

May 23, 2018

Via Electronic Mail

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

Re: Consultative Document – Pillar 3 disclosure requirements – updated framework
(February 2018)

Ladies and Gentlemen:

The Clearing House Association L.L.C.¹ and the American Bankers Association² (the “Associations”) appreciate the opportunity to comment on the Basel Committee on Banking Supervision’s February 2018 Consultative Document³ related to the third phase review of the Pillar 3 framework, covering: (i) revisions and additions to the Pillar 3 framework,⁴ (ii) new disclosure requirements related to asset encumbrance, (iii) new disclosure requirements related to capital distribution constraints and (iv) amendments to the scope of application of disclosures regarding the composition of regulatory capital.

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.

² 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 over \$13 trillion in deposits and extend nearly \$10 trillion in loans.

³ BASEL COMMITTEE, Consultative Document: *Pillar 3 disclosure requirements – updated framework* (Feb. 2018), <https://www.bis.org/bcbs/publ/d432.pdf>.

⁴ BASEL COMMITTEE, *Basel III: Finalising post-crisis reforms* (Dec. 2017), <https://www.bis.org/bcbs/publ/d424.pdf>.

The Associations share the Basel Committee's goals of comparable and consistent disclosures. Although we agree that certain changes to Pillar 3 disclosure requirements are appropriate and necessary to align them with the December 2017 standards, we have several concerns with the proposed amendments, as detailed in the recommendations below. Additionally, Annex A to this letter contains additional requests for clarification and technical comments that we believe should be addressed by the Basel Committee in its consideration of the third phase review.

This third phase review represents an opportunity for the Basel Committee to not only make needed changes to the Pillar 3 disclosures to conform to the December 2017 standards, but also to conduct a holistic review of the entire Pillar 3 framework, including existing and proposed disclosure requirements. We strongly support the Basel Committee's efforts to continue to improve Pillar 3 disclosures, but believe that the Basel Committee must give greater consideration to the marginal utility of additional disclosures, particularly where such disclosures require significant resources from banking organizations or are similar to existing Pillar 3 or other disclosures made by banking organizations under other frameworks. Finally, given the expansive scope contemplated by the proposed framework, guidance or more detailed instructions would be required before they could be applied consistently.

We would welcome the opportunity to discuss our recommendations with the Basel Committee.

Executive Summary.

- The tables and templates should be revised to avoid requiring disclosure of proprietary and market-sensitive information.
- The Basel Committee should conduct a holistic review of existing and proposed Pillar 3 disclosure requirements to assess the value of information to market participants relative to the resources required to make such disclosures.
- The Basel Committee should explicitly provide national supervisory discretion for implementation of Pillar 3 disclosure requirements.
- The assurance requirements should be revised to reflect the distinct roles that a banking organization's board of directors and management have in the disclosure process.

I. The Tables and Templates Should Be Revised to Avoid Requiring Disclosure of Proprietary and Market-Sensitive Information.

Requiring banking organizations to disclose the granular data required by several draft tables and templates may create vulnerabilities that could be exploited in stressed market environments, as well as competitive disadvantages for banking organizations that may be forced to reveal proprietary, confidential information. Such disclosures could support predatory behavior by helping market participants anticipate a disclosing organization's risk management activities. Similarly, several of the proposed disclosures appear more appropriate for supervisory

audiences rather than market participants as they are focused on specific, underlying components of risk categories. At the level to be reported, this data would provide minimal utility to a market participant assessing whether to transact with or invest in a banking organization. Finally, the historical operational risk loss data to be disclosed could result in the disclosure of highly sensitive information that could prejudice the interests of the banking organizations and ultimately be inimical to their safety and soundness.

A. CVA-Related Disclosures.

Issues associated with the disclosure of granular information are manifested clearly in the proposed CVA-related disclosures. Specifically, the proposed requirements to break out the components of the basic approach for CVA risk (contemplated by rows 1-2 and 4-7 of Template CVA2) as well as the breakout of counterparties with liquid and proxied credit spreads in Template CVA3 (contemplated by rows 8-9) are examples of specific components of broader risk categories that would provide little utility to market participants and have the potential to be misused. In particular, the breakout of counterparties with liquid and proxied credit spreads and qualitative disclosures, such as adjustments to front office/accounting CVA, could reveal proprietary information about the banking organization's underlying derivatives portfolio, risk management practices and pricing strategy. Similarly, the combination of disclosures for index and indirect hedges could reveal proprietary information about the various hedging strategies employed by the banking organization. The detailed disclosures of methodologies and underlying components of CVA risk contemplated by the Consultative Document should be limited to a supervisory audience, as it is not clear what need market participants would have for this information or how such disclosures would promote market discipline without undue adverse effects on disclosing organizations.

