

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 54

Docket ID OCC-2023-0011

RIN 557-AF21

FEDERAL RESERVE SYSTEM

12 CFR Parts 216, 217, 238, and 252

Regulations P, LL, and YY; Docket No. R-1537

RIN []**

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 374

RIN 3064-AF86

Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation are issuing a proposed rule for comment that would require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and certain insured depository institutions, to issue and maintain outstanding a minimum amount of long-

term debt. The proposed rule would improve the resolvability of these banking organizations in case of failure, may reduce costs to the Deposit Insurance Fund, and mitigate financial stability and contagion risks by reducing the risk of loss to uninsured depositors.

DATES: Comments must be received on or before November 30, 2023.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below.

Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “**Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions**” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”:** Go to www.regulations.gov. Enter “Docket ID OCC-2023-0011” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- **E-mail:** regs.comments@occ.treas.gov.

- **Mail:** Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street, SW, suite 3E-218, Washington, DC 20219.

- **Fax:** (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2019-0009” in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or

personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to *www.regulations.gov*. Enter “Docket ID OCC-2023-0011” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen and then “Comments.” Comments and supporting materials can be filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally:** You may personally inspect comments at the OCC, 400 7th Street, SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments to the Board, identified by Docket No. R-1628, by any of the following methods:

- **Agency Website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments will be made available on the Board's website at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request.

Accordingly, comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments to the FDIC, identified by RIN 3064-AF86, by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow instructions for submitting comments on the FDIC website.

- **Mail:** James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064-AF86), Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- **Hand Delivered/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

- **E-mail:** comments@FDIC.gov. Include RIN 3064-AF86 on the subject line of the message.

- **Public Inspection:** Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Andrew Tschirhart, Risk Expert, Capital and Regulatory Policy, (202) 649-6370; or Carl Kaminski, Assistant Director, or Joanne Phillips, Counsel, Chief Counsel’s Office, (202) 649-5490; or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597; the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

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FDIC: Andrew J. Felton, Deputy Director, (202) 898-3691; Ryan P. Tetrick, Deputy Director, (202) 898-7028; Elizabeth Falloon, Senior Advisor, (202) 898-6626; Jenny G. Traille, Acting Senior Deputy Director, (202) 898-3608; Julia E. Paris, Senior Cross-Border Specialist, (202) 898-3821; Division of Complex Institution Supervision and Resolution; R. Penfield Starke, Acting Deputy General Counsel, rstarke@fdic.gov; David Wall, Assistant General Counsel, (202) 898-6575; F. Angus Tarpley III, Counsel, (202) 898-8521; Dena S. Kessler, Counsel, (202) 898-3833, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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I. Introduction and Overview of the Proposal

A. Background and Introduction

Following the 2008 financial crisis, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC and, together with the OCC and the Board, the “agencies”) adopted rules and guidance, both jointly and individually, to improve the resolvability, resilience, and safety and soundness of all banking organizations. The agencies have continued to evaluate whether existing regulations are appropriate to address evolving risks. In recent years, certain banking organizations that are not global systemically important banking organizations (GSIBs) have grown in size and complexity, and new vulnerabilities have emerged, such as increased reliance on uninsured deposits. In light of these trends, the Board and the FDIC issued an advance notice of proposed rulemaking (ANPR) in October 2022 seeking public input on whether a long-term

debt requirement was appropriate to address the financial stability risk associated with the material distress or failure of certain non-GSIB large banking organizations.¹ More recently, the insured depository institutions (IDIs) of certain non-GSIB banking organizations with consolidated assets of \$100 billion or more experienced significant withdrawals of uninsured deposits in response to underlying weaknesses in their financial position, precipitating their failures. These events have further highlighted the risk that the failure of one of these banking organizations can spread to other financial institutions and potentially give rise to systemic risk. Moreover, these recent IDI failures have resulted in significant costs to the FDIC's Deposit Insurance Fund (DIF).

