

# Total Loss-Absorbing Capacity (“TLAC”) Disclosure

On December 15, 2016, the Board of Governors of the Federal Reserve System (the “FRB”) adopted a final rule that requires global systemically important bank holding companies (“BHCs”) to maintain a minimum amount of loss-absorbing capacity. The final rule requires covered BHCs to publicly disclose a description of the financial consequences to unsecured debtholders of the covered BHC’s entry into a resolution proceeding in which the covered BHC is the only entity that would enter resolution. In order to comply with this rule, Wells Fargo & Company (“Wells Fargo”) makes the following disclosure:

## **The Resolution Of Wells Fargo Under The Orderly Liquidation Authority Could Result In Greater Losses For Holders Of Wells Fargo’s Debt Securities, Particularly If A Single-Point-Of-Entry Strategy Is Used.**

An unsecured debtholder’s ability to recover the full amount that would otherwise be payable on Wells Fargo’s debt securities in a proceeding under the U.S. Bankruptcy Code may be impaired by the exercise by the Federal Deposit Insurance Corporation (the “FDIC”) of its powers under the “orderly liquidation authority” under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). In particular, the single point of entry strategy described below is intended to impose losses at the top-tier holding company level in the resolution of a Global Systemically Important Bank (“G-SIB”) such as Wells Fargo.

Title II of the Dodd-Frank Act created a new resolution regime known as the orderly liquidation authority to which financial companies, including bank holding companies such as Wells Fargo, can be subjected. Under the orderly liquidation authority, the FDIC may be appointed as receiver for a financial company for purposes of liquidating the entity if, upon the recommendation of applicable regulators, the United States Secretary of the Treasury determines, among other things, that the entity is in severe financial distress, that the entity’s failure would have serious adverse effects on the U.S. financial system and that resolution under the orderly liquidation authority would avoid or mitigate those effects. Absent such determinations, Wells Fargo, as a bank holding company, would remain subject to the U.S. Bankruptcy Code.

If the FDIC is appointed as receiver under the orderly liquidation authority, then the orderly liquidation authority, rather than the U.S. Bankruptcy Code, would determine the powers of the receiver and the rights and obligations of creditors and other parties who have transacted with Wells Fargo. There are substantial differences between the rights available to creditors in the orderly liquidation authority and under the U.S. Bankruptcy Code, including the right of the FDIC under the orderly liquidation authority to disregard the strict priority of creditor claims in some circumstances (which would otherwise be respected by a bankruptcy court) and the use of an administrative claims procedure to determine creditors’ claims (as opposed to the judicial procedure utilized in bankruptcy proceedings). In certain circumstances under the orderly liquidation authority, the FDIC could elevate the priority of claims if it determines that doing so is necessary to facilitate a smooth and orderly liquidation without the need to obtain the consent of other creditors or prior court review. In addition, under the orderly liquidation authority, the FDIC has the right to transfer assets or liabilities of the failed company to a third party or “bridge” entity.

The FDIC has announced that a “single point of entry” strategy may be a desirable strategy to resolve a large financial institution such as Wells Fargo in a manner that would, among other things, impose losses on shareholders, unsecured debt holders (including, in Wells Fargo’s case, holders of Wells Fargo’s debt securities) and other creditors of the top-tier holding company (Wells Fargo), while permitting the holding company’s subsidiaries to continue to operate. In addition, in December 2016, the Board of Governors of the Federal Reserve System (the “FRB”) finalized rules requiring U.S. G-SIBs, including Wells Fargo, to maintain minimum amounts of long-term debt and total loss-absorbing capacity (TLAC). It is possible that the application of the single point of entry strategy— in which Wells Fargo would be the only legal entity to enter resolution proceedings—could

result in greater losses to holders of Wells Fargo's debt securities than the losses that would result from the application of a bankruptcy proceeding or a different resolution strategy for Wells Fargo. Assuming Wells Fargo entered resolution proceedings and that support from Wells Fargo to its subsidiaries was sufficient to enable the subsidiaries to remain solvent, losses at the subsidiary level could be transferred to Wells Fargo and ultimately borne by Wells Fargo's security holders (including holders of Wells Fargo's unsecured debt securities), with the result that third-party creditors of Wells Fargo's subsidiaries would receive full recoveries on their claims, while Wells Fargo's security holders (including holders of its debt securities) and other unsecured creditors could face significant losses. In that case, Wells Fargo's security holders could face significant losses while the third-party creditors of Wells Fargo's subsidiaries would incur no losses because the subsidiaries would continue to operate and would not enter resolution or bankruptcy proceedings. In addition, holders of Wells Fargo's debt securities could face losses ahead of Wells Fargo's other similarly situated creditors in a resolution under the orderly liquidation authority if the FDIC exercised its right, described above, to disregard the strict priority of creditor claims.

The orderly liquidation authority also requires that creditors and shareholders of the financial company in receivership must bear all losses before taxpayers are exposed to any losses, and amounts owed by the financial company or the receivership to the U.S. government would generally receive a statutory payment priority over the claims of private creditors, including senior creditors such as claims in respect of Wells Fargo's debt securities. In addition, under the orderly liquidation authority, claims of creditors (including holders of Wells Fargo's debt securities) could be satisfied through the issuance of equity or other securities in a bridge entity to which Wells Fargo's assets are transferred. If securities were to be delivered in satisfaction of claims, there can be no assurance that the value of the securities of the bridge entity would be sufficient to repay all or any part of the creditor claims for which the securities were exchanged.

While the FDIC has issued regulations to implement the orderly liquidation authority, not all aspects of how the FDIC might exercise this authority are known and additional rulemaking is possible.