Additionally, the extensive qualitative disclosures contemplated by Tables CVAA and CVAB are not necessary to achieve the market discipline objective of the Pillar 3 framework. For example, Table CVAA requires disclosures of strategies, processes and systems used by a banking organization to identify, measure, monitor and control CVA risks as well as related hedging activities. We recognize the important role of these policies and processes in a banking organization's risk management capabilities, but the nature of such information—which is inherently confidential and proprietary—would be more appropriately limited to a supervisory audience as part of confidential supervisory processes instead of public Pillar 3 disclosures. Similarly, Part A of Template CVAB requires extensive disclosures—such as an exhaustive list of inputs used to calculate regulatory CVA, proxy spread methodology, and adjustments of accounting CVA to arrive at prudential CVA—that raise similar concerns and would be more appropriately directed at a supervisory audience given that such disclosures relate to specific, proprietary aspects of how transactions are undertaken, valued and risk managed.

The Basel Committee has previously recognized that “[p]roprietary information encompasses information (for example on products or systems), that if shared with competitors would render a bank's investment in these products/systems less valuable, and hence would

undermine its competitive position.”⁵ Although the Consultative Document states that a banking organization is not required to disclose specific items that may reveal confidential or proprietary information, this exception is too limited, as it is framed as applying in only “exceptional cases,” and specifically where information “may reveal the position of a bank or contravene its legal obligations.”⁶ Therefore, we believe that changes to the proposed CVA-related tables and templates are necessary to adequately protect the confidentiality of banking organizations’ sensitive information.

Finally, when reviewed holistically, the scope of the proposed CVA-related disclosures in Part 5 of the Consultative Document appears to have expanded well beyond the role of market discipline envisioned for Pillar 3 when it was first introduced as “reinforc[ing] minimum capital standards (Pillar 1) and the supervisory review process (Pillar 2)”⁷ and “strengthen[ing] incentives for prudent risk management.”⁸ The Consultative Document’s proposed revisions to Pillar 3 appear to conflate the role of market discipline with that of supervisory review as they would require the dissemination of sensitive information to market participants. We believe that revealing technical and sensitive information in a public document is misplaced and could ultimately undermine the existing three-pillar framework. Moreover, the proposed CVA-related disclosures are disproportionately extensive relative to disclosures about other risk categories.⁹ Accordingly, we recommend removing many of the requirements set forth in Part 5 from the Pillar 3 framework, including: parts (a) and (b) of Table CVAA, as well as rows 1-2 and 4-7 in Template CVA2, rows 8-9 of Template CVA3 and table CVAB in its entirety.¹⁰

B. Asset Encumbrance Disclosures.

The granularity and scope of the proposed asset encumbrance disclosures raise similar concerns related to proprietary information. Although other Basel Committee disclosure standards contemplate that banking organizations would make certain disclosures related to unencumbered assets, such disclosures relate only to high-quality liquid assets as a component of the Liquidity Coverage Ratio and Net Stable Funding Ratio and therefore would not cover a

⁵ BASEL COMMITTEE, *Working paper on Pillar 3 –Market Discipline*, ¶ 12 (Sept. 2001), https://www.bis.org/publ/bcbs_wp7.pdf.

⁶ Consultative Document at 11.

⁷ *Id.* at ¶ 1.

⁸ Jaime Caruana, Gov. of the Bank of Spain and Chairman of the Basel Committee, *The implementation of Basel II – central banks and the challenge of development* (March 13, 2006), <https://www.bis.org/review/r060531b.pdf>.

⁹ Although not within the scope of the Consultative Document, the market risk-related disclosures set forth in Part 11 of the March 2017 enhanced Pillar 3 framework raise similar concerns associated with the public disclosure of proprietary information contemplated by the proposed CVA-related disclosures in the Consultative Document. BASEL COMMITTEE, *Standards: Pillar 3 disclosure requirements –consolidated and enhanced framework, Part 11: Market risk* (March 2017), <https://www.bis.org/bcbs/publ/d400.pdf>.

¹⁰ For the reasons discussed in the technical appendix in Annex A, we believe that Template CVA4 is unnecessary as a standalone template and can be merged with the other tables or templates in Part 5.

banking organization's entire balance sheet.¹¹ Template ENC would therefore represent a significant expansion of existing disclosures by mandating the release of specific information about how a banking organization deploys and finances various assets.

Further, it is unclear what market-discipline purpose would be served by such detailed disclosures for a broad range of activities. Moreover, public knowledge of such information has the potential to pose significant risk to disclosing organizations. For example, disclosing granular changes in asset balances may indirectly result in the disclosure of confidential information, such as liquidity risk management strategies or strategic capital-allocation decisions. This level of granularity may permit market participants to anticipate a disclosing organization's planned capital and liquidity management actions, which could facilitate anticompetitive and predatory behavior and otherwise constrain the firm's ability to respond to market conditions. Moreover, the detailed breakdown of encumbered and unencumbered assets into different categories is unnecessary in light of the requirement that the accompanying narrative include commentary to explain "any significant change in the amount of encumbered and unencumbered assets from the previous disclosure."¹² Accordingly, only significant, high-level and limited categories of assets should be within the scope of Template ENC. Limiting the scope of Template ENC would enhance comparability by narrowing the universe of assets for which disclosure is required. It would also reduce concerns associated with making resource-draining disclosures that would not promote market discipline. At a minimum, further guidance should be provided to achieve proper and consistent application of the encumbered asset concept to assets that, traditionally, have not been the subject of such disclosures.