To address these risks, the Board is proposing to require Category II, III, and IV bank holding companies (BHCs) and savings and loan holding companies (SLHCs and, together with BHCs, "covered HCs"), and Category II, III, and IV U.S. intermediate holding companies (IHCs) of foreign banking organizations (FBOs) that are not GSIBs ("covered IHCs" and, together with covered HCs, "covered entities") to issue and maintain minimum amounts of long-term debt (LTD) that satisfies certain requirements. The agencies also are proposing to require IDIs that are not consolidated subsidiaries of U.S. GSIBs and that (i) have at least \$100 billion in consolidated assets or (ii) are affiliated with IDIs that have at least \$100 billion in consolidated assets (covered IDIs) to issue and maintain minimum amounts of LTD.² Under the proposal,

¹ See Resolution-Related Resource Requirements for Large Banking Organizations, 87 *FR* 64170 (Oct. 24, 2022), <https://www.federalregister.gov/documents/2022/10/24/2022-23003/resolution-related-resource-requirements-for-large-banking-organizations>.

² IDIs that are consolidated subsidiaries of U.S. GSIBs would not be subject to the proposed LTD requirement because their parent holding companies are subject to the LTD requirement under the Board's total loss-absorbing capacity (TLAC) rule. See 12 CFR 252 subparts G and P. In addition, U.S. GSIBs are subject to the most stringent capital, liquidity, and other prudential standards in the United States. These firms also have adopted resolution plans reflecting

covered IDIs that are consolidated subsidiaries of covered entities would be required to issue the LTD internally to a company that consolidates the covered IDI, which would in turn be required to purchase that LTD. Covered IDIs that are not consolidated subsidiaries of covered entities would be permitted (and where there is no controlling parent, required) to issue their LTD externally to nonaffiliates. Under the proposal, only debt instruments that are most readily able to absorb losses in a resolution proceeding would qualify as eligible LTD. Therefore, the agencies believe the proposal would improve the resolvability of covered entities and covered IDIs.

By augmenting loss-absorbing capacity, LTD can provide banking organizations and banking regulators greater flexibility in responding to the failure of covered entities and covered IDIs. In the resolution of a failed IDI, the availability of an outstanding amount of LTD may increase the likelihood of an orderly and cost-effective resolution for the IDI and may help minimize costs to the DIF. Even where the amount of outstanding LTD is insufficient to absorb enough losses so that all depositor claims at the IDI can be fully satisfied, it would reduce potential costs to the DIF and may expand the range of options available to the FDIC as receiver. In addition, the proposed LTD requirement could improve the resilience of covered entities and

guidance issued by the Board and the FDIC which establishes a capital and liquidity framework for resolution. The guidance (including the provisions related to Resolution Capital Adequacy and Positioning, or RCAP) is designed to ensure adequate maintenance of loss-absorbing resources either at the parent or at material subsidiaries such that all material subsidiaries, including IDIs, could be recapitalized in the event of resolution under the single point of entry resolution strategies adopted by the U.S. GSIBs. *See* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 *FR* 1438 (Feb. 4, 2019), <https://www.federalregister.gov/documents/2019/02/04/2019-00800/final-guidance-for-the-2019>.

covered IDIs by enhancing the stability of their funding profiles. Investors in LTD could also exercise market discipline over issuers of LTD.

1. Risks presented by covered entities and covered IDIs, and challenges in resolution

Covered entities today primarily operate a bank-centric business model, with deposits providing the main source of their funding.³ Following the 2008 financial crisis, the reliance of covered entities on uninsured deposits grew dramatically.⁴ This increased reliance on uninsured deposit funding has given rise to vulnerabilities at these banking organizations.

As recent events have highlighted, high levels of uninsured deposit funding can pose an especially significant risk of bank runs when customers grow concerned over the solvency of their bank. The failure of covered entities or covered IDIs can also spread to a broader range of banking organizations, impacting the provision of financial services and access to credit for individuals, families, and businesses. FDIC research shows that account holders with uninsured deposits are more sensitive to negative news regarding the stability of their banks and are more likely to withdraw funds to protect themselves than those holding only insured deposits.⁵ The sensitivity of uninsured depositors to information flows has been amplified by social media, potentially further shortening the timeline between a banking organization experiencing a

³ According to FR Y-9C and Call Report data as of December 31, 2022, for domestic Category II, III and IV BHCs and SLHCs with more than \$100 billion in total assets, excluding U.S. GSIBs and grandfathered unitary SLHCs, deposits account for approximately 82 percent of total liabilities. Review of the Federal Reserve’s Supervision and Regulation of Silicon Valley Bank, Table 1 (Apr. 2023) (SVB Report), <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>. Comparatively, across the U.S. GSIBs, deposits account for approximately 54 percent of total liabilities.

