June 29, 2017

*Via Electronic Mail*
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number S7-02-17, Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosure by Bank Holding Companies)

Ladies and Gentlemen:

The Clearing House Association L.L.C. and the Securities Industry and Financial Markets Association (collectively, the "Associations")[1] appreciate the opportunity to offer recommendations in response to the Securities and Exchange Commission's request for comment on possible changes to Industry Guide 3, *Statistical Disclosure by Bank Holding Companies* ("Guide 3") (the "Request for Comment"). The Associations strongly support efforts to improve the efficiency and effectiveness of disclosures. We believe that a comprehensive disclosure framework for U.S. bank holding companies ("BHCs") is of paramount importance and we are supportive of ensuring that BHCs' disclosures are understandable and transparent to investors.

We understand that Guide 3 was originally introduced in order to supplement and bolster existing U.S. GAAP and SEC disclosure requirements regarding deposit, lending, and investment activities of BHCs, and to provide disclosures for investors to make informed investment and voting decisions. However, as the Request for Comment notes, Guide 3 was introduced in 1976 and was most recently revised in 1986, which is more than thirty years ago. Since that time there have been substantial changes, both in form and substance, to the accounting treatment and disclosures pertaining to financial instruments. We have summarized the more significant developments during this time period in Appendix B. As a result, investors now have access to a vast amount of additional information regarding the activities that Guide 3 was originally designed to address.

In light of the expansion of the disclosure framework since the last substantive revision of Guide 3, we strongly believe that Guide 3 is now, in most instances, either duplicative of, or

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[1] *See* Appendix A to this letter for descriptions of the Associations.

largely overlapping with, existing disclosures included in SEC filings in response to requirements under the Accounting Standards Codification ("ASC"), Regulation S-X and Regulation S-K. As a result, we believe there is an opportunity to provide investors with a more useful presentation of information in SEC filings if Guide 3 were significantly streamlined to serve as a "gap filler" for U.S. BHCs, requiring only information that (i) is not otherwise required in SEC filings and (ii) would be useful and material to investors.

For foreign banking organization ("FBO") registrants filing Form 20-F, we believe the SEC should defer to home country practices, similar to its approach to Form 20-F, and eliminate the applicability of Guide 3 to such registrants, given that Guide 3 is heavily influenced by U.S. banking regulation and U.S. GAAP, and that not all Guide 3 concepts are applicable to FBOs. Alternatively, if the SEC decides that Guide 3 disclosures are necessary for FBOs, the SEC should adopt the approach recommended for U.S. BHCs, requiring Guide 3 disclosures only if substantially similar information is not otherwise available in 20-F reports and the disclosures would provide additional material information to investors.

## I. Executive Summary

- Guide 3 should be significantly streamlined and should act as a "gap filler" for U.S. BHCs.
    - Items that provide meaningful information not otherwise required to be included in SEC filings should be retained.
    - Items that duplicate or overlap with U.S. GAAP, Regulation S-K or Regulation S-X disclosures, or that do not provide meaningful information, should be eliminated.
- The SEC should defer to home country practices and eliminate the applicability of Guide 3 to FBO registrants filing Form 20-F; if the SEC decides that Guide 3 disclosures are necessary for FBOs, the SEC should adopt the approach recommended for U.S. BHCs, requiring Guide 3 disclosures only if substantially similar information is not otherwise available in 20-F reports and the disclosures would provide additional material information to investors.
- Due to the dramatic expansion of information in SEC filings since 1986, no additions to Guide 3 are needed at this time.
- Existing SEC disclosure requirements adequately address regulatory matters and need not be supplemented by additional Guide 3 disclosures.
- Guide 3 should not be codified into Regulation S-K or S-X but should remain as guidance, as codification would not enhance adherence by registrants and may make updating Guide 3 more cumbersome. In addition, retaining Guide 3 as guidance would continue to allow BHCs flexibility in their approach to disclosure.

- BHCs provide additional information in the form of Pillar 3 disclosures and regulatory reports that are publicly available, but this information need not be included or incorporated by reference in SEC filings.

    - Pillar 3 disclosures and regulatory reports should not be required to be included in SEC filings as this would only lead to further duplication of disclosures and would not add material information to SEC filings. Moreover, information in regulatory reports is provided for different purposes, and quantitative information incorporated by reference from regulatory reports cannot be accompanied by qualitative, contextualizing disclosures.

- Guide 3 should not explicitly require disclosures in interim periods as this could result in substantial duplication of disclosures; annual reporting periods should be conformed to Regulation S-X requirements as historical data is readily accessible.

- The SEC should continue to allow registrants the flexibility to provide Guide 3 disclosures throughout SEC filings, including in Item 303 of Regulation S-K, *Management's discussion and analysis of financial condition and results of operations* ("MD&A") or financial statements; suggested MD&A disclosures need not be included in Guide 3 as BHCs regularly provide the suggested information to the extent it is meaningful and material.

- Guide 3 should continue to apply to BHCs and other registrants with material lending and deposit activities as this provides useful information to investors.

- Guide 3 should be reviewed and updated periodically, and should be reviewed after the new FASB standards on financial instruments and credit losses are fully implemented; the disclosure requirements of new FASB and IASB standards on financial instruments and credit losses are comprehensive and should not be revised or supplemented at this time.

- Guide 3 disclosures should not be required in structured data format as the disclosures are made throughout SEC filings and therefore do not lend themselves easily to structured data format; and the cost of providing information in this format would be significant.

## II. Guide 3 should be significantly streamlined and should act as a "gap filler" for U.S. BHCs.

As a result of the substantial expansion in disclosure requirements outlined in Appendix B, most Guide 3 disclosures are now either entirely duplicative of, or largely overlapping with, disclosures required by U.S. GAAP, Regulation S-X and Regulation S-K. Accordingly, we recommend that Guide 3 be significantly streamlined and the SEC adopt an approach whereby Guide 3 would serve as a "gap filler." That is, the Guide 3 disclosures should consist of only those items for which (i) substantially similar information is not otherwise available in SEC reports and (ii) the standardized Guide 3 disclosures would provide additional material information to investors.

**A. Items that provide meaningful information not otherwise required to be included in SEC filings should be retained.**

In light of the disclosure requirements applicable to U.S. BHCs, many Guide 3 disclosures have become unnecessary. Accordingly, we recommend retaining only those Guide 3 disclosures that provide meaningful additional information that is not otherwise required to be included in SEC filings, which we have identified for U.S. BHCs as follows:

- Average balance sheet information required by Section I (A) of Guide 3.

- The information required by Section I (B) of Guide 3 regarding average amount outstanding of each category of interest-earning asset and interest-bearing liability; interest earned/paid for each category, and average yield for each category of interest-earning asset.

- The information regarding the weighted average yield of investments by specified maturity buckets in Section II (B) of Guide 3.

- The information on maturity profile of loans as required by Section III (B) of Guide 3.

- The information regarding deposits required in:

    - Section V (A), Average rate paid on deposits;
    - Section V (C), the aggregate amount of deposits by foreign depositors in domestic offices;
    - Section V (D), the amount outstanding at the end of the reported period of 1) time certificates of deposit in amounts of $100,000 or more and 2) other time deposits of $100,000 or more issued by domestic offices by specified categories of time remaining until maturity of 3 months or less; over 3 through 6 months; over 6 through 12 months; and over 12 months; and
    - Section V (E), the amount outstanding at the end of the reported period of time certificates of deposits and other time deposits in amounts of $100,000 or more issued by foreign offices.

    These requirements should, however, be updated to align with the U.S. GAAP requirement to disclose information regarding time deposits that exceed the FDIC insurance limits (currently $250,000).[2]

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[2] FASB Editorial and Maintenance Update 2014-07 (Mar. 17, 2014), *available at* https://asc.fasb.org/imageRoot/89/51570489.pdf.

- All of the ratios (return on assets, return on equity, dividend payout, and equity to assets) required by Section VI of Guide 3.

- All of the information regarding short-term borrowings required by Section VII of Guide 3, more specifically:[3]

  - Amounts outstanding at the end of the reported period by specified category, weighted average interest rate thereon, and general terms thereof;

  - Maximum amount of borrowings in each category outstanding at any month-end during each reported period; and

  - Approximate average amounts outstanding during each reported period and the approximate weighted average interest rate thereon.

**B. Items that duplicate or overlap with U.S. GAAP, Regulation S-K or Regulation S-X disclosures, or that do not provide meaningful information, should be eliminated.**

We strongly believe the following Guide 3 requirements should be eliminated:

- The information required in Section I (C) presenting the change in interest income and expense is duplicative of MD&A disclosures,[4] and the rate/volume analysis is not representative of how financial institutions currently manage interest rate risk and should therefore be eliminated. We believe a financial institution's interest rate risk profile would be more appropriately disclosed in the context of Item 305 of Regulation S-K, *Quantitative and Qualitative Disclosures About Market Risk Disclosures* ("Item 305 Market Risk Disclosures"), as well as in MD&A, which requires registrants to include a narrative discussion of the extent to which any material increases in financial statement items are attributable to increases in price or increases in volume. We also note that these disclosures are further supplemented by the quantitative and qualitative Pillar 3

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3 This information is not required for any category for which the average balance outstanding during the period was less than 30% of stockholders' equity at the end of the period.

4 As noted in the Request for Comment, page 20, "all registrants must discuss their financial condition, changes in financial condition and results of operations in MD&A, including a narrative discussion of the extent to which any material increases are attributable to increases in price or increases in volume. MD&A requires registrants to describe significant components of revenues or expenses that, in the registrant's judgment, should be described in order to understand the results of operations."

disclosures on interest rate risk.[5]

- The information required in Section II regarding the book value and maturity profile of the investment portfolio (Sections II (A) and II (B), respectively), and additional information on investments for which the book value exceeds 10% of stockholders' equity (Section II (C)), is largely duplicative of U.S. GAAP requirements as noted in the Request for Comment,[6] and should therefore be eliminated.

- The information required in Section III (A), *Types of Loans*; Section III (C) (1), *Risk Elements: Nonaccrual, Past Due and Restructured Loans*; Section III (C) (2), *Risk Elements: Potential Problem Loans;* and Section III (C) (4), *Loan Concentrations* is largely duplicative of U.S. GAAP requirements, as noted in the Request for Comment,[7] and should be eliminated.

- The information regarding foreign outstanding loans as required by Section III (C) (3) of Guide 3 should be eliminated. This information overlaps with the country risk disclosures included in MD&A, which we believe are more useful and informative for investors, as the MD&A disclosures are typically presented in a manner that is consistent with how the underlying risks are managed. The MD&A country risk disclosures and Guide 3 foreign outstanding loan disclosures are not comparable; as a result, the inclusion of both in SEC filings does not promote effective disclosure, but instead potentially contributes to investor confusion.

- The information required in Section IV (A) regarding the loan loss allowance overlaps substantially with U.S. GAAP and should be eliminated.[8] The information required in Section IV (B) can be derived from information regarding the loan loss allowance that is otherwise required by U.S. GAAP and therefore is unnecessary and should be eliminated.

- The requirement to provide five fiscal years of data with respect to the Loan Portfolio and

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5 Federal Reserve Board, Table 10 to 12 C.F.R. § 217.63 (applicable to BHCs that are not subject to the advanced approaches capital rules) and Table 13 to 12 C.F.R. § 217.173 (applicable to BHCs that are subject to the advanced approaches capital rules).

6 *See* U.S. GAAP requirements as summarized in the Request for Comment pp. 30-33, primarily the disclosure requirements of ASC 320-10-50. In addition, ASC 825-10-50-20 requires disclosure of significant concentrations of credit risk arising from financial instruments.

7 *See* Article 9 of Regulation S-X and U.S. GAAP requirements as summarized in the Request for Comment, pp. 41-44.

8 *See* U.S. GAAP requirements as summarized in the Request for Comment, pp. 50-54, primarily the disclosure requirements of ASC 320-10-50-11B.

the Allowance for Loan Losses in Sections III and IV has been rendered redundant in light of the accessibility of historical information online via EDGAR and other easily accessible archives and websites, and therefore should be eliminated.

## III. The SEC should defer to home country practices and eliminate the applicability of Guide 3 to FBO registrants filing Form 20-F; if the SEC decides that Guide 3 disclosures are necessary for FBOs, the SEC should adopt the approach recommended for U.S. BHCs, requiring Guide 3 disclosures only if substantially similar information is not otherwise available in 20-F reports and the disclosures would provide additional material information to investors.

In the Request for Comment, the SEC acknowledges that Guide 3 is heavily influenced by U.S. banking regulation and U.S. GAAP, and that not all Guide 3 concepts are applicable to FBOs. For example, information about deposits in excess of $250,000 may not be meaningful for an FBO, as that asset threshold is linked to FDIC deposit insurance limits; and information about Troubled Debt Restructurings ("TDRs") is not applicable, as TDRs are not a concept within IFRS. Attempting to align the Guide 3 disclosures to IFRS disclosures can be a costly and time-consuming exercise for registrants, and often results in disclosures that are not particularly meaningful to investors.

In addition, we note that since 2008, the SEC has permitted foreign private issuers to file financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP, thereby acknowledging that "investors can understand and work with both IFRS and U.S. GAAP and that these two systems can co-exist in the U.S. public capital markets."[9] Accordingly, we believe that the SEC should adopt an approach similar to that of the Form 20-F filings, and defer to IFRS disclosures without requiring additional, supplementary Guide 3 disclosures for FBOs.

We acknowledge that IFRS disclosure requirements may be more principles-based and less prescriptive in certain instances than U.S. GAAP, and that certain FBOs may not be subject to the same regulatory filing requirements as U.S. BHCs, thereby potentially leading to a slightly different scope of disclosures for FBOs. At the same time, the information that would be required to be disclosed by FBOs may be available in comparable form, as a U.S. bank subsidiary of the FBO would be required to file a Call Report, which would provide comparable information about U.S. deposits where relevant, and FBOs may also have U.S. holding company subsidiaries that are required to file FR Y-9Cs. Finally, FBOs are also subject to the Pillar 3

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[9] SEC Release No. 33-8879 (Dec. 21, 2007), 17 CFR Parts 210, 230, 239 and 249, *Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, effective March 4, 2008, *available at* http://www.sec.gov/rules/final/2007/33-8879.pdf.

disclosures described in Section VII.

Should the SEC decide not to defer to home country practices, and instead determine that Guide 3 disclosures are necessary for FBOs, we recommend that the SEC adopt the approach recommended for U.S. BHCs in Section II above. Using that approach, Guide 3 would be significantly streamlined and act as a "gap filler" for FBOs, requiring disclosures only for those items for which (i) substantially similar information is not otherwise available in 20-F reports and (ii) the disclosures would provide additional material information to investors. Under this approach, disclosure items such as the average balance sheet information required by Section I (A) of Guide 3 should be retained for FBOs.

At a minimum, the General Instructions to Guide 3 should state that if the registrant's accounting framework does not support a particular disclosure, such as the requirement to disclose TDRs, then the registrant should provide a similar disclosure that is responsive to the requirement.

## IV. Due to the dramatic expansion of information in SEC filings since 1986, no additions to Guide 3 are needed at this time.

As a result of the substantial changes to the disclosure framework for BHCs described in Appendix B to this letter, we believe that no additions to Guide 3 are required at this time.

Moreover, there are a number of proposed additions to Guide 3 contained in the Request for Comment, and we do not support including them in Guide 3:

- Any of the interest rate or liquidity risk disclosures proposed in the FASB's 2012 Exposure Draft, *Accounting For Financial Instruments: Liquidity And Interest Rate Disclosures*, as these disclosures consisted of static repricing, gap, and sensitivity analyses and do not reflect the dynamic ways that financial institutions measure and monitor interest rate risk or liquidity risk.

- The proposal to disclose either compliance with or the calculation of the liquidity coverage ratio ("LCR"). For the reasons we have stated previously,[10] we believe that granular quantitative LCR disclosures and any required discussion of qualitative factors that have a significant effect on a firm's LCR would potentially do meaningful harm to banks' competitive positions without any meaningful incremental benefit to investors. We recommend that BHCs should be permitted to use their discretion to determine how

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10 *See* The Clearing House, *Comment Letter Re: Liquidity Coverage Ratio: Public Disclosure Requirements* (June 2, 2017), *available at* https://www.theclearinghouse.org/~/media/TCH/Documents/TCH%20WEEKLY/2017/20170602_TCH_Comment_Letter_regarding_LCR_Disclosure_Requirements.pdf.

to summarize LCR disclosures in the relevant sections of their SEC filings, taking into account the SEC's existing requirements and guidance regarding MD&A disclosures on liquidity.

