JEFFREY S. DAVIS
SENIOR VICE PRESIDENT
DEPUTY GENERAL COUNSEL
805 King Farm Boulevard, Suite 100
Rockville, Maryland 20850
P: +1 301-978-8484
E: Jeffrey.davis@nasdaq.com

February 2, 2024

VIA ELECTRONIC DELIVERY

The Honorable Jerome Powell, Chair
Ann E. Misback, Secretary
Board of Governors, Federal Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 20551
Docket No. R-1813; RIN 7100-AG64

Office of the Chief Counsel
Office of the Comptroller of the Currency
400 7th Street, SW Suite 3E-218
Washington, D.C. 20219
Attn: Comment Processing, Docket ID OCC-2023-0008

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
Attn: Comments/Legal OES (RIN 3064-AF29

Re: Regulatory Capital Rule: Large Banking Organization and Banking Organizations With Significant Trading Activity

Dear Madam and Sirs:

Nasdaq Inc. appreciates the opportunity to submit this letter to the Board of Governors of the Federal Reserve System (the "FRB"), the Office of the Comptroller of the Currency (the "OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively the "Agencies") regarding the proposed regulatory capital rule, referred to as the Basel III Endgame proposal ("Proposal"). Nasdaq believes that by materially increasing capital requirements for all of the largest U.S. banks, adoption of the Proposal would trigger a domino effect that will damage the U.S. economy, capital markets, banks, brokers, small businesses, and tens of millions of U.S. investors and citizens. Additional analysis of the potential impact of the Proposal is needed to provide greater clarity to the agencies and to ensure adoption of regulations that best suit the needs of the American public.

Nasdaq has a unique and important interest in the Proposal. Nasdaq's mission is to become the trusted fabric of the world's financial system. To that end, we aspire to deliver world-leading platforms that improve the liquidity, transparency, and integrity of the global economy. Nasdaq is a leading global technology company serving corporate clients, investment managers, banks, brokers, and exchange operators as they navigate and interact with financial systems and the global capital markets. We provide mission-critical risk management, regulatory reporting, and capital markets software to our clients in the U.S. and abroad. Nasdaq has relationships with bank organizations that would be directly impacted by the Proposal. In addition, Nasdaq serves businesses, banks and other financial institutions in the U.S. and around the world who would experience collateral consequences if the Proposal were adopted in its current from.

From this vantage point, Nasdaq sees a Proposal that, in its current form, may have unintended consequences that could harm the U.S. economy. The Proposal would materially increase capital requirements for the largest U.S. banks by an estimated 19 percent.[1] The increased costs will affect bank counterparties and customers, which could lead to a reduction in the amount of banking and financial services the banks offer. While the Agencies state that the intent is to "enhance the resilience of the banking system[,]" the Proposal may negatively impact every aspect of the economy, from the largest securities trading firms to small businesses, local banks and individual consumers striving to purchase a home.[2]

For example, the risk weights for residential mortgages are more stringent under the Proposal, which could increase the costs of home loans for households which would impact one's ability to gain access to these loans. Multiple commenters have indicated that the downstream effects of the Proposal could disproportionately affect first-time home buyers, low-to-moderate income borrowers, and underserved communities.[3] Another commenter noted more generally that the Proposal would "decrease the availability and increase the cost of: (1) lending to households to finance an array of important purchases such as a home or automobile and even everyday purchases made via credit cards; [and] (2) lending to small businesses to support their ability to remain active in local communities and provide employment…."[4] In addition, the increased capital requirements related to funding renewable energy and other green initiatives could decrease investments in this area.[5]

Nasdaq shares Federal Reserve Chair Jerome Powell's concerns that the Proposal's capital increases could reduce banks' activity in the markets, "threatening a decline in liquidity in critical markets and a movement of some of these activities into the shadow banking sector" and that "raising capital requirements also increases the cost of, and reduces access to, credit."[6]

American companies use capital markets funding more than bank lending, and capital markets are crucial to economic growth in the U.S.[7] Any possibility of the banks' decreased participation in the markets is of particular concern to Nasdaq because large banking

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1 *See,* Proposal, 88 FR 64028 (September 18, 2023) at 64169. Other commenters have estimated the increase to be around 25%. *See,* Financial Services Forum Comment Letter ("FSF Letter") (January 16, 2024), at 2; JPMorgan Chase & Co. Comment Letter ("JPMC Letter") (January 16, 2024), at 4.

2 Proposal at 64170.

3 Urban Chamber of Commerce Comment Letter (November 14, 2023); NAACP Pittsburgh Branch Comment Letter (undated); Hispanic Leadership Fund Comment Letter (January 16, 2024).

4 JPMC Letter at 3.

5 As drafted, the Proposal would increase the risk weighting of renewable energy tax credit financing from 100% to 400%, effectively treating such financings the same as all other non-public investments. Proposal at 64214.

6 Chair Powell's July 27, 2023 statement, available at https://www.federalreserve.gov/newsevents/pressreleases/powell-statement-20230727.htm.