⁴ Data from Call Reports show that the proportion of uninsured deposits to total deposits at covered entities increased from about 31 percent to 43 percent from 2009 to 2022.

⁵ See FDIC, Deposit Inflows and Outflows in Failing Banks: The Role of Deposit Insurance (last updated July 15, 2022), <https://www.fdic.gov/analysis/cfr/working-papers/2018/cfr-wp2018-02-update.pdf>.

negative news event and being faced with a potential deposit run. This can, in turn, bring about the rapid failure of a covered entity, forcing its IDI subsidiary into an FDIC receivership with little runway for recovery steps to be implemented or for contingency planning for resolution. The speed at which stress occurs has the potential to cause contagion to other institutions perceived to be similarly situated.

Among covered entities that are subject to resolution planning requirements under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), most indicate that their preferred resolution strategy involves the resolution of their IDI subsidiaries under the Federal Deposit Insurance Act of 1950, as amended (FDI Act), with the covered entities being resolved under Chapter 11 of the U.S. Bankruptcy Code. In the resolution of an IDI under the FDI Act, the FDIC as receiver has a variety of strategic options, including, among others, selling the IDI's assets and transferring its deposit liabilities to one or more healthy acquirers, transferring the IDI's assets and deposit liabilities to a bridge depository institution, or executing an insured deposit payout and liquidation of the assets of the failed bank. Many covered entities focus in their resolution plans on a bridge strategy where the FDIC transfers the assets and deposit liabilities of a failed IDI to a newly organized bridge depository institution that the FDIC continues to operate. This resolution option can allow the FDIC to effectively stabilize the operations of the failed IDI and preserve the failed IDI's franchise value, making the business of the failed IDI or its separate business lines more attractive to a greater number of potential acquirers.

The FDIC is required by section 13(c) of the FDI Act to resolve an IDI in a manner that poses the least cost to the DIF.⁶ Depending on the losses incurred at an IDI and on the liability

⁶ See 12 U.S.C. 1823(c)(4).

structure of the IDI, the FDIC could be required to impose losses on the IDI's uninsured depositors in order to satisfy the least-cost requirement, unless the systemic risk exception is invoked.⁷ As recent experiences have demonstrated, if uninsured depositors believe they might lose a portion of their deposit funds or they might encounter interrupted access to such funds, contagion can spread to other institutions and cause deposit runs beyond those at the failing IDI.

The recent failures of three IDIs that would have been covered within the scope of this proposal, Silicon Valley Bank (SVB), Signature Bank (SBNY), and First Republic Bank (First Republic), highlighted the risks posed by the failure of a covered IDI, including systemic contagion, as well as the challenges that the FDIC can face in executing an orderly resolution for covered IDIs. The comparative absence of alternate forms of stable funding in these cases, other than equity and deposits, increased these banks' vulnerability to deposit runs, and these runs precipitated their failures. Despite prompt action taken by regulators to facilitate the resolution of these failed IDIs, there was contagion in the banking sector, particularly for certain covered entities and certain regional banking organizations,⁸ some of which experienced higher than normal deposit outflows during this time.⁹ The proposed rule, if fully implemented at the time of the failure of these firms, would have provided billions of dollars of additional loss-absorbing capacity. The agencies believe that the presence of a substantial layer of liabilities that absorbs

⁷ Invocation of the systemic risk exception allows the FDIC to take actions that could be inconsistent with the least-cost requirement in the FDI Act. The systemic risk exception determination can only be made by the Secretary of the Treasury, in consultation with the President, and with the recommendation of two-thirds of the boards of the Board and the FDIC, upon a determination that compliance with the least-cost requirement would have serious adverse effects on economic conditions or financial stability. 12 U.S.C. 1823(c)(4)(G).

⁸ Regional banking organizations generally are considered those with total consolidated assets between \$10 billion and \$100 billion. *See, e.g.*, SVB Report.

