August 17, 2018

Comments on the document: *Monitoring the Technical Implementation of the FSB Total Loss-absorbing Capacity (TLAC) Standard - Call for public feedback*, issued by the Financial Stability Board

Japanese Bankers Association

We, the Japanese Bankers Association ("JBA"), would like to express our gratitude for the opportunity to comment on: *Monitoring the Technical Implementation of the FSB Total Loss-absorbing Capacity (TLAC) Standard - Call for public feedback*, issued on June 6, 2018 by the Financial Stability Board ("FSB").

We respectfully expect that the following comments will contribute to your further discussion.

<Executive Summary>

We recognise TLAC as an important framework to address the "Too Big To Fail" issue and avoid the reoccurrence of a similar financial crisis. We also highly appreciate the FSB's efforts to invite wide-ranging interested parties to submit views and evidence on the technical implementation of the TLAC standard and to examine whether the implementation of the TLAC standard is proceeding in a manner consistent with the TLAC principles and the Term Sheet.

[Ensuring flexibility in internal TLAC distribution and the use of surplus TLAC]

We have provided our views on internal TLAC and TLAC holdings requirements for the following issues.

For internal TLAC, Guiding Principle 7 defines surplus TLAC as "TLAC that is not distributed to material sub-groups in excess of that required to cover risks on the resolution entity's solo balance sheet," and requires home authorities to consider the characteristics of the corresponding assets in which such surplus TLAC is held to ensure that it is readily available to recapitalize any direct or indirect subsidiaries. It is also suggested that surplus TLAC should be invested in assets that can be promptly and easily valued and which are likely to retain sufficient value in times of market-wide stress as an example of the use of surplus TLAC. Furthermore, maintaining surplus TLAC in the form of highly liquid assets at the resolution entity is not a requirement and down-streaming surplus TLAC within a group is not prohibited..

Whereas, we understand that there are some jurisdictions which mandate a resolution entity to hold surplus TLAC (and invest in highly liquid assets). Resolution of G-SIBs,

however, is dependent on various factors, including differences in the resolution legal regime established at respective jurisdictions, differences in a business portfolio or a group structure, the background of resolution and market and economic environments, and involves significant uncertain or idiosyncratic factors. We therefore believe that flexibility should be ensured for each G-SIB on the distribution of internal TLAC and how to invest surplus TLAC to realise smooth resolution. Furthermore, the evaluation of resolvability by home and host authorities should be in accordance with internationally agreed standards instead of national standards because the implementation of TLAC differs across jurisdictions.

[Easing the identification of eligible instruments under the standard on TLAC holdings]

With respect to the standard on TLAC holdings, we have already requested establishing a framework to ensure TLAC eligible instruments are purchased smoothly in the market after taking into account the situation of bond markets at respective jurisdictions, such as participants in capital markets of respective jurisdictions and a difference in investors of bonds issued by banks.

To realise the implementation of the TLAC framework, we believe it necessary to accurately and completely understand which debt instruments are deemed as TLAC eligible instruments or those that rank pari passu with such eligible instruments, on the assumption that conditions that are required for eligibility may differ across jurisdictions.

The approach above allows each bank subject to the standard on TLAC Holdings to appropriately control risk-weighted assets and ensures the market stability of TLAC eligible instruments and those which rank pari passu with such eligible instruments.

[Respecting international agreement on internal TLAC and minimum requirement for own funds and eligible liabilities (MREL)]

In Europe, the implementation of requirements to establish an intermediate parent undertaking (“IPU”) has been discussed, and in the U.S., regulatory requirement for the establishment of an intermediate holding company (“IHC”) is already in place. We however point out a concern that these requirements to establish an intermediate holding company such as an IPU and IHC may impair the effectiveness of smooth cross-border resolution based on an SPE approach.

The Specific Comments section below describes our responses (some overlap with our comments in Executive Summary) to the issues the FSB seeks views and evidence in particular (those issues for which we have comments are only included) and provides our specific requests and matters to be confirmed, if any.

<Specific Comments>
[Comments on which the FSB seeks views and evidence in particular]

(1) The regulatory adoption of the TLAC principles and Term Sheet, including the relevant provisions of the Basel Committee standard on TLAC holdings and Pillar 3 disclosure requirements, through rules, regulations and policies in G-SIB home and relevant host jurisdictions.

(Our comment)

<Creation of a list of TLAC eligible instruments and those debt instruments which rank pari passu with such instruments by the FSB and other bodies (TLAC Term Sheet §15 and 20)>

With regard to TLAC related disclosure requirements (Pillar 3) established by the Basel Committee on Banking Supervision ("BCBS"), in addition to disclosure by each G-SIB on its website, we request the FSB or BCBS to consider undertaking the following initiative in order to ensure smooth data collection on TLAC holdings (TLAC eligible debt instruments and those debt instruments which rank pari passu with such instruments held by banks) and accurate disclosure.

・The FSB or BCBS establishes a framework to create and publish a list of TLAC eligible instruments and those debt instruments which rank pari passu with such instruments.

Under current requirements and practice, practical burdens for banks to collect data on TLAC holdings are considerably high. Specifically, each bank needs to manually collect data disclosed by all G-SIBs and create a statement that shows a list of debt instruments subject to the standard on TLAC holdings on a quarterly basis.

This means that each bank conducts similar work redundantly, and such an exercise is considered to be significantly inefficient from an industry-wide perspective. We are also concerned that the accuracy and completeness may not be sufficiently ensured if data is collected by each bank manually.

To eliminate such inefficiency and concern, we suggest an established framework whereby each bank can access to the same information source similarly to the case where the BCBS creates and publishes a list of countercyclical capital buffer ratio by jurisdiction.

(Reference)

List of the countercyclical capital buffer ratio by jurisdiction

https://www.bis.org/bcbs/ccyb/index.htm

(2) Cross-border aspects of the implementation of the TLAC standard, in particular relating to the identification of material subgroups, the determination of internal TLAC requirements and trigger conditions and mechanism for internal TLAC

(Our comment)

<Ensuring flexibility in internal TLAC distribution and investment tools for surplus TLAC>

We have provided our views on internal TLAC and TLAC holdings requirements for the following issues.

For internal TLAC, Guiding Principle 7 defines surplus TLAC as "TLAC that is not distributed to material sub-groups in excess of that required to cover risks on the resolution entity's solo balance sheet", and requires home authorities to consider the characteristics of the corresponding assets in which such surplus TLAC is held to ensure that it is readily available to recapitalize any direct or indirect subsidiaries. It is also suggested that surplus TLAC should be invested in assets that can be promptly and easily valued and which are likely to retain sufficient value in times of market-wide stress as an example of the use of surplus TLAC. Furthermore, maintaining surplus TLAC in the form of highly liquid assets at the resolution entity is not a requirement and down-streaming surplus TLAC within a group is not prohibited..

Whereas, we understand that there are some jurisdictions which mandate a resolution entity to hold surplus TLAC (and invest in highly liquid assets). Resolution by G-SIBs, however, is dependent on various factors, including differences in the resolution legal regime established at respective jurisdictions, differences in a business portfolio or a group structure, the background of resolution and market and economic environments, and involves significant uncertain or idiosyncratic factors.

We therefore believe that flexibility should be ensured for each G-SIB on the distribution of internal TLAC and how to invest surplus TLAC to realise smooth resolution. Furthermore, the evaluation of resolvability by home authorities and host authorities should be in accordance with internationally agreed standards instead of national standards because the implementation of TLAC differs across jurisdictions.

(3) G-SIBs' issuance strategies and overall progress towards meeting external and internal TLAC requirements, including nature and composition of the issued TLAC-instruments and specific features (e.g., triggers) and level of public disclosures by each bank

(Our comment)

<Necessity and granularity of the insolvency creditor hierarchy's disclosure of material sub-group entities (TLAC Term Sheet §20)>

The necessity and granularity of the insolvency creditor hierarchy's disclosure of material sub-groups need to be reconsidered after carefully comparing cost and benefit of the disclosure.

The template "TLAC2" provided in the disclosure requirements (Pillar 3) established by the BCBS requires G-SIBs to disclose creditor ranking of a material sub-group entity. Specifically, Pillar 3 requires to provide creditors with information regarding their ranking in the liabilities structure of a material subgroup entity which has issued internal TLAC to a G-SIB resolution entity.

Burdens and costs imposed on G-SIBs to make disclosure according to this template would be high. It is however doubtful whether creditors truly need such information, and such information would help further stabilise the TLAC instrument market.

While we understand that this disclosure requirement has been already finalised, we consider it necessary to carefully compare cost and benefit of this disclosure requirement and the level of creditors' interest, and reconsider the necessity and granularity of this disclosure requirement in a medium-to-long term.

(5) Any technical issues, jurisdiction-specific circumstances or other material factors affecting or likely to affect the implementation of the TLAC standard

(Our comment)

<Respecting international agreement on internal TLAC and minimum requirement for MREL>

In Europe, the implementation of requirements to establish an intermediate parent undertaking ("IPU") has been discussed, and in the U.S., regulatory requirement for the establishment of an intermediate holding company ("IHC") is already in place. We however point out a concern that these requirements to establish an intermediate holding company such as an IPU and IHC may impair the effectiveness of smooth cross-border resolution based on an SPE approach.

<Protection of TLAC investors>

While it is important to have the standpoint of limiting the issuance of TLAC to

investors who have properly identified associated risks, the concept of protecting investors has already been established at respective jurisdictions in the form of the Markets in Financial Instruments Directive ("MiFID") in Europe and the Financial Instruments and Exchange Act in Japan. We therefore believe that the investor protection doesn't need to be addressed within the framework of prudential regulations.

We also have a concern that the implementation of prudential regulations may have impacts on liquidity of TLAC markets.