7 The Securities Industry and Financial Markets ("SIFMA") Comment Letter (January 16, 2024) SIFMA "2023 Capital Markets Factbook," p.6., available at https://www.sifma.org/resources/research/fact-book/.

organizations play many key roles in the daily operation of U.S. markets.[8] Large banks act as brokers, market makers, and intermediaries infuse liquidity into the markets, executing and facilitating millions of transactions each day. Corporates, asset managers and smaller banks of varying sizes utilize the large banks' market-related products and services. In addition, large banks provide market access to all types of end users, including small businesses, asset managers, government agencies, local municipalities, pension funds, and community banks. The cost of credit and hedging will likely increase significantly due to the additional costs for derivatives imposed by FRTB risk weight increases. Moreover, the Proposal's CVA capitalization requirements and its proposed treatment of securities financing transactions could detrimentally affect stock exchanges and publicly traded companies.[9] Furthermore, the increased costs could lead to smaller inventories and less liquid markets, which would also raise costs for companies seeking investment capital and savers looking for a solid financial return.

The Agencies acknowledge that the Proposal's increases are not based on concrete data because "identification of causal effects of tighter capital requirements on market liquidity is challenging," and note that "existing empirical studies on the relationship between capital requirements and market liquidity are limited and empirical evidence on causal effects of higher capital requirements on liquidity is mixed."[10] We urge the Agencies to conduct thorough modeling of the Proposal's increases and potential consequences, study the concerns raised by the banks and other commenters and revise the proposal to avoid causing needless damage to the markets and the economy.

The Proposal adds unnecessary obligations to U.S. banks that the Basel Committee did not recommend and that European Banks are not implementing, The Agencies' effort to impose "gold plating" standards that exceed those set forth by the Basel Committee would disadvantage U.S. banks versus global competitors. These "gold plated" issues include:

- The Proposal's risk weight for residential real estate far exceeds the Basel Committee standard and those adopted by the UK and Europe.[11]

- Eliminating credit risk weighted asset ("RWA") modeling and propose several standards that are more conservative than the international standards maintained by the Basel Committee on Banking Supervision ("Basel Committee").[12] As stated above, conservative estimates indicate that this will cause an approximately 19 percent capital increase, which several banks argue is understated.[13] Even at 19 percent, the increase is significantly higher than projected increases England and

8 The proposed capital requirements primarily relating to trading activities would materially increase to an estimated $880 billion for large holding companies. *See*, Proposal at 64170.

9 As noted in other comment letters, the proposed capital requirements primarily relating to trading activities would materially increase, an estimated increase in risk-weighted assets of approximately $880 billion for large holding companies. Goldman Sachs Comment Letter (January 16, 2024); FSF Letter, 1.16.24, p. 65; Bank Policy Institute and American Bankers' Association Comment Letter ("BPI and ABA Letter") (January 16, 2024), p. 9.

10 Proposal at 64170.

11 SIFMA "A Non Exhaustive List of U.S. Gold Plating and A Cross-Jurisdictional Comparison", available at https://www.sifma.org/wp-content/uploads/2023/11/Table-A1.-A-Non-Exhaustive-List-of-U.S.-Gold-Plating-and-A-Cross-Jurisdictional-Comparison.pdf.

12 JPMC Letter 1.16.24, p.6.

13 E.g., JPMC, SIFMA.

Europe, which are projected to result in a 3.2% increase in Tier 1 capital requirements for major UK firms and a 9.9 percent rise in Tier 1 requirements for EU firms.[14]

- The Proposal sets the internal loss multiplier ("ILM") of the operational risk framework at a floor of one, which causes historical operational loss events to increase the operational risk charge but does not allow favorable operational events to decrease it. This is not part of the Basel Committee's proposal, and regulators in the UK and Europe have not added it. The UK Prudential Regulation Authority ("PRA") actually rejected the ILM finding that many operational losses are "low probability high-impact events" that do not serve as accurate predictors of additional operational losses.[15]

- The Proposal's use of supervisory stress testing in the stress capital buffer ("SCB") framework and the Method 2 calculation of Globally Systemically Important Banks ("GSIB") surcharge are also unique to the U.S. If the Agencies adopt this significant surcharge, U.S. banks will be required to maintain significantly higher levels of capital than their overseas peers.[16]

- The Proposal would implement haircut floors for SFTs, which are not present in the Basel Committee Standards, the UK or the EU.[17]

Holding U.S. banks to higher standards than those of its European partners increases the risks to the U.S. economy and trading and capital markets activities in particular.[18] These gold-plating standards could make it far more difficult for banks to serve American customers seeking to expand into other jurisdictions.

As a U.S. company with operations and clients around the globe, Nasdaq urges the Agencies to more thoroughly examine the potential impact of the Proposal on the U.S. markets, economy, and American companies' ability to remain competitive at home and abroad. Thank you for the opportunity to share our concerns with you.

Sincerely,

Jeffrey S. Davis
Senior Vice President
Deputy General Counsel

14 JPMC Letter 1.16.24, p. 6-7.

15 BPI and ABA Letter; UK PRA CP16/22 – Implementation of the Basel 3.1 Standards, 8.24 (Nov. 30, 2022), available at https://www.bankofengland.co.uk/prudential-regulation/publication/2022/november/implementation-ofthe-basel-3-1-standards.

16 FSF Letter, p. 5.

17 JPMC Letter, p. 7.

18 SIFMA and ISDA Letter, p. 7; American Banker, "Basel III endgame: 5 Things to Watch in 2024;", available at https://www.americanbanker.com/list/basel-iii-endgame-5-things-to-watch-in-2024.