, would be assigned a 400% risk weight.

Quadrupling the risk weight for such investments could make it prohibitively expensive for banks to extend tax equity financing ("TEF"), leading to a host of unintended consequences, including: banks pausing new investments or exiting the renewable tax equity market entirely, seeking additional protections to new deals and to existing deals that have not yet been fully funded, or increasing tax equity investment pricing to levels that would make such projects uneconomic to develop.

Such an outcome could undermine federal executive and legislative efforts to promote investment and innovation in clean energy technologies and projects. Such punitive capital treatment would also be inconsistent with the financial performance of tax equity investments historically, which present less

credit risk than other equity investments[5] and more closely resemble loans—a view that is consistent with recent OCC guidance and regulation stating that permissible "TEF transactions are the functional equivalent of loans."[6]

Question 71: *The agencies invite comment on the impact of the proposed expanded risk-based framework for equity exposures. What are the pros and cons of the proposal and what, if any, unintended consequences might the proposed treatment pose with respect to a banking organization's equity exposures? Provide data to support the response.*

Recommendation: We request that the Agencies' proposed 100% risk weight for public welfare investments under the ESRWA be expanded to include renewable energy tax equity investments that National Banks would be permitted to make under their lending authority (Section 12 CFR § 7.1025). These investments present less credit risk than other equity investments, are the functional equivalent of a loan, and are a critical financing source for clean energy projects.

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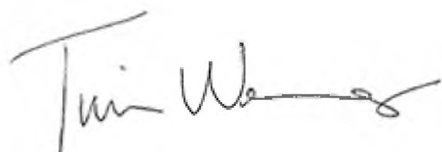
Santander US appreciates the Agencies' consideration of our comments on the Proposal. If I can answer any questions or provide any further information, please contact me at (617)346-7398.

Respectfully yours,



Tim Wennes
President & Chief Executive Officer
Santander US

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5 *See* American Council on Renewable Energy et al., Letter to Dr. Lael Brainerd (Aug. 22, 2023): "Projects are often held in a limited liability corporation (LLC) and taxed as partnerships. In most cases, the project sponsors do not have sufficient tax liabilities to efficiently use the tax benefits that may be available for these projects. Thus, the Sponsor sells non-controlling passive interests in the LLC to tax equity investors in a structured tax equity transaction. This structure is designed to allow tax equity investors to fund a large portion of the capital cost of the project and to receive a pre-negotiated rate of return which consists primarily of the value of available tax credits and other tax benefits. The tax equity investor has limited downside exposure as the tax equity investment will receive most of its return from more predictable tax credits and other tax benefits, and it has other protective features such as no senior debt in the project, and its priority over a sponsor's return. In many ways tax equity has more loan-like characteristics versus true equity investments."

6 *See* Office of the Comptroller of the Currency, Treasury, Activities and Operations of National Banks and Federal Savings Associations,(December 22, 2020).