May 4, 2018

Via Electronic Mail

Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 – Basel, Switzerland

Re: Technical Amendment – Pillar 3 disclosure requirements – regulatory treatment of accounting provisions (March 2018)

Ladies and Gentlemen:

The Clearing House Association L.L.C., the American Bankers Association and the Financial Services Roundtable (collectively, the "Associations")[1] appreciate the opportunity to comment on the Basel Committee on Banking Supervision's March 2018 technical amendment[2] proposing additional Pillar 3 disclosure requirements for those jurisdictions implementing an expected credit loss ("ECL") accounting standard as well as for those adopting transitional arrangements for the regulatory treatment of accounting provisions (the "Technical Amendment").

The Associations share the Basel Committee's goal of comparable and consistent disclosures. Although we agree that certain changes to Pillar 3 disclosure requirements are appropriate and necessary to reflect the implementation of ECL accounting standards, we have several concerns with the proposed amendments, which we describe in greater detail below. To address these concerns, we offer two key recommendations:

- The Basel Committee should provide national discretion for implementation of the amendments to the Pillar 3 disclosure requirements; and

- The disclosure requirements should not be effective for a jurisdiction until that jurisdiction has implemented ECL accounting standards.

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1 Descriptions of the Associations are provided in Annex A of this letter.

2 BASEL COMMITTEE, Technical Amendment: *Pillar 3 disclosure requirements –regulatory treatment of accounting provisions* (March 2018), https://www.bis.org/bcbs/publ/d435.htm.

I. <u>The Basel Committee Should Provide National Discretion for Implementation of the Amendments to the Pillar 3 Disclosure Requirements</u>.

Allowing discretion for national supervisors to implement the proposed disclosure requirements is critical for the following two reasons. First, this discretion would appropriately recognize the important nuances that exist across jurisdictions, not only related to the implementation of regulatory capital requirements, but also those resulting from differences in accounting standards. For example, although ECL accounting standards have been implemented under IFRS and will soon be implemented under U.S. GAAP, in relation to regulatory capital important differences will persist that make uniform disclosure requirements inappropriate for all jurisdictions. Specifically, the Basel capital framework's standardized approach to credit risk differentiates between general provisions and specific provisions by permitting banking organizations to include general provisions in Tier 2 capital, subject to a cap of 1.25% of risk-weighted assets.[3] However, the distinction between general provisions and specific provisions is largely inapplicable to U.S. banking organizations because these institutions generally record provisions for credit losses in their Allowances for Loan and Lease Losses ("ALLL"). Under U.S. capital regulations, ALLL is (and allowance for credit losses ("ACL"), if finalized as proposed, will be) treated as a general provision for regulatory capital purposes.[4] Accordingly, as applied to U.S. banking organizations, the quantitative disclosures contemplated by Template CR1 and the additional qualitative disclosures contemplated by Table CRB in the Technical Amendment would not provide any meaningful information to market participants or further the objectives of Pillar 3.

Moreover, by breaking out allowances and impairments into provisions on (i) standardized approach exposures and (ii) internal ratings-based exposures, Template CR1 implicitly assumes that banking organizations risk-weight certain exposures using the standardized approach and others using an internal ratings-based approach. However, this does not align with the regulatory capital floor for U.S. advanced approaches banking organizations,

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[3] BASEL COMMITTEE: *International Convergence of Capital Measurement and Capital Standards* (June 2006), ¶ 49(x)(a) https://www.bis.org/publ/bcbs128.pdf.

[4] *See*, *e.g.*, 12 C.F.R. § 217.20(d)(3). The April 2017 proposal by the U.S. prudential regulators contemplates the creation of a new defined term, ACL that would replace ALLL for U.S. banking organizations that have adopted the current expected credit loss methodology ("CECL") under U.S. GAAP. ACL would include all credit loss allowances related to financial assets measured at amortized cost, except those for purchased credit-deteriorated assets. Like ALLL, ACL would be eligible for inclusion in Tier 2 capital, subject to the 1.25% cap. OFFICE OF THE COMPTROLLER OF THE CURRENCY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM AND FEDERAL DEPOSIT INSURANCE CORPORATION, *Regulatory Capital Rules: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rules and Conforming Amendments to Other Regulation* (April 17, 2017), at 13 (the "April CECL NPR"), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180417a1.pdf. *Cf.* The European Banking Authority has expressed the opinion that all provisions recorded under IFRS 9 should be considered specific provisions. EUROPEAN BANKING AUTHORITY, *Opinion of the European Banking Authority on transitional arrangements and credit risk adjustments due to the introduction of IFRS 9* (March 6, 2017), ¶ 38, *available at* https://www.eba.europa.eu/documents/10180/1772789/EBA+Opinion+on+transitional+arrangements+and+credit+risk+adjustments+due+to+the+introduction+of+IFRS+9+(EBA-Op-2017-02).pdf.

which are required to risk-weight all exposures separately according to both the standardized and advanced approaches and calculate their capital ratios using the measure that results in the lower ratio.[5] The Technical Amendment does not contemplate how U.S. advanced approaches banking organizations should complete Template CR1 in light of the U.S. capital floor framework, and more importantly, it is unclear what benefit the information contained in Template CR1 would provide to market participants as a result of U.S. banking organizations making such disclosures. Furthermore, any benefits that may be derived from the disclosures contemplated by the Technical Amendment for U.S. banking organizations would be clearly outweighed by both the burden involved in preparing such disclosures and the potential for confusion that may result among market participants attempting to interpret such disclosures. Thus, national supervisors should be given discretion to implement the Technical Amendment in the manner and to the extent appropriate for the banking organizations in their respective jurisdictions.