- A requirement to disclose information regarding "core deposits," as a formal definition of this term was never finalized by the FASB, and is therefore not an accounting measure extant in U.S. GAAP.

- Additional disclosures regarding trading securities or trading revenue, in light of the extensive and comprehensive U.S. GAAP, IFRS and SEC disclosure requirements (including the Item 305 Market Risk Disclosures) for trading securities and trading revenue. In addition, we do not believe that changes or enhancements to the Item 305 Market Risk Disclosures are required at this time, as we believe the current market risk disclosures provide an appropriate balance of a standardized approach that at the same time allows for some customization of assumptions and the application of judgment, resulting in disclosures that investors find useful as well as comparable from firm to firm.

- Separate disclosure of the provision amount that relates to loans originated during the period in the allowance for credit losses roll-forward in light of the upcoming implementation of Accounting Standards Update ("ASU") 2016-13—Financial Instruments—Credit Losses (Topic 326): *Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), as the allowance is not calculated separately for new loans under the expected credit loss model, and therefore the information provided would not be meaningful.

- Additional standardized disclosures on non-interest income and/or expense in SEC filings in light of existing disclosure requirements. There is no need for such additional disclosures, as they would be unrelated to the primary purpose of Guide 3, which is to provide statistical information regarding lending and deposit activities. For the same reasons, Guide 3 should not be revised to address disclosures relating to commodities, asset management or broker-dealer activities.

## V. Existing SEC disclosure requirements adequately address regulatory matters and need not be supplemented by additional Guide 3 disclosures.

We acknowledge the fact that BHCs have become subject to many new bank regulatory and capital requirements in recent years. However, we do not believe that it is necessary to add specific new disclosures regarding these requirements to Guide 3, as we believe existing disclosure requirements applicable to SEC filings—in particular, Regulation S-K Items 101 (Description of Business), 503(c) (Risk Factors) and 303 (MD&A) and ASC 942-505-50—already adequately address the disclosure of this information. Specifically:

- Key information related to Dodd-Frank Act resolution plans is typically provided by BHC registrants in response to Item 101 of Regulation S-K, often in a separate section on supervision and regulation. Where relevant and material, BHCs supplement such disclosure with risk factors relating to resolution planning and the potential effects of resolution strategies on their security holders, as well as MD&A discussions of how matters relating to resolution planning can affect their liquidity and capital resources.

- A requirement to disclose the effects of capital and other regulatory requirements on a BHC's business, financial condition, and result of operations is not necessary as BHCs routinely describe applicable regulatory frameworks, as well as proposed changes to those frameworks, in response to Item 101 of Regulation S-K, often in a separate section on supervision and regulation. In addition, ASC 942-505-50 requires disclosures regarding, among other matters, compliance with regulatory capital requirements and factors that may significantly affect capital adequacy. BHCs typically supplement those disclosures with discussions of regulatory matters (including effective, pending and proposed regulatory requirements relating to capital and liquidity) in risk factors and the liquidity and capital disclosures of MD&A.

- We do not believe that disclosing the inputs or outputs of stress-testing scenarios that BHCs perform, such as those related to Dodd-Frank Act Stress Tests ("DFAST"), would provide meaningful information to investors. The key information, which is whether a BHC could be prevented from paying dividends or repurchasing shares of its stock or other securities as a result of regulatory determinations (including a failure to pass stress tests), is typically addressed in descriptions of BHCs' businesses (frequently in a separate supervision and regulation section) as well as in risk factors and the liquidity and capital disclosures of MD&A. Moreover, DFAST serves a variety of supervisory purposes—including supervisory management of risks to the overall financial system (that is, macroprudential risk)—and includes requirements and standardized assumptions that are intended to serve those purposes. As a result of those and other aspects of DFAST, disclosure of DFAST inputs and outputs would not provide meaningful information for investors, particularly in light of the information BHCs already include in their SEC filings on liquidity and capital adequacy. Rather, disclosure of such stress testing inputs and outputs could contribute to investor confusion because those inputs and outputs serve supervisory purposes that are entirely distinct from the information needs of investors. In addition, the inputs and outputs are based on hypothetical economic scenarios prepared for supervisory purposes. Those scenarios are not forecasts and should not be regarded or treated as such.

- Similarly, we do not believe that a reconciliation of risk-weighted assets at the beginning and end of the period would provide meaningful information to investors. Rather, the key information, which is how changes in a BHC's balance sheet and business profile have impacted a BHC's required capital levels, is addressed in descriptions of BHCs' businesses in response to Item 101 of Regulation S-K, as well as the required liquidity and capital disclosures of MD&A and the financial statement disclosures required by ASC 942-505-50.

Accordingly, we believe that Guide 3 need not be amended to include any of the above specific disclosure requirements.

## VI. Guide 3 should not be codified into Regulation S-K or S-X but should remain as guidance, as codification would not enhance adherence by registrants and may make updating Guide 3 more cumbersome. In addition, retaining Guide 3 as guidance would continue to allow BHCs flexibility in their approach to disclosure.

We believe there is no need to codify Guide 3 as part of Regulation S-K or Regulation S-X and that instead Guide 3 should remain as guidance for BHCs. As evidenced by industry practice since the inception of Guide 3, financial institutions have substantially increased their disclosures in an effort to cover the elements contained in Guide 3. In its current form, Guide 3 has resulted in enhanced comparability in the disclosures provided by registrants in the banking industry. At the same time, as guidance instead of a rule, Guide 3 has permitted flexibility for BHC registrants in their approach to disclosure in appropriate circumstances. That flexibility, combined with the SEC staff's periodic review of and comment on filings, has worked well for investors.