In addition, as the Consultative Document notes, disclosures specific to central bank transactions raise significant policy concerns given the potential impact on a central bank's monetary operations or ability to safely provide liquidity without jeopardizing the stability of the specific banking organizations or the broader financial system. Although we support the Basel Committee's decision not to mandate such disclosures, we do not believe optionality is sufficient. Rather, for the reasons described above, such disclosures should not be included in the scope of Template ENC at all.

A similar issue arises in Template LR2, which calls for disclosures relating to the revised Leverage Ratio standard released in December 2017 permitting jurisdictions to temporarily exempt central bank reserves from the Leverage Ratio exposure measure¹³ by creating two different rows for the resulting Basel Leverage Ratio measure: one including the impact of any applicable temporary exemption, and one excluding it. However, this approach of dual disclosures could frustrate the purpose of granting discretion to national supervisors to exclude central banking reserves in certain circumstances and cause confusion to market participants.

¹¹ BASEL COMMITTEE, Standards: *Pillar 3 disclosure requirements – consolidated and enhanced framework, Templates LIQ1 and LIQ2* (March 2017), <https://www.bis.org/bcbs/publ/d400.pdf>.

¹² Consultative Document at 56.

¹³ BASEL COMMITTEE, *Basel III: Finalising post-crisis reforms*, Leverage Ratio ¶ 26 (Dec. 2017) <https://www.bis.org/bcbs/publ/d424.pdf>.

Moreover, additional disclosures regarding the Leverage Ratio are inappropriate in light of ongoing revisions to the role of this measure in the regulatory capital framework.¹⁴

C. Operational Risk Disclosures.

The proposed operational risk disclosures raise significant concerns that a disclosing banking organization would be required to make public proprietary information in a sufficiently granular manner such that its interests may be prejudiced in litigation or similar proceedings. This could have negative implications for the integrity of the protections afforded by the relevant legal system.¹⁵

The reasons why such disclosures could harm a banking organization's interests are best understood in the context of reserves established for ongoing litigation. Although Template OR1 does not, on its face, mandate the disclosure of specific reserves, its structure and granular requirements could have the same practical effect. Specifically, the template requires disclosure of the number of operational risk losses above €100,000 as well as the total amount of such losses over a period of ten years. Depending on the nature and scope of a banking organization's ongoing and historical litigation, these requirements to disclose the number and total amount of such losses could result in the indirect disclosure of reserve amounts by a banking organization, provide insight into a banking organization's reserving practices and methodologies, or otherwise allow litigation adversaries and other users of the disclosures to gain insight into a banking organization's litigation reserves and litigation strategy.

Other information in the template could compound this risk to banking organizations. Template OR1 requires separate disclosure of excluded operational risk losses, such as the result of a divestiture. If a banking organization exits a line of business that had been subject to significant litigation, a comparison of the banking organization's pre-disposition Pillar 3

¹⁴ As recently explained by Vice Chairman for Supervision Randal Quarles, U.S. proposals to recalibrate the Leverage Ratio are designed to "restore the original intent of leverage requirements as a backstop measure" because "a leverage requirement that is too high favors high-risk activities and disincentivizes low-risk activities." Randal Quarles, Vice Chairman for Supervision, Board of Governors of the Federal Reserve System, Liquidity Regulation and the Size of the Fed's Balance Sheet (May 4, 2018), <https://www.federalreserve.gov/newsevents/speech/quarles20180504a.htm>; 83 Fed. Reg. 17,317, 17,319 ("If a leverage ratio is calibrated at a level that makes it a generally binding constraint through the economic and credit cycle, it can create incentives for firms to reduce participation in or increase costs for low-risk, low-return businesses.").

¹⁵ The concerns noted in this section have previously been raised by the Associations in comments addressed to a national supervisor regarding proposals that implicated the issues described above. See, e.g., Letter from the Associations and The Financial Services Roundtable to the Board of Governors of the Federal Reserve System, dated April 23, 2012, regarding *Proposed Agency Information Collection Activities* – 77 Fed. Reg. 10,525 (Feb. 22, 2012) (characterizing disclosures of legal reserves as "unwise, unsound and highly prejudicial" because such disclosures may "establish a floor" for plaintiffs' settlement demands, and adverse parties may seek to introduce reserves as evidence in proceedings); Letter from The Clearing House and the Risk Management Association to the Board of Governors of the Federal Reserve System, dated August 21, 2014, regarding *Proposed Agency Information Collection Activities* – 79 Fed. Reg. 41,276 (July 15, 2014) (warning that disclosure of information related to litigation reserves would not only "threaten the safety and soundness of banking institutions" but would also "upset [the] informational balance" and "infring[e] upon" rights critical to an adversarial legal system.).

disclosures (which would not treat the line of business as excluded) and post-disposition Pillar 3 disclosures (which would treat the line of business as excluded) could reveal highly sensitive information about the reserves for such litigation. Finally, Template OR1 requires accompanying narrative descriptions of recent large losses from operational risk, their context and management. Such qualitative disclosure could increase the risk to banking organizations, as this information could allow market participants to gain additional understanding of the relationship between historical operational risk losses and reserves for specific litigation matters.

If a banking organization reserves a specific amount for a particular matter, disclosure of that amount could not only adversely affect its ability to resolve the case through a settlement agreement by establishing a “floor” amount,¹⁶ but may also raise issues in the proceeding itself. A plaintiff could argue that the reserve represents a statement against interest or an admission of a party opponent and attempt to have the existence of the reserve introduced as evidence. If jury members learn of the existence and amount of a specific reserve, they may misinterpret this information and inappropriately draw an adverse inference from it, resulting in harm to the banking organization’s interests, irrespective of the true merits of the relevant claim. These issues are all the more troubling given that they would most severely impact banking organizations that establish reserves in advance of when payments to resolve legal proceedings are made, as generally required under applicable accounting standards, including U.S. GAAP. It would be unthinkable for a court to require a plaintiff to disclose a proprietary estimate of the anticipated value of a settlement, and principles of equity and fairness dictate that the same should not be imposed on a banking organization, even if indirectly through the proposed disclosures. Moreover, banking organizations would be placed at a unique disadvantage by facing the prospects of settling claims, no matter their merits, for amounts that may be inflated and not representative of what the outcome of a fair and impartial proceeding would be absent such disclosures because no other industry would face similar constraints.

An even more fundamental concern is the potential erosion of protections afforded to advice provided by and communication with attorneys in such a context. Banking organizations rely heavily on input from legal counsel in determining whether and in what amount to record a reserve. Any disclosures of the results of such discussions have the potential to undermine the fundamental and critical protections afforded by the attorney-client privilege and work product doctrine—a process that should not be undertaken lightly.

For the above reasons, we urge the Basel Committee to eliminate aspects of the proposed tables and templates that would require disclosure of confidential and proprietary information, and, at a minimum, to expressly exclude legal reserves from the scope of Template OR1.

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It is self-evident that an adverse party’s knowledge of the amount of a banking organization’s reserve for a pending litigation matter would be extremely detrimental to that banking organization’s negotiating position in settlement discussion. Simply put, if a banking organization has reserved a specific amount for a litigation matter and the adverse party becomes aware of this information, the prospects of reaching a settlement below the reserve amount become highly unlikely.

II. The Basel Committee Should Conduct a Holistic Review of Existing and Proposed Pillar 3 Disclosure Requirements to Assess the Value of Information to Market Participants Relative to the Resources Required to Make Such Disclosures.

When combined with existing Pillar 3 requirements, the proposed tables and templates would result in banking organizations being required to make extensive and detailed disclosures according to a Pillar 3 framework that consists of more than a dozen parts, typically consisting of multiple templates and tables. The sheer volume of such disclosures not only requires banking organizations to dedicate substantial resources to compile such reports, but also undermines the utility of the Pillar 3 framework. Many of the tables and templates overlap with one another and with disclosures that are already provided by banking organizations for financial reporting purposes. As a result, the Pillar 3 tables and templates have the potential to create confusion among market participants. Moreover, we understand that the investor relations departments of banking organizations have historically received very few, if any, questions or requests relating to Pillar 3 disclosures. The sparse number of questions and lack of engagement by market participants concerning the Pillar 3 disclosures that subject banking organizations have provided for years raises real concerns about their value.

Specific aspects of the proposed requirements should be modified or eliminated to address these concerns as discussed below. However, we urge the Basel Committee to also conduct a holistic review of the expansive Pillar 3 framework. Such an analysis should consider the overlap among existing and proposed disclosure requirements, including with financial reporting disclosures, the incremental utility that each disclosure provides to market participants and the resources that banking organizations need to expend to make such disclosures. This review would facilitate the creation of a framework that provides for relevant disclosures to market participants yet avoid the confusion and misallocation of resources that results from duplicative and overly granular disclosures. Indeed, national regulatory bodies have recognized not only the substantial burden and resulting misallocation of resources associated with repetitive disclosures, but also the risks of confusion posed by requiring such disclosures, including reduced readability and navigability of disclosures as well as the potential to inadvertently distract market participants from information that is truly material.¹⁷

There are examples of these issues in the proposed credit risk tables and templates. Templates CR4 and CR5 cover essentially the same information on risk-weight percentages by asset class, except that the latter requires break downs for components of the asset classes. The usefulness of the more granular Template CR5 data for analysis of the banking organization is questionable. Similarly, alignment of exposure amounts with risk-weight bands in the second table in Template CR5 has no clear value to market participants. What is clear is that any purported benefits that these disclosures would provide are outweighed by the resources that banking organizations would need to allocate to complete both templates. Accordingly, we

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See, e.g., SEC. AND EXCH. COMM'N, *FAST Act Modernization and Simplification of Regulation S-K*, 82 Fed. Reg. 50,988, 50,992 (elimination of certain prior period disclosures to discourage repetition and disclosure of information that is no longer material); *Id.* at 51,012–13 (providing greater flexibility in the use of captions in certain SEC filings “to reduce the use of unnecessary cross-references when information may be responsive to more than one disclosure item in the Exchange Act forms”).

recommend that Template CR5 be eliminated. Similarly, banking organizations would need to implement operational changes to be able to report the granular credit risk details contemplated by Template CRB-A, but it does not appear that this commitment of resources would be warranted by any limited utility provided to market participants. Finally, the risk-weighted assets and exposure amounts contemplated by Template CR10 are already provided within the specialized lending disclosures in other credit risk templates, and presentation in the slotting approach format contemplated by Template CR10 would therefore be duplicative, overly granular and lacking a clear justification based on any meaningful utility to market participants.