Second, such national discretion would be appropriate in recognition of the extensive disclosures already made or proposed by supervisors and the overlap with the disclosures proposed by the Technical Amendment. For example, the U.S. prudential regulators recently proposed rules related to the implementation of CECL which included proposed updates to Pillar 3 requirements under the U.S. regulatory capital rules.[6] For advanced approaches banking organizations, these proposed disclosure requirements include disclosure of capital ratios based on the transitional approach as well as capital ratios on a fully phased-in basis.[7] Moreover, the proposed rules also expressly contemplated revisions to regulatory reporting forms, such as the Call Report, the FR Y-9C and the FFIEC 101, each of which already include detailed disclosures related to credit losses, provisions and allowances for credit losses, and regulatory capital including exposures and risk-weights under the standardized and advanced approaches. Further, U.S. banking organizations that are SEC reporting companies include extensive disclosures on credit losses and provisions and allowances for credit losses in their quarterly and annual reports filed with the SEC. In many cases, the disclosures contemplated by the Technical Amendment are substantially similar to, and overlap with, disclosures that U.S. banking organizations already provide (or would be required to provide under the April CECL NPR, if finalized as proposed). Mandating that U.S. banking organizations provide overlapping disclosures reflected in the Technical Amendment would not promote effective disclosure and market discipline; rather, it could contribute to investor confusion because similar information would be provided merely to fulfill requirements and not to highlight information that a banking organization views as important. Accordingly, the Basel Committee should afford national discretion to eliminate or modify disclosure requirements that are duplicative or may cause confusion in light of existing or proposed disclosure requirements.

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5 12 C.F.R. § 217.10(c).

6 April CECL NPR, at 32-33.

7 *Id*.

II. **The Disclosure Requirements Should Not Be Effective for a Jurisdiction Until that Jurisdiction Has Adopted ECL Accounting Standards.**

The Technical Amendment notes that the application of ECL accounting models and introduction of transitional arrangements takes effect from January 1, 2018 and accordingly proposes that the amendments to the Pillar 3 standard come into effect on January 1, 2019. However, the January 2018 date cited in the Technical Amendment applies only to the implementation of IFRS 9[8] and not the implementation of CECL by the Financial Accounting Standards Board, which will be applicable to banking organizations that report results in accordance with U.S. GAAP. Given that CECL will not be required for banking organizations that file financial statements with the SEC until fiscal years that commence after December 15, 2019 and that CECL will not be required for other banking organizations until fiscal years that commence after December 15, 2020,[9] the proposed additional Pillar 3 disclosures could create confusion and result in inaccurate comparisons of banking organizations by market participants if the Technical Amendment becomes effective for all jurisdictions on January 1, 2019.

Presumably, the Basel Committee would expect that Pillar 3 disclosures made before the implementation of CECL by banking organizations that report results in accordance with U.S. GAAP should simply not reflect any CECL-related adjustments, including those contemplated by the Technical Amendment. As currently drafted, however, the proposed disclosure requirements set forth in the Technical Amendment do not make this clear. For example, it is unclear whether banking organizations planning to implement CECL in 2020 should leave row 1a of Template KM2 blank in 2019, or simply fill in the same numbers listed in row 1. Even assuming such clarity were achieved, implementing these changes in 2019 for banking organizations that have not adopted an ECL accounting standard would result in disclosures that were neither uniform nor comparable across banking organizations in different jurisdictions subject to accounting frameworks that implement ECL accounting standards at different times.

Finally, the imbalance noted above between the effort required to complete Template CR1 and the possibility for inaccurate or confusing disclosures, and the potential benefit of such disclosures, is magnified given the Basel Committee's ongoing consideration of the longer-term regulatory treatment of provisions.[10] To the extent the longer-term treatment of provisions results in revisions to the distinction between general and specific provisions or other changes, banking organization efforts to comply with the disclosure requirements of Template CR1 would be rendered moot and new approaches with concomitant efforts by banking organizations would be required. Accordingly, we recommend that the Basel Committee acknowledge that changes to the regulatory treatment of accounting provisions would necessitate changes to the

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[8] IFRS FOUNDATION, *IFRS 9 Financial Instruments* *http://www.ifrs.org/supporting-implementation/supporting-materials-by-ifrs-standard/ifrs-9/*.

[9] FINANCIAL STANDARDS ACCOUNTING BOARD, *Accounting for Financial Instruments—Credit Losses*, http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176159268094#next_steps. Banking organizations would have the option to voluntarily adopt CECL for fiscal years beginning after December 15, 2018. *Id.*

[10] BASEL COMMITTEE, Discussion paper: *Regulatory treatment of accounting provisions* (October 2016), https://www.bis.org/bcbs/publ/d385.pdf.

corresponding Pillar 3 disclosure requirements. Indeed, the possibility of such changes and the potential for the disclosures contemplated by the Technical Amendment to impose undue burden on banking organizations and contribute to confusion among market participants is a further reason why the Basel Committee should allow national supervisors discretion in implementing the Technical Amendment.

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The Associations appreciate the opportunity to comment on the proposal. If you have any questions, please contact David Wagner by phone at 212-613-9883 or by email at david.wagner@theclearinghouse.org.

Respectfully submitted,

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ANNEX A

The Clearing House. 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 launching 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.

The American Bankers Association. The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits, and extend nearly $10 trillion in loans.

The Financial Services Roundtable. The Financial Services Roundtable represents the largest banking and payment companies financing the American economy. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO.