WILMERHALE

February [ ], 2020

Canadian Depository for Securities Limited
1700 – 1190, avenue des Canadiens-de-Montréal C. P. 14
Montréal (Québec) H3B 0G7

Re: U.S. Bank Insolvency Risk

Ladies and Gentlemen:

You have asked us for our opinion regarding the risk that cash deposited by Canadian Depository for Securities Limited ("CDS"), in a US-dollar-denominated account at Wells Fargo Bank, N.A. ("WFBNA"), would be unavailable to CDS if either (a) WFBNA were to become subject to a receivership under the FDI Act (defined below) and/or (b) WFBNA's parent entity, Wells Fargo Company ("WFC"), were to become subject to a bankruptcy case or an OLA (defined below) liquidation (each an "Insolvency Proceeding").

It is our opinion, based on the assumptions and subject to the qualifications set forth herein, that such cash should be available to CDS notwithstanding an Insolvency Proceeding.

General Assumptions and Qualifications:

We are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. Nothing contained herein is or should be construed as tax or accounting advice.

This opinion is provided to you as a legal opinion only and not as a guaranty or warranty of the matters discussed herein. More specifically, and without limiting the generality of the foregoing, we cannot guarantee that a court, after considering the facts and law referenced herein, would reach a conclusion the same as or similar to the opinion stated herein.

Our opinion is limited to the facts assumed herein. More specifically, and without limiting the generality of the foregoing, our opinion is subject to the further qualifications that (a) the assumptions set forth herein are and continue to be true in all material respects, and (b) there are no additional facts that would materially affect the validity of the assumptions set forth herein or upon which this opinion is based.

Our opinion is also limited to the law existing as of the date hereof. More specifically, and without limiting the generality of the foregoing, this opinion is based upon currently existing statutes, rules, regulations, and judicial decisions, and is rendered as of the date hereof, and we disclaim any obligation to advise you of any change in any of the foregoing sources of law or subsequent developments in law or changes in facts or circumstances which might affect any matters or opinions set forth herein.

We are members of the bar of the State of New York, and we are not expressing any opinion as to the laws of any jurisdiction other than the federal laws of the United States of America, including, but not limited to, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), the Federal Deposit Insurance Act, 12 U.S.C. §§ 221 *et seq.* (the "FDI Act"), and the Dodd-Frank Act, 12 U.S.C. §§ 5365 *et seq.* (the "Dodd-Frank Act"). Additionally, we express no opinion as to the applicability of any other national law, state law, or other applicable law under conflict of law principles. In particular, and without limiting the foregoing, we express no opinion as to the laws of Canada or any province thereof. We assume that any bankruptcy filing of WFC or any other entity affiliated with WFBNA would be in a U.S. Bankruptcy Court and would be a case under either Chapter 7 or Chapter 11 of the Bankruptcy Code.

For the purposes of this opinion, we have not reviewed any documents, contracts, communications, instruments, or agreements of CDS or as to which CDS is a party or may be bound, or any of the books and records maintained by CDS, including without limitation any deposit agreements or other contracts, documents, or instruments by or between CDS and WFBNA, nor have we made inquiries of CDS with respect to actions, litigation, claims, investigations and similar matters. We are not opining as to any contractual limitations or requirements with respect to cash deposited by CDS at WFBNA.

We express no opinion regarding the intent of CDS, WFBNA, or any other person or entity concerning the relationship between CDS and WFBNA.

As to all factual matters material to the opinion set forth herein, we have, with your permission and without any investigation or independent confirmation, relied upon and assumed the present and continuing truth and accuracy, in all material respects, of the factual representations made to us by corporate representatives and officers of CDS and its respective affiliates.

Specific Assumptions and Qualifications:

For purposes of this opinion, in addition to the foregoing assumptions and qualifications, we have assumed the following to be true:

CDS is a wholly owned subsidiary of TMX Group Limited and is Canada's national securities depository, clearing, and settlement hub for domestic and cross-border depository eligible securities.

WFBNA is a United States national banking association and an indirect, wholly owned subsidiary of WFC. WFBNA is WFC's primary insured depository institution and engages in retail, commercial, corporate banking, real estate lending, trust, and investment services.

WFC is a financial holding company and a Systemically Important Financial Institution (a "SIFI")[1] that is subject to the reporting requirements of section 165(b) of the Dodd-Frank Act. Pursuant to section 165(b) of the Dodd-Frank Act, WFC is required to furnish to the Board of Governors of the Federal Reserve System and the FDIC (defined below) (the "Agencies") a plan of resolution often referred to as a "living will." The purpose of the living will requirement is "to help ensure that a firm's failure would not have serious adverse effects on financial stability in the United States."[2] The public portions of WFC's "living will," also known as its "165(d) Plan," are in the form attached hereto as Annex A (the "WFC Living Will"). We assume that the only portions of the WFC Living Will relevant to this opinion are contained in Annex A.

The account at WFBNA in which CDS deposits or will deposit its cash (the "Deposit Account") is an ordinary cash deposit account where all funds are in U.S. Dollars and immediately available for withdrawal. The Deposit Account is not a securities account or a restricted account. CDS is the sole depositor in respect of the Deposit Account, and CDS has not granted any rights or interests in the Deposit Account, or pledged the Deposit Account, to any third party.

Apart from any nominal account fees in respect of the Deposit Account that are incurred in the ordinary course of business and not yet due or payable, neither CDS nor any of its affiliates has any obligations to WFC, WFBNA, or any of their respective affiliates, in respect of the Deposit Account or otherwise. There are no contractual restrictions, as between CDS, on the one hand, and WFBNA and its affiliates, on the other hand, that would restrict access of CDS to cash deposited into the Deposit Account. The only relationship of CDS and its affiliates, on the one hand, to WFC, WFBNA, and their respective affiliates, on the other hand, is the Deposit Account.

[1] Wells Fargo's 2019 165(d) Plan acknowledges that "Wells Fargo is a global systemically important bank (G-SIB)." Annex A at *9.
[2] Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 Fed. Reg. 1438, 1439 (February 4, 2019).

Legal Background and Analysis:

In addition to the foregoing general and specific assumptions and qualifications, our opinion is based on the following legal background, which we assume to be the relevant legal background at all times relevant to this opinion.

There are two levels of possible Insolvency Proceedings at issue here. First, as to WFBNA alone, WFBNA may enter a receivership under the FDI Act. Second, as to WFC (and, in turn, potentially implicating WFBNA as a subsidiary of WFC), WFC may either (a) enter a bankruptcy under the Bankruptcy Code, or (b) enter a liquidation under the Orderly Liquidation Authority ("OLA") of the Dodd-Frank Act. 12 U.S.C. §§ 5381-5394.

Bank Insolvency Proceedings: WFBNA

Major U.S. Banks chartered by the federal and state governments, including WFBNA, are subject to the FDI Act. Under the FDI Act, the Federal Deposit Insurance Corporation ("FDIC") may be appointed receiver of an insolvent bank to wind down its operations. 12 U.S.C. § 1821(c). A bank such as WFBNA cannot itself be a debtor under the Bankruptcy Code.[3]

Deposits in federally insured chartered banks up to $250,000 per category of ownership are insured by the FDIC. 12 U.S.C. § 1821(a)(1)(F).[4] Deposit amounts above this threshold are not insured. In the event of a chartered bank's insolvency, deposits will be handled through an FDIC receivership whereby the FDIC takes over the bank's operations and winds them down. 12 U.S.C. § 1821(c). During such a receivership and wind-down, depositors take priority over the bank's general unsecured creditors, but depositors are subordinate to the receiver's administrative expenses. 12 U.S.C. § 1821(d)(11). In practice, it is probable that depositors would be paid in full in such a proceeding to the extent the bank is properly capitalized, though there is no legal guarantee of that result.

While it is technically possible for the FDIC to commence a stand-alone receivership of WFBNA, we believe that result is highly unlikely given the status of WFC as a SIFI and given the subsidiary-parent relationship of WFBNA to WFC.

[3] 11 U.S.C. §109(b)(2) prohibits depository banks from being debtors under the Bankruptcy Code.
[4] *See also* 12 U.S.C. § 1821(b)(11); FDIC, *Resolutions Handbook* at *16-20 (January 15, 2019), https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf#page=16.

Bank Holding Company/Parent Insolvency Proceedings: WFC

Any Insolvency Proceeding of WFC will be informed by the fact that WFC is a SIFI,[5] and by the WFC Living Will.[6]

Under the Dodd-Frank Act, the preference is that SIFI insolvencies are resolved under the Bankruptcy Code.[7] Accordingly, we believe that a bankruptcy is the most likely manner of resolution of a WFC insolvency (and, in turn, would effectively control the outcome of deposits at WFBNA).

However, SIFIs like WFC that are not chartered banks, but rather are holding companies of chartered banks, may be subject to the governance of the FDIC in the event of insolvency.[8] Instead of a bankruptcy of the SIFI, the FDIC may be appointed as receiver of a SIFI when failure of a SIFI "would have serious adverse effects on financial stability in the United States." 12 U.S.C. § 5383; *see also* 12 U.S.C. §§ 5382-4. The FDIC may seek a determination of such effects, and corresponding OLA activation, by submitting a request to the Federal Reserve Board of Governors and the U.S. Secretary of the Treasury. The request must be approved by a two-thirds vote of the Board of Governors and by the Treasury Secretary after consultation with the President of the United States. To date, the OLA has not been activated for any SIFI.

A liquidation under the OLA, if it occurs, is most likely to occur only at the holding company level through what is known as the Single Point of Entry ("SPOE") strategy, whereby the FDIC takes

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[5] 12 U.S. Code § 5323 sets forth the considerations to be made when determining SIFI status. 12 USCS § 5325 and related regulations set forth the prudential standards that a SIFI must satisfy, which inherently influence the course of a resolution of insolvency. *See e.g.* 12 C.F.R. part 217 and part 249.

[6] The WFC Living Will contemplates a resolution under the Bankruptcy Code. Additionally, 12 U.S.C. § 5365 sets forth detailed requirements for resolution planning which the living will must satisfy. Although 12 U.S.C. § 5365(d)(6) states that the living will has no binding effect on an OLA liquidation, the FDIC would likely utilize insights provided by the living will in the OLA liquidation process. *See* Monica M. Burks, *Note & Comment: Living Wills: How Legal Entity Rationalization Addresses the "Too Big to Fail" Problem*, 21 N.C. Banking Inst. 357, 361 (March 2017).

[7] A non-bank financial company can be a debtor in bankruptcy and the preference for resolution of SIFIs is bankruptcy. 11 U.S.C. §109; U.S. Department of the Treasury, *Report to the President of the United States Pursuant to the Presidential Memorandum Issued April 21, 2017*: *Orderly Liquidation Authority and Bankruptcy Reform* at *10-11 (February 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf.

[8] Moreover, OLA is designed to backstop the Bankruptcy Code." Stephen J. Lubben, *Article: Failure of the Clearinghouse: Dodd-Frank's Fatal Flaw*?, 10 Va. L. & Bus. Rev. 127, 159 (2015). Further, "[i]n essence, OLA expands the FDIC's bank receivership powers to cover a greater part of the financial institution." Stephen J. Lubben, *Twenty-Fifth Annual Corporate Law Symposium: Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act: Resolution, Orderly and Otherwise: B of A in OLA*, 81 U. Cin. L. Rev. 485, 508 (2012); Resolving Globally Active, Systemically Important, Financial Institutions, Fed. Deposit Ins. Corp. & Bank Eng. (2012), www.fdic.gov/about/srac/2012/gsifi.pdf; *see* generally 12 U.S.C. § 5384.

control of the SIFI at the holding company level to resolve the insolvency there, ideally leaving the subsidiaries (including any depositary banks) to operate without disruption.[9] Whether to adopt an SPOE approach is within the discretion of the FDIC once OLA has been triggered.

Therefore, in the case of a failure of a SIFI that is the parent company of a chartered bank, such as WFC, either (a) the SIFI will enter a bankruptcy proceeding, or (b) the FDIC will resolve the SIFI's operations under the OLA. Under the SPOE approach, the parent company may be the only entity affected by the OLA resolution; the depository bank might not enter an insolvency proceeding at all.

After commencement of the bankruptcy or the OLA proceeding, a SIFI parent entity, such as WFC, may transfer any depositary bank, along with all deposits, to a new entity.[10] That transfer may take various forms.[11]

First, the depositary bank and all deposits may be transferred in a manner that would leave depositors' rights unaffected.[12, 13] Indeed, under the Dodd-Frank Act, because WFC is a SIFI, these

[9] Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76614, 76614-2 (Dec. 18, 2013).
[10] Annex A §§ 4.2, 5.3. We assume, in the bankruptcy context, that a bankruptcy court would approve this transaction.
[11] FDIC, *Resolutions Handbook* at *16-20 (January 15, 2019), https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf#page=16 (explaining types of transfers the FDIC uses in resolutions).
[12] Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 Fed. Reg. 1438, 1454 (February 4, 2019) (describing SPOE); 12 U.S.C. § 1821(b)(11) (FDI Act priority scheme with depositor preference); FDIC, *Resolutions Handbook* at *16-20 (January 15, 2019), https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf#page=16 (explaining types of transfers the FDIC uses in resolutions).
[13] The FDIC's resolution of WFC under the OLA, particularly using an SPOE strategy, and assuming the adequacy of the WFC Living Will and the Agencies' vetting thereof, should not disrupt WFBNA's operations and should not affect customer deposits. *See* U.S. Department of the Treasury, *Report to the President of the United States Pursuant to the Presidential Memorandum Issued April 21, 2017*: *Orderly Liquidation Authority and Bankruptcy Reform*, at *10-11 (February 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf. The FDIC must implement the resolution strategy that "is the least costly to the Deposit Insurance Fund," 12 U.S.C. § 1823(4), and a transfer of the whole bank is less likely to impact a depositor's recovery than option a liquidation is. *See* FDIC, *Resolutions Handbook* at *16-21 (January 15, 2019), https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf#page=16.

"intact transfer" scenarios would be the preferred option,[14] and these scenarios would also be preferred under the WFC Living Will.[15]

In such a scenario, using the preferred SPOE strategy in an OLA process, WFC (or the FDIC under the OLA, acting for WFC) would effect a transfer of the depositary bank (or an intermediary holding company between the SPOE entity and the depositary bank) to a new entity. In such a scenario, as stated in the WFC Living Will, "WFBNA would be transferred to a new holding company and would continue to operate throughout resolution, receiving capital and liquidity support," as available, from other applicable Wells Fargo entities under the relevant intercompany support agreements.[16] The equity in the new transferee entity would be held in a trust for the benefit of the insolvency estate of WFC.[17, 20] This result is similar to the anticipated result of a transfer of a bank, such as WFBNA, in a bankruptcy proceeding of a bank holding company, such as WFC.[18] We believe this type of intact transfer is the most likely type of transfer of WFBNA in any bankruptcy or OLA of WFC.[19]

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[14] U.S. Department of the Treasury, *Report to the President of the United States Pursuant to the Presidential Memorandum Issued April 21, 2017*: *Orderly Liquidation Authority and Bankruptcy Reform* (February 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf. *See also* 12 U.S.C. §§ 5382-3; Resolving Globally Active, Systemically Important, Financial Institutions, Fed. Deposit Ins. Corp. & Bank Eng. (2012), www.fdic.gov/about/srac/2012/gsifi.pdf

[15] Annex A § 5.1-5.2.

[16] Annex A § 5.3. This also assumes that WFC's methods and procedures of evaluating its financial situation as laid out in its "Approach to Maintaining Financial Resiliency" are accurate enough to sufficiently inform the funding decisions made pursuant to the Support Agreement. *See* Annex A §§ 6, 8.

[17] *See* Annex A §§ 5.2 and 5.3.

[18] *See* U.S. Department of the Treasury, *Report to the President of the United States Pursuant to the Presidential Memorandum Issued April 21, 2017*: *Orderly Liquidation Authority and Bankruptcy Reform*, at *10-11 (February 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf.; Orderly Liquidation Authority, 76 Fed. Reg. 4207, 4209-4211 (Jan. 25, 2011).

[19] We note that in any Insolvency Proceeding, a short period may occur (*e.g.*, 24 to 48 hours) where deposits are not accessible, but it is difficult to predict whether such a period would exist or its precise length as a practical concern. These practical concerns and vulnerabilities are noted by WFC and the Agencies and are being addressed through the "living will" formulation and feedback process. *See* Annex A at *2; *Feedback Letter from Ann E. Misback and Robert E. Feldman to Betsy Duke and Charles W. Scharf*, at *5-6 (Dec. 16, 2019) (https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20191217a8.pdf); U.S. Department of the Treasury, *Report to the President of the United States Pursuant to the Presidential Memorandum Issued April 21, 2017: Orderly Liquidation Authority and Bankruptcy Reform*, at * 11-12 (February 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf.

