INSTITUTE OF INTERNATIONAL BANKERS

299 Park Avenue, 17th Floor
New York, N.Y. 10171
Direct: (646) 213-1147
Facsimile: (212) 421-1119
Main: (212) 421-1611
www.iib.org

Briget Polichene
Chief Executive Officer
E-mail: bpolichene@iib.org

June 25, 2018

regs.comments@federalreserve.gov

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

Re: Proposed Amendments to the Regulatory Capital Rules and the Total Loss-Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies (Docket No. R-1604, RIN 7100 AF-03)

Ladies and Gentlemen:

The Institute of International Bankers ("IIB") appreciates the opportunity to provide comments on the recent proposal (the "Proposal")[1] by the Board of Governors of the Federal Reserve System (the "Board") to revise the enhanced supplementary leverage ratio ("eSLR") requirements applicable to U.S. global systemically important bank holding companies ("U.S. GSIBs") and the total loss-absorbing capacity ("TLAC") requirements applicable to U.S. GSIBs and to U.S. intermediate holding companies ("Covered IHCs") of global systemically important foreign banking organizations ("FBOs").[2]

Specifically, we are writing to (i) express our support for the proposed changes relating to the TLAC requirements applicable to Covered IHCs; (ii) urge the Board to undertake a broader assessment of the U.S. TLAC Rule with a view to recalibrating its requirements, including in particular with respect to Covered IHCs; (iii) delay the effective date of the U.S. TLAC Rule for one year to facilitate such a review and avoid the inefficiencies of complying with a requirement that is subject to change; and (iv) request that, if the Board and other U.S. federal banking agencies undertake a recalibration of the eSLR to reflect changes to the denominator of the supplementary leverage ratio ("SLR") required for certain banking organizations under the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Regulatory Relief Act" or the "Act"), the Board and the other federal banking agencies work within the Basel Committee on Banking Supervision (the "Basel Committee") to ensure that any such recalibration of the eSLR and/or the SLR denominator does not undermine the Basel capital

---

[1] 83 Fed. Reg. 17317 (April 19, 2018).

[2] 12 C.F.R. Part 252, Subparts G and P ("U.S. TLAC Rule").

framework's objective of establishing a global level-playing field for internationally active banking organizations.[3]

The Proposal's TLAC Modifications. The IIB and its members generally support the Board's efforts to simplify the regulatory capital and TLAC frameworks. The Proposal would allow Covered IHCs to add back to their TLAC buffer level calculation the 50% haircut on eligible long-term debt ("LTD") securities with a remaining maturity of between one and two years. In addition, it would revise the transition provisions to ensure that a new Covered IHC would, in all cases, have at least three years to conform to the requirements of the U.S. TLAC Rule, and it would make technical corrections to the methodology for calculating the Covered IHC LTD amount to align it with the methodology used for U.S. GSIBs.

We support these modest changes, which recognize the importance of making comparable reductions to TLAC requirements applicable to U.S. GSIBs and Covered IHCs, acknowledge the necessity of adequate transition periods, and materially reduce burden for many Covered IHCs.

The Proposal's Request for Views on Additional Changes. We also support the Board's efforts, in the Proposal, to take a fresh look at how the various buffers interact with the TLAC and LTD requirements. Question 9[4] in the Proposal indicates the Board is considering changes to the TLAC requirements applicable to U.S. GSIBs based on their total leverage exposure, including potentially lowering the U.S. TLAC Rule's SLR-based requirement for U.S. GSIBs to match the levels currently required for Covered IHCs. We note that an additional downward adjustment to the TLAC requirements applicable to U.S. GSIBs would better align these requirements with international standards, and we strongly support an approach that would bring the U.S. TLAC Rule into closer alignment with the TLAC standards established by the Financial Stability Board (the "FSB Standards"). Nevertheless, we also request that any recalibration of the leverage-based TLAC and LTD requirements for U.S. GSIBs should be accompanied by comparable downward adjustments to the requirements applicable to Covered IHCs (consistent with the parallel changes to the TLAC buffer level calculation in the Proposal).

Further Recommended Changes. In finalizing the Proposal, the Board should also modify certain other aspects of the TLAC and LTD requirements in a manner consistent with the Proposal's theme of recalibrating the calculations to address inconsistencies, complexity and burdens.

- First, to further reduce complexity, we request that the Board eliminate the 50% haircut on eligible LTD from the U.S. TLAC Rule entirely.

- Second, the IIB supports the Proposal's objective of ensuring that leverage requirements function as backstops to risk-based requirements rather than as binding constraints.

