The Clearing House
At the Center of Banking Since 1853®

September 25, 2017

Via Electronic Mail

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Attention: Legislative and Regulatory Activities Division

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, DC 20429
Attention: Robert E. Feldman, Executive Secretary

Re: Regulatory Capital Rules: Retention of Certain Existing Transition Provisions for Banking Organizations that are Not Subject to the Advanced Approaches Capital Rules (Docket ID OCC-2017-0012; FRB Docket No. R-1571 and RIN 7100-AE 83; FDIC RIN 3064-AE 63)

Ladies and Gentlemen:

The Clearing House Association L.L.C.[1] appreciates the opportunity to comment on the above-captioned notice of proposed rulemaking by the Office of the Comptroller of the

[1] The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly $2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.

Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation. The proposal would extend the existing transitional regulatory capital treatment of certain items[2] for banking organizations that are not subject to the advanced approaches capital rules until the agencies finalize a related upcoming rulemaking to simplify the regulatory capital treatment of these items.

The Clearing House strongly supports the agencies' efforts to simplify the regulatory capital rules, and view both the proposal and the prospect of the upcoming rulemaking as a positive step forward in that regard. However, we believe that the proposed extension of the current regulatory capital treatment of the affected items should be extended to *all* banking organizations for purposes of calculating all relevant regulatory capital ratios (i.e., under both the standardized and advanced approaches capital rules) until the agencies have completed a comprehensive review of the regulatory capital rules (including the capital rules' treatment of the affected items) and assessed whether, in light of that review and any resulting revisions to the capital rules, the more stringent treatment of the affected items remains appropriate for any banking organization.

Because the proposal would not apply to advanced approaches banking organizations, these firms would be required to continue to apply the existing transition provisions in the capital rules and, beginning on January 1, 2018, to apply the fully phased-in regulatory capital treatment for the items covered by the proposal. The agencies limited their explanation for the different treatment of advanced approaches banking organizations to the conclusory assertion that "the current treatment for these items strikes an appropriate balance between complexity and risk sensitivity for the largest and most complex banking organizations" and "remains appropriate" for such banking organizations in light of their "business models and risk profiles."[3] The agencies did not provide any analysis or meaningful explanation for their assertion that applying the fully phased-in regulatory capital treatment for the affected items is appropriate for advanced approaches banking organizations, address why they believe the dichotomy between non-advanced and advanced approaches banking organizations is appropriate, or discuss how the business models and risk profiles of advanced approaches banking organizations relate to the treatment of the affected items. The absence of such analysis or discussion is particularly

[2] The agencies propose to extend the current regulatory capital treatment of: Mortgage servicing assets; deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks; significant investments in the capital of unconsolidated financial institutions in the form of common stock; non-significant investments in the capital of unconsolidated financial institutions; significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock; and common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest exceeding the capital rules' minority interest limitations.

[3] Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation, *Regulatory Capital Rules: Retention of Certain Existing Transition Provisions for Banking Organizations That Are Not Subject to the Advanced Approaches Capital Rules*, 82 Fed. Reg. 40495, 40497 (Aug. 25, 2017).

significant because there does not appear to be any meaningful difference in the relative risks posed by the affected items as held by banks included and excluded within the scope of the proposal.

The Clearing House has long argued that prudential regulation should be appropriately tailored to the relative risk profile, business model and other risk-related criteria of different firms.[4] Accordingly, although we support the agencies' initiative to seek to balance simplicity with risk-sensitivity and better tailor the risk-based capital rules, we believe that both the criterion and technique by which the proposal would differentiate among banks are problematic. First, with respect to the criterion of differentiation, the proposal's exclusion of advanced approaches banking organizations from coverage represents yet another example of the agencies' use of size alone as a proxy for risk. Many aspects of the capital rules already rely on size as a proxy for risk and thus require banking organizations to hold capital largely based on size. The capital rules are thus, in many respects, size-sensitive rather than risk-sensitive. The proposal would only compound this flaw in the capital rules. Rather than creating dichotomies and more stringent requirements based on size alone (as the proposal would do), the agencies should evaluate their capital rules—including the transitional provisions subject to the proposal—for their efficacy in improving risk-sensitivity and promoting simplicity for banking organizations of all sizes. Second, with respect to the technique of differentiation, we note that effectively varying the risk-weight of specific items and exposures by bank size would appear an especially dubious approach. Unlike tailoring techniques that apply differing methodologies (i.e., more v. less complex measurement approaches) or differing calibrations, techniques that effectively deem certain items and assets as less risky when held by certain institutions but not others are, in the absence of an empiric basis for doing so, likely to undermine the coherence and risk-sensitivity of the risk-based capital framework and (depending on the extent and nature of differentiation) may impact and distort the market for banking activities related to the affected items.

We therefore urge the agencies to apply the proposed extension of the current treatment for the affected items to all banking organizations (including for purposes of calculating regulatory capital ratios under both the standardized and advanced approaches capital rules) until the agencies have completed a comprehensive review of the regulatory capital rules and considered whether, in light of that review and any resulting revisions to the capital rules, the more stringent treatment of the affected items remains appropriate for banking organization of all sizes. In addition, to the extent the agencies propose other interim changes to the regulatory capital rules, we also believe that any such changes should likewise be made applicable to all banking organizations pending the completion of the comprehensive review.

[4] *See, e.g.*, Letter from The Clearing House Association L.L.C. to Daniel K. Tarullo, Governor, Federal Reserve, dated July 15, 2014, regarding Appropriately Tailoring Prudential Regulation, *available at* https://www.theclearinghouse.org/-/media/files/association%20related%20documents/20140715%20letter%20from%20saltzman%20to%20tarullo.pdf.

* * * * *

The Clearing House appreciates your consideration of the views expressed in this letter. If you have any questions, please contact the undersigned by phone at (212) 613-9883 or by email at david.wagner@*theclearinghouse.org*.

Respectfully submitted,

David Wagner

David Wagner
Executive Managing Director, Head of Finance,
Risk and Audit Affairs and Senior Associate
The Clearing House Association L.L.C.

Cc: Michael Gibson
Mark Van Der Weide
(Board of Governors of the Federal Reserve System)

Amy Friend
Morris Morgan
(Office of the Comptroller of the Currency)

Doreen Eberley
Charles Yi
(Federal Deposit Insurance Corporation)