Furthermore, codifying Guide 3 would result in a more cumbersome procedure for the SEC in updating disclosures in the future, as well as limit the opportunity for registrants to selectively omit or update disclosures as they become obsolete over time. For example, currently the threshold for disclosure of time deposits outstanding (Items V.D and V.E) is amounts greater than or equal to $100,000, which was established to distinguish "retail" from "wholesale" deposits in 1980 and happened to coincide with the then-applicable FDIC insurance limit (which has since changed). As noted previously, we believe that the asset threshold should be updated to reflect the current FDIC insurance limit, which is $250,000. Thus, Guide 3 should remain in its present form so that updates of this nature can be made easily by the SEC.

## VII. BHCs provide additional information in the form of Pillar 3 disclosures and regulatory reports that are publicly available, but this information need not be included or incorporated by reference in SEC filings.

In addition to the changes in U.S. GAAP and Regulation S-K disclosures described in Appendix B, another significant development in the BHC disclosure regime was the introduction of the Pillar 3 disclosures by the Basel Committee on Banking Supervision.[11,12] The Pillar 3

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[11] Pillar 3 disclosure requirements were first issued as part of the Basel II Framework in 2004 and the Basel 2.5 revisions and enhancements introduced in 2009; the revised Pillar 3 disclosure requirements issued in January 2015 superseded these requirements, and were based on an extensive review of previous Pillar 3 requirements, outreach with market participants, and a consultation process. The Basel Committee most recently revised its Pillar 3 disclosure requirements in March 2017. The Basel Committee's Pillar 3 disclosure requirements are not directly applicable to BHCs or FBOs; rather, BHCs and FBOs are subject to the disclosure requirements implemented in their respective home jurisdictions. In the U.S., for

disclosures set forth a comprehensive framework intended to provide users with information relating to a banking organization's regulatory capital, and credit, market and operational risk exposures, to increase transparency and improve comparability and the consistency of disclosures. The foundational principles of Pillar 3 call for disclosures that are clear, comprehensive, meaningful to users, consistent over time, and comparable across banking organizations.

The Pillar 3 disclosures focus on regulatory measures defined in Pillar 1 of the Basel capital framework, which requires banking organizations to adopt specified approaches for measuring credit and, where applicable, market and operational risks, the corresponding risk-weighted assets and capital requirements. This common disclosure framework is designed to enable market participants to better understand a banking organization's regulatory capital and risk exposures, thereby promoting market discipline.

The Pillar 3 disclosures are required to be made available to the public, with only limited exceptions,[13] and provide additional information to investors regarding regulatory capital and risk exposures in a generally standardized format, allowing for comparability.

Additional information is also provided by banking organizations in the Call Report, which is filed by U.S. depository institutions, and the FR Y-9C which is filed by the top-tier BHCs and U.S. intermediate holding companies of FBOs. The information in the Call Report and FR Y-9C provides detailed, granular information regarding the areas addressed by Guide 3, including the investment portfolio, loans and the loan loss allowance, deposits, short-term borrowings, interest income and expense. The Call Report and FR Y-9C frequently require disclosure of information at a more disaggregated level than the disclosures required by U.S. GAAP, Regulation S-K or Regulation S-X. Moreover, both the Call Report and FR Y-9C are required to be submitted in a standardized format, and significant portions of these filings are available publicly.

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example, BHCs are subject to the Federal Reserve Board's regulatory capital rules, which include disclosure requirements based on the Basel Committee's Pillar 3 framework.

12 In the U.S., BHCs are subject to the Federal Reserve Board's Pillar 3-based disclosure requirements only if they have $50 billion or more in assets. In addition, market risk capital and related disclosure requirements apply only to those BHCs subject to the Federal Reserve's market risk capital rules, and operational risk capital and related disclosure requirements apply only to larger BHCs (*i.e.*, the advanced approaches BHCs).

13 If disclosure of certain items required by Pillar 3 may reveal the position of a banking organization or contravene its legal obligations by making public information that is proprietary or confidential in nature, a banking organization need not disclose those specific items, but must disclose more general information about the subject matter of the requirement instead. It must also explain in the narrative commentary to the disclosure requirement the fact that the specific items of information have not been disclosed and the reasons for this.

**A. Pillar 3 disclosures and regulatory reports should not be required to be included in SEC filings as this would only lead to further duplication of disclosures and would not add material information to SEC filings. Moreover, information in regulatory reports is provided for different purposes, and quantitative information incorporated by reference from regulatory reports cannot be accompanied by qualitative, contextualizing disclosures.**

We believe there is no need to require BHCs to include disclosures substantially similar to what is contained in the Pillar 3, Call Report or FR Y-9C disclosures in SEC filings. A BHC has the flexibility to include information from the Pillar 3, FR Y-9C or Call Report disclosures in its SEC reports if the BHC believes that such disclosure would provide meaningful information for investors. In addition, BHCs are subject to the general requirements of SEC Rules 408 and 12b-20, which require registrants to include information beyond that which is expressly required to the extent necessary to make the required disclosure not misleading. Moreover, BHCs are strongly incentivized to ensure the accuracy of their Pillar 3 disclosures and FR Y-9C and Call Report filings under the U.S. banking laws, and BHCs are subject to Section 10(b) and Rule 10b-5 under the Securities Exchange Act of 1934 for their Pillar 3 disclosures as well as disclosures made in their FRY-9C filings and their subsidiaries' Call Report filings. The existing U.S. banking and securities law disclosure frameworks appropriately balance the availability of information for investors, the incentives for BHCs to provide fair and accurate disclosures and the flexibility for BHCs in preparing their disclosures. Requiring BHCs to repeat information required by Pillar 3, the FR Y-9C or Call Report in SEC filings would not add material information to SEC filings. In addition to overlapping with the disclosures already required in SEC filings, the information required in Pillar 3 disclosures and regulatory reports may be of limited use to investors given the volume and granularity of the information, as well as the fact, discussed below, that the regulatory reports are designed to further supervisory objectives and not the information needs of investors in making investment and voting decisions.