---

3 Basel Committee, International Convergence of Capital Measurement and Capital Standards (July 1988), para. 3 ("[t]he framework should be fair and have a high degree of consistency in its application to banks in different countries with a view to diminishing an existing source of competitive inequality among international banks").

4 83 Fed. Reg. 17322 (Question 9).

Consistent with that objective, the Board should eliminate the U.S. Tier 1 leverage ratio component of the TLAC and LTD requirements for Covered IHCs that are subject to the SLR because there is no regulatory purpose served in subjecting only Covered IHCs to this duplicative requirement. Moreover, the Proposal's recalibration of the eSLR would significantly reduce the effective SLR requirements for many GSIBs, which would mitigate (and, indeed, render inapplicable) the Board's stated concerns motivating its application of Tier 1 leverage-based TLAC and LTD requirements to Covered IHCs.[5]

A Broader Re-evaluation of TLAC and LTD Requirements. Beyond the Proposal, we also believe that a broader re-evaluation of the TLAC and LTD requirements is warranted at this time, particularly as these requirements diverge significantly from internationally agreed standards that are applicable to non-U.S. banks. We are encouraged by Vice Chairman Quarles' recent statements indicating that the Board is considering recalibrating the internal TLAC requirements for IHCs toward the lower end of the FSB Standards and/or streamlining the elements of the resolution loss absorbency regime, which include both TLAC and LTD requirements, to reflect the practice of other regulators.[6]

In light of the Board's intent to consider a review of the suitability and calibration of the LTD and TLAC requirements,[7] the Board should delay the effective date of the U.S TLAC Rule for one year. Such a delay is appropriate given the lack of guidance from the U.S. Department of the Treasury on the impact of the base erosion and anti-abuse tax ("BEAT") included in the Tax Cut and Jobs Act as it relates to IHCs and FBOs that must issue new instruments or restructure existing instruments in order to comply with the TLAC and LTD requirements. Furthermore, mandating compliance with requirements that are under consideration for significant revision or potential elimination is inefficient both for banking organizations and for the Board, which should not allocate resources to reviewing and approving

---

5 See 82 Fed. Reg. 8266, 8292 n. 82 (Jan. 24, 2017). ("[A]dding a total consolidated assets TLAC or LTD requirement in the case of a covered BHC would be superfluous since the [eSLR] based requirement would always be larger than the U.S. tier 1 leverage ratio requirement. This is because both the U.S. tier 1 leverage ratio requirement of 4 percent is lower than the [eSLR] requirement of 5 percent, and the total consolidated assets amount is always less than the total leverage exposure amount. This reasoning does not apply in the case of covered IHCs. Covered IHCs are not subject to the eSLR ratio of 5 percent but are subject to the SLR of 3 percent. Accordingly, there can be cases in which the U.S. tier 1 leverage ratio based requirement would be larger than the [SLR]-based requirement. Since covered IHCs are subject to both the U.S. tier 1 leverage ratio and the [SLR] and since the U.S. Tier 1 based requirement is not redundant, the final rule requires that the TLAC and LTD requirements reference both the U.S. tier 1 leverage ratio and [SLR] capital measures.")

6 See Vice Chairman Quarles, Trust Everyone—But Brand Your Cattle: Finding the Right Balance in Cross-Border Resolution (May 16, 2018).

7 See Id. ("I believe we should consider whether the internal TLAC calibration for IHCs could be adjusted to reflect the practice of other regulators without adversely affecting resolvability and U.S. financial stability. The current calibration is at the top end of the scale set forth by the FSB, and willingness by the United States to reconsider its calibration may prompt other jurisdictions to do the same, which could better the prospects of successful resolution for both foreign G-SIBs operating in the United States, and for U.S. G-SIBs operating abroad. Alternatively, it may be possible to streamline the elements of our resolution loss absorbency regime, which include both TLAC and long-term debt requirements. I will be recommending to my colleagues that we look closely at these possibilities in the coming weeks and seek comment on ways to further improve this framework.").

LTD conversion provisions when changes to the LTD requirement to bring it back in line with the FSB Standards are under discussion.