Second,[20] it is possible, under the "bail-in" provisions of the OLA, in an extreme situation where there is still insufficient value to capitalize the parent using an SPOE strategy,[21] that the bankruptcy or OLA receivership would transition to a multiple point of entry ("MPOE") strategy[22] and effect resolutions of each subsidiary where necessary. In an MPOE strategy especially, if no transferee bank would assume all depositary obligations,[23] WFBNA would be liquidated. In a liquidation scenario, it is possible that depositary obligations would not be satisfied in full if WFBNA itself has insufficient assets.[24] Even in such a scenario, the FDIC would effect the type of transaction

[20] Bail-in of deposits should not occur assuming WFCH and WFC follow the procedures laid out in Annex A § 5.3, which should adequately prepare them for a successful bankruptcy. However, in a feedback letter dated December 16, 2019 the Agencies "found WFC to have a shortcoming related to implementation of its governance mechanism intended to facilitate SPOE by providing for the timely deployment of internal capital and liquidity." Feedback Letter from Ann E. Misback and Robert E. Feldman to Betsy Duke and Charles W. Scharf (Dec. 16, 2019) (https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20191217a8.pdf). According to the Agencies, the WFC Living Will and related capabilities did not demonstrate a reliable and timely process that would provide an appropriate level of confidence to the firm's decisionmakers to act pursuant to the firm's Support Agreement, calling into question the feasibility of the WFC Living Will. The Agencies expressed that in an actual stress WFC's capabilities, which are highlighted in Annex A sections 6 and 8, "may be insufficient to produce the correct balance between timeliness and accuracy necessary to execute key actions contemplated by the Support Agreement," including the timely deployment of liquidity. The Agencies instructed WFC to provide its action plan addressing these shortcomings to the Agencies by March 31, 2020, which we assume will occur prior to any Insolvency Proceeding.

[21] SPOE's success is predicated on a sufficient amount of debt to bail in at the parent level. *See* Wolf-Georg Ringe, *Article: Bank Bail-in Between Liquidity and Solvency*, 92 Am. Bankr. L.J. 299, 307 ("[I]f the bail-in-able debt is at the holding company level, the financial institution, market participants, and the regulator would be aware of the potentially bail-in-able debt, which would enhance transparency and foreseeability of resolution effects.").

[22] A multiple point of entry strategy is a resolution strategy that involves initiating independent insolvency proceedings at more than one company within an enterprise, including at the subsidiary (*e.g.*, depositary bank) level.

[23] Under 12 U.S.C. § 1821, the FDIC has both assumption and repudiation powers with respect to certain obligations. Further, transferees also have the ability to assume certain obligations, but are not necessarily required to assume all of them. *See* 12 U.S.C. § 1821; *see also* FDIC, *Resolutions Handbook* at *16 (January 15, 2019), https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf#page=16 ("A [purchase and assumption] is a resolution transaction in which a healthy institution purchases some or all of the assets of a failing institution and assumes some of the liabilities, including all insured deposits.").

[24] In extreme circumstances, "shareholders and sometimes creditors, as opposed to the government and taxpayers, [may] bear the first losses of failing SIFIs." Steven L. Schwarcz, *Article: Systematic Regulation of Systemic Risk*, 2019 Wis. L. Rev. 1, 22 (2019). This is accomplished "by converting enough of the claims against the SIFI into common equity, in accordance with the priorities of such claims, at some defined point of nonviability." Randall D. Guynn, *Article: Are Bailouts Inevitable?*, 29 Yale J. on Reg. 121, 135 (2012). In an OLA liquidation of WFC, there is no U.S. government guarantee or similar formal protection; rather, protection for depositors is an implicit expectation that would be realized through the WFC Living Will. *See* 12 U.S.C. § 1821 (c), (d)(11); 12 USCS § 5365. Of course, there are hypothetical circumstances of total market failure where this protection may not be available.

most protective of depositors under the circumstances.[25] We believe this type of transfer is highly unlikely, because it is disfavored by law and policy and would require extreme circumstances.

Opinion

While there are possible scenarios in which CDS's rights to the Deposit Account may be adversely affected by an Insolvency Proceeding, as described above, it is our opinion, subject to the assumptions and qualifications contained herein, that cash deposited by CDS in the Deposit Account should be available to CDS notwithstanding any Insolvency Proceeding.

This opinion is rendered only to CDS and is solely for the benefit of such parties in connection with the deposits at WFBNA, and may not be furnished to, quoted to or relied upon by any other person or used for any other purpose without our prior written consent, except, notwithstanding the above, that CDS may make this opinion available to regulatory authorities having jurisdiction over CDS, which require CDS to furnish this opinion, on a confidential basis.

Very truly yours,

WILMER CUTLER PICKERING
HALE AND DORR LLP

By: _____
George W. Shuster, Jr., a Partner

[25] In such a resolution "[c]ustomers with insured deposits suffer no loss in service," FDIC, *Resolutions Handbook* at *17 (January 15, 2019), https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf#page=17, whereas in a liquidation depositors will recover under the FDI Act's priority scheme. *See* 12 U.S.C. § 1821(d)(11).