BARCLAYS

12 January 2024

By Electronic mail

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

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Ann 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

Re: Comments Related to Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity (Federal Reserve Docket No. R-1813, RIN 7100-AG64; FDIC RIN 3064-AF29; Docket ID OCC-2023-0008)

Ladies and Gentlemen,

Barclays US LLC (BUSLLC), on behalf of itself and its ultimate parent company, Barclays PLC and its subsidiaries (collectively, Barclays), appreciates the opportunity to comment on the proposed amendments applicable to large banking organizations and to banking organizations with significant trading activity (Proposed Rule) issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (collectively, the Agencies).

BUSLLC is Barclays' US intermediate holding company (IHC), which is the umbrella holding company for Barclays' US subsidiaries and is subject to the FRB's Enhanced Prudential Standards. BUSLLC operates a consumer bank, Barclays Bank Delaware, which provides co-branded credit cards and high-yield savings and CD products, and a corporate and investment bank, both of which support US consumers, businesses, and the overall US economy. Barclays Bank Delaware has partnered with 21 top companies to provide credit cards to over twenty million individuals, making it the ninth largest card issuer in the US. BUSLLC operates the sixth largest corporate and investment bank in the US and is a leading primary dealer in the Treasury market.

We support a bank capital framework that promotes the safety and soundness of banking institutions and the financial system more broadly, and we are actively engaging with UK and global regulators to share insights and help promote a holistic and coordinated approach to implementation of the Basel framework. As outlined below, however, we are concerned that certain components of the Proposed Rule would: (1) increase capital requirements in a disproportionate manner relative to the risk of activities and entities, impacting the cost and availability of products and services offered by BUSLLC without a data-driven, commensurate reduction in risk; and (2) as a result of the unique structure required of a foreign banking

organization (FBO) operating in the US, inhibit US investment (including incentives to reduce the scale and scope of products and services offered in the US) and negatively impact the diversity and competitiveness of the US financial system through further concentration and consolidation of activities that have the potential to increase systemic risk. Notably, data suggest[1] that the operational risk requirement alone would increase the cost of credit and access to capital markets for US consumers and businesses, without a clear and corresponding proportional incremental benefit when considering the overall application and impacts of the proposal. Overall, the Proposed Rule would impair the lending, liquidity, and diversity that BUSLLC provides to the US market—even though BUSLLC poses relatively limited risk to the US financial system[2]—at a time when stability and predictability in retail and corporate lending is important to supporting the strength of the US economy. To that end, we recommend the Agencies make the following changes to the proposal.[3]

Adjust the services component to avoid disincentivizing BUSLLC from providing a diverse set of products to US consumers and businesses

The operational risk requirement, as proposed, would penalize BUSLLC and other banks that provide important products and services, which are compensated primarily via fees and commissions. Unlike interest income (which is capped and netted) and trading revenue (which is netted), the Proposed Rule would require a bank to include the gross amount of fee- and commission-based income (or expense) in the services component of the operational risk requirement. This approach would significantly overcapitalize fee- and commission-based business lines relative to their underlying risks—particularly for certain activities, such as investment banking advisory services and client custodial clearing—and therefore make it more challenging for American businesses to access credit and the capital markets.

The Basel Committee itself acknowledged the problem with the overcapitalization of fee and commission income in the services component,[4] which will only become more problematic as fee- and commission-based activity continues to increase. To address this problem, we urge the Agencies to modify the services component, which could be accomplished by applying all, or some combination of, the following revisions: netting fee and commission income (including applying a pre-tax margin, which utilizes both netting and data currently reported, to more appropriately calibrate any requirement), weighting fee and commission income associated with different business lines based on historical operational losses associated with each

[1] The comment letter from the American Bankers Association and Bank Policy Institute contains a detailed discussion of the capital charges and costs associated with the proposed operational risk capital requirement.

[2] BUSLLC is a Category III banking organization with less than $200 billion in total consolidated assets. In addition, BUSLLC ranked 31 out of 35 banking organizations on the Office of Financial Research's Contagion Index, *available at* https://www.financialresearch.gov/bank-systemic-risk-monitor/ (accessed Fri. Oct. 20, 2023). The Contagion Index measures the fraction of liabilities held by other financial institutions. All else being equal, the default of a bank with a higher connectivity index would have a greater impact on the rest of the banking system because its losses would spill over onto other financial institutions, creating a cascade that could lead to further defaults.