Additionally, we believe that the FR Y-9C and Call Report regulatory filings should not be incorporated by reference into SEC filings. Information in regulatory reports is provided for entirely different purposes than for U.S. GAAP, S-X and S-K disclosures – that is, for supervisory purposes, so that banking regulators can ensure the safety and soundness of banking organizations – as opposed to the core mission of the SEC, which focuses on investor protection, fair, orderly, and efficient markets, and capital formation. Furthermore, certain schedules of the FR Y-9C and the Call Report are confidential and are therefore not appropriate for incorporation by reference.

Moreover, if FR Y-9C filings and Call Reports were incorporated by reference into SEC filings, BHCs would not able to accompany the quantitative information required by the regulatory filings with additional qualitative information that would be needed to provide market participants with a broader picture of an institution's risk position and give context to the voluminous quantitative disclosures. Lastly, the instructions for the FR Y-9C and Call Report are subject to frequent change, and those changes may not reflect the information needs of investors in making investment and voting decisions.

**VIII. Guide 3 should not explicitly require disclosures in interim periods as this could result in substantial duplication of disclosures; reporting periods should be conformed to Regulation S-X requirements as historical data is readily accessible.**

We do not believe that Guide 3 requirements should be explicitly required for interim periods, except with respect to material changes. Requiring the same level of disclosure in interim financial statements as that required in annual financial statements could result in substantial duplication of disclosure that may be confusing to investors, as it does not highlight information that management views as important, but is provided merely to fulfill a requirement. Instead, we believe that interim disclosures should be provided only where such disclosures are necessary to reflect material matters that have occurred since the issuance of the annual financial statements.

In addition, as noted previously, there is no need to present five years of historical data, in light of the ease of accessibility of historical information regarding BHCs. Accordingly, we recommend that the Guide 3 reporting periods be reduced to match the Regulation S-X requirements.

**IX. The SEC should continue to allow registrants the flexibility to provide Guide 3 disclosures throughout SEC filings, including in MD&A or financial statements; suggested MD&A disclosures need not be included in Guide 3 as BHCs regularly provide the suggested information to the extent it is meaningful and material.**

We note that the General Instructions to Guide 3 state that "[i]nformation furnished in accordance with this Guide should generally be presented in tabular form in the order appearing [in Guide 3]. However, an alternative presentation, such as inclusion of the information in Management's Discussion and Analysis, may be used if in management's opinion such presentation would be more meaningful to investors." We note that, in accordance with these instructions, the SEC has not objected to the inclusion of Guide 3 disclosures in MD&A or financial statements. We believe this is a sensible approach that allows registrants to present related disclosures together, and therefore results in a superior disclosure package. Accordingly, we recommend that the SEC clarify this instruction to state that registrants have the flexibility to select the section or sections of SEC filings in which to present Guide 3 disclosures so that BHCs can provide information in the manner management considers meaningful and useful for investors.

In addition, we do not believe there is a need to include the SEC's suggested MD&A disclosures in Guide 3, such as the SEC's 2009 Sample MD&A Letter.[14] We believe that BHC

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[14] Available at https://www.sec.gov/divisions/corpfin/guidance/loanlossesltr0809.htm.

registrants have followed this suggested guidance since it was promulgated in 2009 to the extent that the disclosures provide relevant and important information, such that including it in Guide 3 would not result in any substantive improvements in disclosures but only add to the duplication of SEC requirements or potentially result in immaterial disclosures by BHCs.

**X. Guide 3 should continue to apply to BHCs and other registrants with material lending and deposit activities as this would provide useful information to investors.**

As noted in the Request for Comment, while Guide 3 technically applies only to BHCs, the SEC staff has indicated that such disclosures should also be provided by other registrants with material lending and deposit activities. We support the continued application of this approach, as we believe it appropriately captures institutions that engage in activities substantially similar to BHCs. This approach is also consistent with the recent trend among standard-setters to move away from industry-specific accounting and disclosure requirements and to provide more activity-based guidance. The application of Guide 3 requirements to other registrants with material lending and deposit activities would also provide useful information to investors, as we believe they would be interested in this information regardless of entity type.

**XI. Guide 3 should be reviewed and updated periodically and should be reviewed after the new FASB and IASB standards on financial instruments and credit losses are fully implemented; the disclosure requirements of new FASB and IASB standards on financial instruments and credit losses are comprehensive and should not be revised or supplemented at this time.**

We further recommend that Guide 3 be reviewed and updated periodically, including whenever a significant new accounting or disclosure standard that affects the banking industry is implemented, so that it can remain a relevant and useful document. We note that major new disclosures will be implemented by BHCs and FBOs over the next several years with the implementation of ASU 2016-01—Financial Instruments—Overall (Subtopic 825-10): *Recognition and Measurement of Financial Assets and Financial Liabilities* ("ASU 2016-01"); ASU 2016-13; and the IASB's issuance of a revised version of IFRS 9, *Financial Instruments* ("IFRS 9"). The new disclosures required by these standards may render even more of the Guide 3 requirements obsolete, and therefore, we encourage the SEC to update Guide 3 after the new standards are implemented, as well as whenever other significant financial disclosure requirements are promulgated for the banking industry.

However, we believe it would be premature to supplement the aforementioned standards with additional disclosures prior to their required implementation date; the FASB and IASB deliberated for many years and consulted extensively with investors, regulators, and preparers of financial statements to develop a set of disclosures that they believed would best serve their constituents. We believe that these new disclosures should be fully implemented first, and a post-implementation review performed of them, before they are supplemented by any additional requirements in Guide 3.