While we welcome a review and recalibration of the U.S. TLAC Rule, we believe it is unlikely that the Board could (i) undertake a thorough review of the U.S. TLAC rule, (ii) conduct a full notice and comment procedure with respect to any proposed changes identified in that review and (iii) finalize these changes adequately in advance of year end, *while also* providing covered firms with enough time to implement any necessary changes to their TLAC and/or LTD instruments and/or to issue additional instruments before January 1, 2019. Requiring Covered IHCs to comply with the current TLAC and LTD requirements by January 1, 2019, when it is uncertain whether they will be significantly revised or recalibrated, would impose significant cost and administrative burden. If additional changes to the TLAC and LTD requirements are adopted after January 1, 2019, such changes could require many IHCs to engage in a second round of costly and burdensome restructuring to adjust their outstanding capital and long-term debt instruments or potentially redeem outstanding instruments to comply with the new requirements. Accordingly, we request that the Board extend the effective date for the U.S. TLAC Rule to ensure that Covered IHCs have certainty about the requirements to which they will be subject *before* they must complete any restructuring of their capital and long-term debt.

As discussed in detail in our comment letter on the Board's 2015 TLAC proposal[8] and in our recent discussions with Board staff regarding the BEAT, we strongly urge the Board to consider additional modifications to the internal TLAC and LTD requirements applicable to Covered IHCs. These modifications should include, but not necessarily be limited to:

- Downward recalibration of the TLAC requirements applicable to Covered IHCs to reflect more accurately the risk profile and particular tax and structural considerations relevant to Covered IHCs generally, and the impact of the BEAT specifically;

- Elimination of the Tier 1 leverage-based TLAC requirement entirely, or at a minimum, for Covered IHCs that are subject to the SLR; and

- Elimination of the formal LTD requirement consistent with the FSB Standards.

We would welcome the opportunity to discuss revisions to the TLAC and LTD requirements with Board staff and would be pleased to provide additional information as may be useful to aid Board staff in this fresh look.

Effect of Recent Statutory Changes. Finally, the Proposal indicates that "significant changes to [the definition of 'total leverage exposure'] would likely necessitate reconsideration of the proposed recalibration [of the eSLR] as the proposal is not intended to materially change the amount of capital in the banking system."[9] Given the recent enactment of

[8] IIB Letter to the Board re: TLAC and Clean Holding Company Requirements for U.S. GSIBs and Covered IHCs (Feb. 19, 2016).

[9] 83 Fed. Reg. 17319. See also Vice Chairman Quarles, Testimony before House Committee on Financial Services (Apr. 17, 2018) ("If that provision of the Senate bill were to become law, I think we would have to

the Regulatory Relief Act, which requires the federal banking agencies to amend the definition of "total leverage exposure" to exempt funds on deposit with certain central banks for bank holding companies and their subsidiaries that are "predominantly engaged in custody, safekeeping and asset servicing" activities, we expect the Board will propose revisions to the SLR to implement the Act in addition to (or in place of) revisions to the eSLR.

Although the eSLR does not apply to any IHC, our members are subject to the Basel leverage ratio at the global consolidated level in their home jurisdictions. The revisions to the SLR required by the Act, once implemented, would cause the SLR to diverge from the Basel leverage ratio in its treatment of central bank deposits.[10] Regulatory requirements agreed upon by the Basel Committee should be implemented in such a way as to entail consistent outcomes across various jurisdictions and in a manner not disadvantageous to banks operating in host countries. In order to ensure that any recalibration of the eSLR and/or the SLR denominator in the U.S. does not undermine the Basel capital framework's objective of establishing a global level-playing field, we urge the Board and the other federal banking agencies to advocate within the Basel Committee for changes to the Basel leverage ratio before any proposed revisions to the SLR and eSLR are issued for notice and comment in the United States.

[continued on next page]

---

consider how to calibrate our proposal to take account of the fact that certain banks would have had a denominator of the eSLR changed for them. That would be appropriate if it does become law.")

10 While the so-called "Basel IV" revisions to the Basel leverage ratio allow for national discretion to exempt central bank reserves from the leverage ratio exposure measure, the exemptions are permitted only temporarily and in exceptional macroeconomic circumstances, and they must be accompanied by a corresponding increase in the calibration of the minimum leverage ratio to offset the impact of exempting central bank reserves. See Basel III: Finalising post-crisis reforms (Dec. 2017), Exposure Measure, para. 26.

*   *   *

We appreciate your consideration of our comments. Please contact the undersigned (646-213-1147; bpolichene@iib.org) or our General Counsel, Richard Coffman (646-213-1149; rcoffman@iib.org), if we can provide any additional information.

Sincerely,

Briget Polichene

Briget Polichene
Chief Executive Officer

cc: Chairman Jerome H. Powell
Vice Chairman Randal K. Quarles
Governor Lael Brainard
Michael S. Gibson
Mary L. Aiken
Kwayne Jennings
Mark E. Van Der Weide
(Board of Governors of the Federal Reserve System)