[3] Barclays also participated in the preparation of the respective comment letters from the Bank Policy Institute, American Bankers Association, Institute of International Bankers, Securities Industry and Financial Markets Association, International Swaps and Derivatives Association, Structured Finance Association, U.S Chamber of Commerce, and Futures Industry Association. We support the issues raised and recommendations made in those letters.

[4] Basel Committee on Banking Supervision, *Consultative Document: Standardised Measurement Approach for operational risk* (Mar. 2016), *available at* https://www.bis.org/bcbs/publ/d355.pdf.

business line, and capping the amount of fee and commission income and expense included in the services component.

Affiliate recharge income should not be included in the operational risk requirement to ensure a level playing field and to avoid impacting competition and US investment

The operational risk requirement would penalize banks like BUSLLC that have established bankruptcy-remote service companies for resolution planning purposes that provide non-financial services to other Barclays affiliates. BUSLLC's service company subsidiaries provide non-financial services, such as information technology, logistical, and human resources services, to affiliates outside the US. In turn, these affiliates must reimburse BUSLLC for the cost of the services, with the amounts required by US GAAP to be recorded as income by BUSLLC (rather than an offset to the expense). Under the Proposed Rule, this income would be included in the business indicator component of the operational risk requirement with concerning negative implications for certain FBOs.

The inclusion of inter-affiliate recharge income in the business indicator would increase BUSLLC's risk-weighted assets and associated regulatory capital requirements, even though the income in no way reflects the size and operational risk profile of BUSLLC (in contrast, US-headquartered top-tier bank holding companies would eliminate recharge income in consolidation). In addition, because non-financial operational *expenses* would be excluded from the services component, the Proposed Rule would create a framework that would act as a disincentive to locate service company operations in the US. Having a US service company that employs personnel in the US has benefits, which ultimately support the operations of the IHC and promote safety and soundness more broadly. We therefore urge the Agencies to correct this incongruence and exclude non-financial income along with non-financial expenses from the business indicator component of the operational risk requirement.

Set the Internal Loss Multiplier to 'one' to address the material over-calibration of the operational risk calculation

The proposed Internal Loss Multiplier (ILM) would materially exaggerate capital requirements related to operational risk. In particular, large one-time litigation-related operational loss events are not generally predictive of future loss events, losses beyond three years generally do not help predict future losses,[5] and the 10-year lookback period would continue to penalize a banking organization that has changed its business model or remediated its control practices. The UK recognized the deficiencies with the ILM and set it to one, as permitted by the Basel Framework.[6] The EU also set the ILM to one. In particular, the UK noted that the ILM may not be "sufficiently risk-sensitive" because the loss distribution is "characterized by infrequent but very large losses" and that these "low-probability high-impact events, given their heterogeneity, are generally not good predictors of other unlikely events and therefore future losses."[7]

To promote a level playing field, the Agencies should follow the UK and EU and set the ILM equal to one. Notably, the current structure of the ILM—when combined with equally significant design flaws for fee- and commission-based businesses and FBOs, as discussed above—would amplify effects on BUSLLC, resulting in

[5] See Filippo Curti and Marco Migueis, *The Information Value of Past Losses in Operational Risk* (Aug. 11, 2022), *available at* https://www.federalreserve.gov/econres/feds/files/2023003pap.pdf.
[6] Prudential Regulation Authority, *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-of-the-basel-3-1-standards.
[7] Id.

requirements that would be asymmetric to risks associated with the activities driving the requirements. In addition, overcapitalization of the operational risk requirement in the US would create an incentive for Barclays and other banks to operate more of their fee- and commission-based activity outside of the US.

Do not add a surcharge to the retail risk weights to avoid dramatic implications for credit card lending and consumers' access to credit

The Proposed Rule would add 10 additional percentage points to certain retail risk weights[8], would require BUSLLC to capitalize for unused credit lines and would mandate new and significantly higher operational risk capital related to credit card activities. These requirements, when taken together, would dramatically increase the cost of, and restrict access to, credit for Americans. In fact, the Proposed Rule would result in higher capital requirements for credit cards than is required today under the generally applicable capital rule—despite no evidence showing that credit cards are riskier than their current treatment suggests.[9]

Overall, the proposed treatment could have dramatic implications for US consumers by potentially making it harder for them to access credit through increased costs and lower credit lines. In particular, it could become more difficult for those with limited or no credit record and those with impaired credit histories to qualify for affordably priced cards. Large increases in capital requirements for card credit lines could also reduce the amount of credit available to consumers to meet unanticipated or emergency expenses. Low- to moderate-income Americans could be particularly hard hit, pushing consumers to nonbanks and less traditional and less protected sources of credit, such as payday lenders and buy now, pay later products. For these reasons, we urge the Agencies to align the retail risk weights with the Basel Framework and, as discussed above, consider alternative approaches to accounting for fee-based income in the services component of the operational risk requirement.

Apply no more than a twenty percent risk weight to inter-affiliate transactions to better account for the risk of such transactions

The Proposed Rule would establish a range of risk weights for bank exposures to depository institution, foreign bank, and credit union obligors that are based on the creditworthiness of these entities. However, neither the Basel standard nor the Proposed Rule takes into account the unique structural aspects of an FBO with a US IHC, in that a transaction between an IHC and its parent bank attracts the same risk-weighting as a transaction between an IHC and an unaffiliated third party financial institution. The risk of potential loss from a transaction between an IHC and its foreign bank parent is fundamentally different from, and materially lower than, a transaction with an unaffiliated third party.

The proposed framework for bank exposure risk weights should be amended to include a category and corresponding risk weight that reflects this different and unique type of exposure between an IHC and its foreign bank affiliates. To that end, we recommend that the Agencies set the risk weight for bank exposures to an affiliated foreign bank between 0 and 20 percent to reflect the lower risk of losses arising from intercompany exposures.

Intercompany lending activity often arises from low-risk or regulatory-driven activities, such as managing intercompany funding, liquidity, capital, leverage, tax, or foreign exchange positions between an IHC and its

[8] The Proposed Rule would apply a 55 percent risk weight to transactors and 85 percent risk weight to revolvers, as opposed to 45 percent and 75 percent, respectively, under the Basel Framework.

[9] Bank Policy Institute, *The Basel Proposal: What It Means for Retail Lending* (Nov. 8, 2023), *available at* https://bpi.com/the-basel-proposal-what-it-means-for-retail-lending.

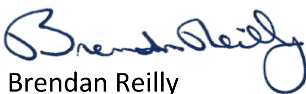
affiliates. In addition, foreign bank holding companies are required to be a source of strength to their US operations, and acknowledging these structural differences would be consistent with other aspects of the bank capital framework, such as FRB's stress testing framework, which does not require US IHCs to include affiliates as a counterparty under Counterparty Default Component for the Supervisory Severely Adverse Scenario[10], the FRB's framework for categorizing banking institutions that adjusts the measurement of cross-jurisdictional activity for IHCs[11], and the Single-Counterparty Credit Limit rule that does not account for affiliated transactions in limiting the amount of credit exposure that an IHC or FBO may have.[12]

Not providing for a more appropriate risk weight for intercompany exposures would discourage prudent management of internal funding, liquidity, and capital. Furthermore, the Proposed Rule would require FBOs to maintain risk-based capital for activities that domestic banks would not be required to capitalize at their top-tier US holding companies—namely the intercompany facilitation that is used to provide access to US markets for foreign affiliates and to foreign markets for US subsidiaries. This requirement would levy a higher capital cost for FBOs to provide the same services compared to top-tier US holding companies.

Barclays appreciates the Agencies' consideration of the issues highlighted in this letter, and we welcome the opportunity to provide further information or assistance to the Agencies. Please contact us at brendan.t.reilly@barclays.com if we can provide any additional information in the meantime.

Sincerely,

Richard Haworth
Chief Executive Officer, Americas



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[10] Board of Governors of the Federal Reserve System, *2023 Stress Test Scenarios,* fn. 14 (Feb. 2023), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230209a1.pdf.

[11] FRB, *Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations,* 84 Fed. Reg. 59032, 59039-40 (Nov. 1, 2019).

[12] 83 Fed. Reg. 38460 (Aug. 6, 2018), implementing section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.