**XII. Guide 3 disclosures should not be required in structured data format as the disclosures are made throughout SEC filings and therefore do not lend themselves**

**readily to structured data format; and the cost of providing information in this format would be significant.**

We do not believe that Guide 3 disclosures should be required to be presented in structured data format, such as XBRL. In particular, the cost of providing the information in this format could be significant to all stakeholders, including the SEC in developing the appropriate XBRL tagging, as well as to registrants in providing the disclosures. In addition, there could be significant challenges to implementing XBRL tagging because registrants provide Guide 3 disclosures throughout SEC filings, including in MD&A and other sections that appropriately are not subject to XBRL requirements. In addition, for registrants that include Guide 3 disclosures in MD&A or among other disclosures not subject to XBRL requirements, subjecting Guide 3 disclosures to XBRL requirements would result in inconsistent presentation (XBRL or not) depending on the underlying reason for providing the disclosure (*e.g.*, in response to Guide 3 or Item 303 of Regulation S-K). Such inconsistency could impede the effectiveness of disclosure and contribute to investor confusion. Accordingly, we do not believe that the benefits of providing Guide 3 information in XBRL format would outweigh the anticipated costs and other drawbacks of doing so.

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The Associations appreciate the opportunity to comment on the proposal and we support the SEC's efforts to improve and enhance disclosures. We hope you find our response to be a constructive addition to the SEC's consideration of possible revisions to Guide 3.

If you have any questions, please contact the undersigned by phone at [redacted] or by email at [redacted].

Respectfully submitted,

David Wagner

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

Mary Kay Scucci

Mary Kay Scucci, PhD, CPA
Managing Director
Securities Industry and Financial Markets
Association

cc: Wesley Bricker
David Fredrickson
William Hinman
(Securities and Exchange Commission)

Susan M. Cosper
Russell Golden
(Financial Accounting Standards Board)

Amy Friend
Morris Morgan
Kathy Murphy
Louis A. Thompson, Jr.
(Office of the Comptroller of the Currency)

Scott Alvarez
Michael Gibson
Joanne Wakim
(Board of Governors of the Federal Reserve System)

Doreen Eberley
Robert Storch
Charles Yi
(Federal Deposit Insurance Corporation)

## Appendix 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 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.

The Securities Industry and Financial Markets Association. SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

## Appendix B

The disclosure framework for BHCs has evolved substantially since Guide 3 was developed. As detailed further below:

A. Numerous new U.S. GAAP and IFRS standards have been introduced since Guide 3 was developed and others have been substantively updated.
B. The SEC has issued significant amendments to and new guidance regarding MD&A.
C. The SEC requires BHCs to provide comprehensive disclosures with respect to market risk.
D. Historical information is now readily accessible online.

### A. Numerous new U.S. GAAP and IFRS standards have been introduced since Guide 3 was developed and substantively updated.

When Guide 3 was first introduced, the major standards relevant to BHC activities consisted, in the U.S., of Statement of Financial Accounting Standards ("SFAS") No. 5, *Accounting for Contingencies;* SFAS No. 12, *Accounting for Certain Marketable Securities*; and SFAS No. 65, *Accounting for Certain Mortgage Banking Activities.*[15] Since that time, U.S. GAAP standards have undergone a substantial expansion resulting in a meaningful increase in information regarding the activities of BHCs that is now available to investors. Significant standards that have been issued relevant to BHC activities over the last three decades include the following:

- <u>*Lending Activities*</u>. New standards were issued regarding the accounting for and disclosure of lending activities, including:
  - SFAS No. 114, *Accounting by Creditors for Impairment of a Loan,* issued in 1993;
  - AICPA Statement of Position 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*, issued in 2003;
  - ASU 2010-20, *Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses*, issued in 2010*;* and
  - ASU 2011-02 —Receivables (Topic 310): *A Creditor's Determination of Whether a Restructuring Is a Troubled Debt Restructuring*, issued in 2011.

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15 At the time that Guide 3 was developed and last substantively revised, international accounting standards were not widely in use.

These standards, as amended and now codified in ASC 310, *Receivables*, significantly revised the accounting for and expanded the disclosure of loans and the related loan loss allowance.

- *Investment Securities.* New standards were issued regarding the accounting for and disclosure of investment securities, including:

    - SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, issued in 1993; and

    - FASB Staff Position FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*, issued in 2008.

  These standards, as amended and now codified in ASC 320, Investments – *Debt and Equity Securities*, significantly changed the accounting for and expanded the disclosure of investment securities.

- *Off-balance Sheet Activities.* Multiple new standards were issued regarding transactions with special purpose entities, which resulted in extensive new disclosures regarding these activities. These standards are now codified in ASC 860, *Transfers and Servicing.*

- *Derivative Instruments and Hedging Activities.* SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, was issued in 1998; now codified in ASC 815, *Derivatives and Hedging*, it provided a comprehensive framework for the accounting and disclosure of derivative instruments and related hedging activities.

- *Fair Value of Financial Instruments.* Several standards were issued on the disclosure of information about fair value of financial instruments,[16] which were later superseded by the issuance of SFAS No. 157, *Fair Value Measurements* ("SFAS No. 157"), in 2006. SFAS No. 157 and SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, issued in 2007 ("SFAS No. 159"), provide a comprehensive framework for the disclosure of financial instruments measured at fair value.[17]

Similar to U.S. GAAP, IFRS has seen a substantial expansion in standards relating to the accounting for and disclosure of financial statements, including the following standards:

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[16] SFAS No. 105, *Disclosure of Information about Financial Instruments with Off-Balance-Sheet Risk and Financial Instruments with Concentrations of Credit Risk*, was issued in 1980; SFAS No. 107, *Disclosures about Fair Value of Financial Instruments*, was issued in 1991; and SFAS No. 119, *Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments*, was issued in 1994.

[17] SFAS No. 157 and SFAS No. 159 are now codified in ASC 820, *Fair Value Measurement* and ASC 825, *Financial Instruments*, respectively.

- IFRS 7, *Financial Instruments: Disclosures* ("IFRS 7") was issued in 2005 and provides a comprehensive framework for the disclosure of information about the significance of financial instruments to an entity, and the nature and extent of risks arising from those financial instruments, both in qualitative and quantitative terms.

- IFRS 9 was issued in 2009, replacing International Accounting Standard ("IAS") 39, *Financial Instruments: Recognition and Measurement*. Effective in 2015, IFRS 9 was subsequently amended to introduce a new expected loss impairment model and changes to the classification and measurement framework for financial instruments, which will go into effect in 2018. IFRS 9 also amends some of the disclosure requirements of IFRS 7, including adding disclosures about investments in equity instruments, disclosures on risk management activities and hedge accounting, and disclosures on credit risk management and impairment.

Many of the above-named standards have been recently revised, as the FASB and IASB have been deliberating over the past decade how best to improve the accounting and disclosure frameworks for financial instruments. These deliberations culminated in the issuance of a comprehensive new framework governing the recognition, measurement, and disclosure of financial instruments, which includes the recent issuance by FASB of ASU 2016-01 and ASU 2016-13, and the IASB's issuance of a revised version of IFRS 9.

These new standards introduce many additional robust disclosure requirements relevant to banking organizations that are required to be implemented by public entities over the next several years.[18]

As the accounting and disclosure frameworks for financial instruments continue to evolve, there continues to be a substantial increase in information available to investors since Guide 3's inception and last substantive update, thereby making many of its requirements duplicative.

### B. The SEC has issued significant amendments to and new guidance regarding MD&A.

Similarly, the SEC has adopted and released important amendments to and guidance regarding MD&A[19] relevant to BHCs. These amendments and guidance include:

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18 In addition, both the FASB and IASB are still reconsidering their respective hedge accounting models: in 2016, the FASB issued a proposed ASU, Derivatives and Hedging (Topic 815): *Targeted Improvements to Accounting for Hedging Activities*, and in 2014, the IASB issued a Discussion Paper DP/2014/1 *Accounting for Dynamic Risk Management: a Portfolio Revaluation Approach to Macro Hedging*.

19 Form 20-F Item 5 requires disclosures similar to the MD&A disclosures.

- Amendments requiring additional disclosure in MD&A about off-balance sheet arrangements and aggregate contractual obligations, issued in 2003;[20]

- Guidance on disclosure regarding provisions and allowances for loan losses in MD&A, issued in the 2009 Sample MD&A Letter;

- Guidance on presentation of liquidity and capital resources disclosures in MD&A, issued in 2010;[21] and

- Guidance providing the SEC's views regarding disclosure related to registrants' exposures to certain European countries experiencing financial stress, issued in 2012.[22]

These amendments and guidance have resulted in a significant expansion in disclosure by BHCs regarding activities that Guide 3 was originally intended to address, and they have promoted the disclosure of comparable information while also providing BHCs with flexibility to present information in the manner they consider most meaningful to investors.

### C. The SEC requires BHCs to provide comprehensive disclosures with respect to market risk.

Another important addition to the disclosure framework for BHCs was the issuance of the Item 305 Market Risk Disclosures in 1997.[23] These disclosures provide comprehensive and informative disclosures regarding the market risk profile of financial institutions that enable users to compare changes in the risk position of an entity over time and compare risk profiles across institutions. For those banking organizations required to file Form 20-F, Item 11 requires disclosures similar to the Item 305 Market Risk Disclosures. We also believe that the SEC appropriately balanced flexibility for registrants and standardization of disclosures in Item 305 and Item 11.

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[20] SEC 17 CFR Parts 228, 229 and 249 [Release Nos. 33-8182; 34-47264; FR-67; International Series Release No. 1266, File No. S7-42-0], *Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations,* effective April 7, 2003.

[21] SEC 17 CFR Parts 211, 231 and 241 [Release Nos. 33-9144; 34-62934; FR-83], *Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis,* effective September 28, 2010.

[22] *See* CF Disclosure Guidance: Topic No. 4, *European Sovereign Debt Exposures*.

[23] SEC 17 CFR 229.305 - (Item 305) [Release No. 7386], published in the Federal Register on February 10, 1997.

**D. Historical information is now readily accessible online.**

In addition to the substantive changes to the information available to investors, the form of such information has also similarly undergone a substantial transformation. In the 1970s and 1980s, information was made publicly available by physically mailing “hard-copies” of financial statements to the respective agencies. In the 1990s, banking institutions had just begun electronically posting of financial reports to the SEC’s EDGAR database. Today, however, EDGAR is significantly more user-friendly, and investors have the ability to easily search for and retrieve relevant information on a BHC’s website,[24] which has effectively rendered obsolete the need for BHCs to provide historical information in Guide 3 that goes beyond the typical financial reporting periods of two years for balance sheet information and three years for income statement information, such as the requirement to provide five fiscal years of data regarding the loan portfolio and the allowance for loan losses in Sections III and IV of Guide 3. In light of the dramatic change in how information is made publicly available today, historical information for periods beyond those for which information is required in Forms 10-K and 20-F should not be required in Guide 3.

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[24] Item 101(e) of Regulation S-K requires registrants to state whether they make available, free of charge, on or through their websites, various SEC filings, including their period and current reports. BHCs typically provide these materials on their websites.