Other templates in which this issue arises include BEN1, BEN2 and OV1 from the benchmarking and overview of risk management sections. The proposed benchmarking process would be resource-intensive for banking organizations: the Consultative Document contemplates institutions calculating exposures using models-based approaches and also the standardized approach, and supplementing this data in certain cases with quantitative data to explain differences between the two. In light of the separate disclosure of credit risk risk-weighted assets contemplated by Template BEN1, any incremental value from the disclosures in Template BEN2 would appear to be outweighed by the substantial resources required to complete the template. This issue is compounded by the seemingly duplicative disclosures contemplated by Template OV1, which would present much the same risk-weighted asset information of Template BEN1. Moreover, the granularity of Template BEN2 would not add to market discipline given that the Basel output floor will be applied on an aggregate—not asset class—basis, and Template BEN1 includes information on the drivers of differences between internally modeled and standardized approach risk-weighted assets at a risk category level. Therefore, we believe that Template BEN2 should be eliminated. Given the substantial degree of quantitative information called for by Templates BEN1 and BEN2, should both templates be retained, the accompanying narratives required should be significantly curtailed, and, at a minimum, the quantitative disclosures for the accompanying narrative in Template BEN1 should be eliminated.

III. The Basel Committee Should Explicitly Provide National Supervisory Discretion for Implementation of Pillar 3 Disclosure Requirements.

Certain aspects of the Consultative Document expressly allow for national discretion, which is important to establishing an effective disclosure framework. We urge the Basel Committee to extend that discretion in order to accomplish two important objectives: aligning the disclosure requirements with local practices and regulations, and reducing potential confusion among market participants and consumption of resources for the preparation of duplicative disclosures. Although we share the Basel Committee’s objectives of consistent and comparable disclosures, these objectives must be considered in the context of existing disclosure regimes at the national level.

First, several of the disclosure requirements either conflict with or do not clearly explain how they should be reconciled with national practices and regulations. The clearest example is the benchmarking disclosure contemplated by Part 6. Specifically, both Templates BEN1 and BEN2 contain column headers labelled “[a]ctual RWA calculated under internal models-based approaches” and “[a]ctual RWA calculated under standardised approaches,” which implicitly assumes that banking organizations calculate certain exposures under each approach. This does not align with the regulatory capital floor for U.S. advanced approaches banking organizations,

which are required to risk-weight all exposures separately under both a standardized and the advanced approaches and calculate capital ratios using the measure that results in the lower ratio.¹⁸ The Consultative Document does not consider how U.S. advanced approaches banking organizations should complete the benchmarking disclosures in light of the U.S. capital floor framework, and therefore may lead to inconsistent disclosures by U.S. banking organizations and confusion among market participants as to how to interpret such disclosures absent modifications or interpretive guidance.

Similarly, some of the asset-level disclosures contemplated in Part 2, including Templates CR4 and CR5, use categories that are not applicable in the U.S. For example, U.S. banking organizations generally segment disclosures related to depository institutions from other financial institutions, so the disclosure of bank exposures to “securities firms” could create identification concerns. In addition, “specialised lending” is not a defined category within the U.S. capital framework. The granular discussion of problem assets contemplated by Table CRB-A also does not align with existing disclosure practices in the U.S. and may not be appropriate for certain asset classes. Given that most jurisdictions require credit risk-related disclosures but formulate them differently, adoption of a rigid approach that conflicts with other, analogous disclosures imposed by national supervisors may cause confusion and yield information that cannot be compared across borders. Such confusion can be avoided by providing for greater national discretion in the implementation of Pillar 3 disclosures.

A related issue arises in the context of the proposed operational risk disclosures. Template OR2 contemplates disclosure of profit and loss data split between the banking and trading books, but this is not consistent with how institutions currently aggregate such information. Thus, this disclosure would burden institutions to re-align their systems to produce information that may not accurately reflect how they consider this information in risk management processes. Template OR1 may also be misleading and not reflective of institutional practices in that it groups unrelated loss events into a single disclosure. While the use of aggregate data is intended to protect the confidentiality of banking organizations’ loss information (albeit an imperfect one, as noted above), the resulting disclosures may provide inconsistent information given the unique characteristics of operational risk and the idiosyncratic nature of loss events. These concerns provide further support for substantially revising the operational risk disclosure templates, but at a minimum, national discretion should be expanded to allow local authorities to address these significant concerns.

Second, it is critical to extend discretion to eliminate the confusion and devotion of resources to making disclosures that are similar to, but distinct from, existing, national requirements. For example, the disclosure of standardized and advanced approach risk-weighted assets contemplated by the Benchmarking templates is already required in existing regulatory reports in the U.S.¹⁹ Similarly, the prior period disclosures contemplated by Template KM1,

¹⁸ 12 C.F.R. § 217.10(c).

¹⁹ See FED. FIN. INST. EXAMINATION COUNCIL, *Schedule RC-R, Item No. 40.a and 40.b*, https://www.fdic.gov/regulations/resources/call/crinst/2015-06/615rc-r_063015.pdf.

which would apply to a broad range of capital-related metrics, do not align with typical approaches for disclosing prior period disclosures in U.S. SEC filings.

The credit risk disclosures contained in the Consultative Disclosure discussed above are also similar to the requirements in existing regulatory reports in the U.S. Specifically, U.S. bank holding companies are required to prepare Form FR Y-9C, which contains similar disclosures but presents them in a different manner and with different asset categories.²⁰ Thus, national discretion in the context of the credit risk disclosures would be important not only to align with local practices, but also to address the potential confusion among market participants that may result from disclosure of similar, but in some cases not identical, information in different disclosure documents.

The issues associated with duplicative—and potentially confusing—disclosures could largely be resolved through increased discretion regarding the use of signposting. We appreciate that, under the proposed approach set forth in the Consultative Document, signposting is allowed in certain circumstances, but greater discretion should be given to national supervisors to permit signposting more broadly. In particular, Section 5.2.3 of the Consultative Document lists the criteria for signposting in the context of fixed format templates, one of which is that “the national supervisor responsible for ensuring implementation of the Basel standards is subject to legal constraints in its ability to require the reporting of duplicative information.”²¹ This requirement is too restrictive in light of the issues associated with duplicative disclosures noted above. For example, Templates CR4 and CR5, each discussed above, are in a fixed format that would be repetitive of similar, existing disclosures required in the U.S. We therefore urge the Basel Committee to increase supervisory discretion broadly, but at a minimum to relax this criterion to permit signposting.

The proposed amendment to the scope of application of disclosures on the composition of regulatory capital raises a similar concern. As recognized in the Consultative Document, requiring resolution-group level disclosures in Template CC1 may result in “artificial” disclosures given that there is no corresponding regulatory capital requirement at the resolution group level.²² At a minimum, we encourage the Basel Committee to clarify that this disclosure is required only at the holding company level for banking organizations that have a single-point-of-entry resolution strategy (and therefore for which the consolidated group is the sole resolution group) to avoid ambiguity about the purpose and scope of the template. Indeed, the Basel Committee previously recognized this in the context of TLAC-related disclosures when it noted that “[f]or single point of entry (SPE) G-SIBs, there is only one resolution group. This means that they only need to complete Template TLAC1 once to report their TLAC positions.”²³

²⁰ BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *Consolidated Financial Statements for Holding Companies—FR Y-9C, Schedule HC-R*, https://www.federalreserve.gov/reportforms/forms/FR_Y-9C20180331_f.pdf.

²¹ Consultative Document at 12.

²² Consultative Document at 9.

²³ BASEL COMMITTEE, Standards: *Pillar 3 disclosure requirements—consolidated and enhanced framework*, Section 3.1 n. 18 (March 2017), <https://www.bis.org/bcbs/publ/d400.pdf>.

Similarly, in the preceding Consultative Document regarding Pillar 3 disclosures, the Basel Committee observed that “[f]or SPE G-SIBs, it is assumed that the consolidated group is the same as the resolution group. This means that TLAC1 will only need to be completed once to report their regulatory capital and TLAC positions.”²⁴ The same principles apply to the proposed amendment to Template CC1; in recognition of the predominance of SPE strategies in certain jurisdictions, we urge the Basel Committee to apply this proposed clarification to Template CC1.

We have commented previously that the requirement to produce instrument-level reporting of TLAC instruments would be unnecessarily granular, and we recommended that Table CCA be produced at a more summarized aggregation level (using materiality thresholds) on a semi-annual basis.²⁵ Our comment and recommendation remain applicable in response to the current Consultative Document. Table CCA requires firms to complete a detailed set of responses for all TLAC-eligible instruments on a CUSIP-by-CUSIP basis. Requiring banking organizations to produce and disclose 39 line items of data for each TLAC-eligible instrument risks overwhelming market participants while providing them with no commensurate benefit. Moreover, as with the credit risk tables and templates discussed above, the relevant information required by Table CCA would typically already be disclosed by banking organizations in the offering documents for the TLAC instruments, either as the result of local legal and regulatory requirements or industry disclosure practices for the marketing of such securities. Indeed, disclosures regarding the loss-absorbing characteristics of TLAC instruments are already mandated in offering materials in many jurisdictions.²⁶ Accordingly, we urge the Basel Committee to revise Table CCA to require aggregate disclosures on a semi-annual basis.

Lastly, national discretion is critical for the Benchmarking disclosures contemplated by Part 6 to align with the ability of national supervisors to permit or restrict models-based approaches. Under the December 2017 standards, a jurisdiction can be in compliance with the Basel framework even if it does not permit any internal-modeled approaches.²⁷ Thus, requiring disclosures contemplated by the Benchmarking templates may be confusing and could be misleading in a jurisdiction that elects not to implement any internal-modeled approaches. At a minimum, until a jurisdiction has finalized related requirements, national supervisors should be

²⁴ BASEL COMMITTEE, Consultative Document: *Pillar 3 disclosure requirements –consolidated and enhanced framework*, Part 4 n. 33 (March 2016), <https://www.bis.org/bcbs/publ/d356.pdf>.

²⁵ See Letter from the Associations to the Basel Committee on Banking Supervision, dated June 10, 2016, regarding *Pillar 3 Disclosure Requirements - Consolidated and Enhanced Framework - Consultative Document*, March 2016.

²⁶ See, e.g., 12 C.F.R. § 252.65 (requiring disclosure of the consequences to unsecured debtholders of a U.S. GSIB entering into a resolution proceeding, including in the offering documents of the relevant securities, as well as on the U.S. GSIB’s website or in publicly filed reports); Directive 2014/59 EU of the European Parliament and of the Council, Art. 55 (May 15, 2014) (requiring the inclusion of contractual terms indicating that a liability may be subject to the write-down and conversion powers of a resolution authority); Bank Recapitalization (Bail-in) Issuance Regulations: SOR/2018-58 of the Canadian Government, Sec. 4 (Apr. 24, 2018) (requiring disclosure to investors that an instrument is eligible for a bail-in conversion in the relevant offering disclosure document).

²⁷ BASEL COMMITTEE, *Basel III: Finalising post-crisis reforms*, Introduction ¶ 8 (Dec. 2017), <https://www.bis.org/bcbs/publ/d424.pdf>.

given discretion as to how or whether to implement these templates for local banking organizations.

IV. The Assurance Requirements Should be Revised to Reflect the Distinct Roles that a Banking Organization’s Board of Directors and Management Have in the Disclosure Process.

Section 5.1.4 of the Consultative Document notes that “the board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over the disclosure of financial information, including Pillar 3 disclosures.”²⁸ Although the board and senior management of a banking organization each play important parts in the assurance process, this statement does not appear to recognize the difference in their respective roles. Specifically, the board oversees management, and management is responsible for the establishment and maintenance of an appropriate internal control structure.²⁹ Providing this, or a similar, clarification in Section 5.1.4 of the Consultative Document would not only better reflect the appropriate roles of management and the board, but may also prevent misalignment and conflicts that could result from ascribing responsibilities to the board and management under Pillar 3 disclosures that they do not hold under existing national regimes.

V. Additional Technical Concerns.

Further technical concerns are included on a section-by-section basis in Annex A of this letter.

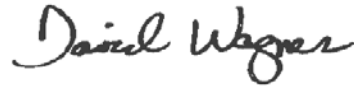
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²⁸ Consultative Document at 11.

²⁹ See, e.g., OFFICE OF THE COMPTROLLER OF THE CURRENCY, *Comptroller’s Handbook: Internal Control* at 15-16 <https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/internal-control/pub-ch-internal-control.pdf> (“The board of directors, which oversees the control systems in general, approves and reviews the business strategies and policies that govern the systems. . . . Senior management oversees operations and provides leadership and direction for the communication and monitoring of control policies, practices and processes. They implement the board’s strategies and policies by establishing effective internal control and delegating or allocating control duties and responsibilities to appropriate personnel”); COMM. OF SPONSORING ORG. OF THE TREADWAY COMM’N, *Executive Summary: Internal Control – Internal Framework* at 6 (May 2013) <https://www.coso.org/Documents/990025P-Executive-Summary-final-may20.pdf> (“The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control. Management establishes, with board oversight, structures, reporting lines and appropriate authorities and responsibilities in the pursuit of objectives.”).

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 and Robert Strand at 202.663.5350 or by email at rstrand@aba.com.

Respectfully submitted,



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



Robert W. Strand
Senior Economist
American Bankers Association

cc: William Coen
(Basel Committee on Banking Supervision)

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

Morris Morgan
Karen Solomon
(Office of the Comptroller of the Currency)

Doreen Eberley
Charles Yi
(Federal Deposit Insurance Corporation)

Annex A: Additional Technical Concerns

Part 3 Operational risk

OR2 Business Indicator and subcomponents

Several of the disclosures contemplated by Template OR2 are excessively granular. Specifically, subrows 1a-1c, 2a-2d and 3a-3b represent specific disclosures of an underlying component of operational risk that would be of limited utility to market participants. The profit and loss disclosures broken out by trading and banking books, in particular, would require publication of sensitive, proprietary information.

Moreover, to the extent banking organizations make disclosures in other contexts that are similar to those proposed for Template OR2 (such as interest income), such disclosures do not completely align with the specific definitions employed by the Basel Committee in the operational risk context. Such apparently conflicting disclosures in different contexts could create confusion.

Disclosure of excluded divested activities also should not be required given the need to obtain supervisory approval to exclude them from the calculation and the requirement for this information to be effectively described in the narrative accompanying the table.

Part 4 Leverage ratio

LR1 Summary comparison of accounting assets vs. Leverage Ratio exposure measure

The proposed disclosures are unreasonably granular and would require banking organizations to make public balance sheet details at a level that would be of limited utility for market participants.

The accompanying narrative requiring detailed discussion of the sources of material differences between total balance sheet assets and the Leverage Ratio exposure measure would represent a substantial and undue increase in disclosure burden on U.S. banking organizations. Under current U.S. regulations, these institutions are required to make Leverage Ratio disclosures without accompanying qualitative discussion in the manner envisioned in the Consultative Document.³⁰

LR2 Summary comparison of accounting assets vs. Leverage Ratio exposure measure

The proposed disclosures are overly granular and would require banking organizations to make public balance sheets details at a level that would be of limited utility for market participants.

The accompanying narrative requiring a description of the key factors that had a material impact on the Leverage Ratio for the current reporting period compared to

³⁰ See, e.g., 12 C.F.R. § 217.173, Table 13.

the prior reporting period would represent a substantial and undue increase in disclosure burden for U.S. banking organizations. Under current regulations, U.S. banking organizations are required to make Leverage Ratio disclosures without accompanying qualitative discussions in the manner envisioned in the Consultative Document.³¹

Part 5 Credit valuation adjustments

CVA3 The standardized approach for CVA (SA-CVA)

The accompanying narrative for Template CVA3, which requires the disclosure of the types of hedges used, would likely not result in useful public information without further guidance. Template CVA3 needs to be revised to address the level of detail or specific categories to be used in compiling this narrative. Without this clarification, disclosing institutions may report inconsistent disclosures of limited utility to market participants.

CVA4 RWA flow statements of CVA risk exposures under SA-CVA

The only meaningful new disclosure contemplated by Template CVA4 is the discussion of significant changes in CVA-related capital requirements during the reporting period. However, this narrative could be integrated into one of the preceding CVA tables and templates. Such a change would not only decrease the resources needed to produce an entirely separate template, but would also streamline market participants' review of Pillar 3 disclosures.

Part 7 Overview of risk management, key prudential metrics and RWA

KM1 Key metrics (at consolidated group level)

Pre-floor, total risk-weighted assets in row 4a and the related ratios in rows 5b, 6b and 7b would be disclosed in Part 6, Benchmarking. This redundancy serves no purpose and should be removed.

More generally, the volume of capital ratios contemplated by Template KM1 is substantial and should be streamlined. In addition, the template should split the disclosures into transition and fully-loaded categories to make clearer to market participants which numbers are effective.

Part 8 Asset encumbrance

ENC Asset encumbrance

Reporting period-end values is not appropriate. Such levels do not represent a banking organization's liquidity over a reporting period given the fluctuations that occur in asset encumbrance during a reporting period as result of ordinary course operating activity.

³¹ See, e.g., 12 C.F.R. § 217.173, Table 13.

Clarification regarding this template’s scope of application is needed given that the illustrative examples in the Consultative Document do not appear to reconcile with the instructions. Specifically, the instructions note that the template should be completed with the “carrying amount for encumbered and unencumbered assets *on the balance sheet*,”³² but the illustrative examples include *off-balance-sheet* products, such as securities financing transactions and collateral swaps. The template should make clear whether all transactions through which collateral is received are to be included.

The template also defines encumbered assets as those “which the bank is restricted or prevented from liquidating, selling, transferring or assigning due to legal, regulatory, contractual *or other limitations*.”³³ The Basel Committee’s Liquidity Coverage Ratio (“LCR”) standard defines “unencumbered assets” as those that are “free of legal, regulatory, contractual *or other restrictions* on the ability of the bank to liquidate, sell, transfer, or assign the asset.”³⁴ The LCR standard also provides that banks should exclude from their stock of High Quality Liquid Assets (“HQLA”) those that meet the definition of unencumbered but that the bank would not have the operational capability to monetize to meet outflows in a stress period.³⁵ It is not clear whether “other limitations” in Template ENC is meant to be the same as “other restrictions” in the LCR standard, or whether the reference to “other limitations” is intended to be broader, potentially capturing unencumbered assets subject to operational constraints that, though unencumbered, would be excluded from the stock of HQLA. Given that the purpose of this disclosure is to provide “a preliminary overview on the extent to which a bank’s assets remain available to creditors in the event of insolvency,”³⁶ and not the ability to monetize assets, the definition of encumbered assets accompanying Template ENC should be revised to conform to the LCR standard.

³² Consultative Document at 56 (emphasis added).

³³ *Id.* at 57 (emphasis added).

³⁴ BASEL COMMITTEE, *Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools* ¶ 31 (Jan. 2013) <https://www.bis.org/publ/bcbs238.pdf> (emphasis added).

³⁵ *Id.* at ¶ 32.

³⁶ Consultative Document at 7.