⁹ *See* GAO, Preliminary Review of Agency Actions Related to March 2023 Bank Failures at 32 (Apr. 28, 2023), <https://www.gao.gov/assets/gao-23-106736.pdf>.

losses ahead of uninsured depositors could have reduced the likelihood of those depositors running, might have facilitated resolution options that were not otherwise available and could have made systemic risk determinations unnecessary.

2. Key benefits and rationale of the proposal

The proposed LTD requirements would improve the resolvability of covered entities and covered IDIs because LTD can be used to absorb loss and create equity in resolution. In particular, because LTD is subordinate to deposits and can be used by the FDIC to absorb losses by leaving it behind in the receivership estate of a failed IDI, it can help mitigate the risk that any depositors would take losses in the resolution of the IDI. Because LTD absorbs losses before deposits, an LTD requirement at the covered IDI would give the FDIC greater flexibility, including the potential to transfer all deposit liabilities (including uninsured deposit liabilities) of a failed IDI to an acquirer or to a bridge depository institution in a manner consistent with the FDI Act's least-cost requirement.

Expanding the FDIC's range of options for resolving a failed IDI to potentially include the use of a bridge depository institution that can assume all deposits on a least-cost basis can significantly improve the prospect of an orderly resolution. When an IDI fails quickly, a bridge depository institution might afford the FDIC additional time to find an acquirer for the IDI's assets and deposits. Transfer of deposits and assets to a bridge depository institution may also give the FDIC additional time to execute a variety of resolution strategies, such as selling the IDI in pieces over time or effectuating a spin-off of all or parts of the IDI's operations or business lines. LTD can therefore reduce costs to the DIF and expand the available resolution options if a bank fails. The availability of LTD would also improve the FDIC's options for resolving a failed IDI by maintaining franchise value, improving the marketability of the failed IDI, and reducing

the need to use DIF resources to stabilize the institution or support a purchaser. Further, the availability of LTD could enable strategies involving bridge depository institutions to meet the least-cost test. The availability of LTD resources would also potentially support resolution strategies that involve a recapitalized bridge depository institution exiting from resolution on an independent basis as a newly-chartered IDI that would have new ownership. This may be particularly important in circumstances where there are market or other limitations that preclude finding a suitable acquirer, and where other options, such as liquidation, are not feasible or involve unacceptable levels of systemic risk. Further, there may be a limited market for the covered IDIs subject to this proposal due to their size and, in some cases, relatively more specialized business models. As a result, at the time of resolution, strategies that involve the sale of large IDIs may be limited due to market or other barriers, or may involve high costs in order to make a sale attractive and feasible for an acquirer, especially taking into account post-acquisition capital requirements. The availability of LTD to absorb losses or to recapitalize a failed IDI through the resolution process could also mitigate the impact of a covered IDI's failure on financial stability by reducing the risk to uninsured depositors, thereby reducing the risk of runs and contagion. LTD can therefore reduce costs to the DIF and expand the available resolution options if a bank fails.

Although the primary benefits of LTD relate to the resolution of covered entities and their covered IDI subsidiaries, LTD can also improve the resiliency of these banking organizations prior to failure. Considering its long maturity, LTD would be a stable source of funding and, in contrast to other forms of funding like uninsured deposits, may serve as a source of market discipline through pricing.

B. Overview of the Proposal

The agencies are inviting comment on this notice of proposed rulemaking to improve the resolvability of covered entities and covered IDIs. The proposal includes five key components.

First, the proposal would require Category II, III, and IV covered entities to issue and maintain outstanding minimum levels of eligible LTD. This aspect of the proposal is being issued solely by the Board.¹⁰

Second, the proposal would require covered IDIs to issue and maintain outstanding a minimum amount of eligible LTD.¹¹ This aspect of the proposal is being issued by all of the agencies. A covered IDI that is a consolidated subsidiary of a covered entity or a foreign GSIB IHC would be required to issue eligible LTD internally to an entity that directly or indirectly consolidates the covered IDI.¹² A covered IDI that is not a controlled subsidiary of a further parent entity would be required to issue eligible LTD to investors that are not affiliates. A covered IDI that is a consolidated subsidiary of a further parent entity that is not a covered entity or that is a controlled but not consolidated subsidiary of a covered entity or a foreign GSIB IHC

¹⁰ The proposal would also require covered entities to purchase the debt of their subsidiaries that are internally issuing IDIs under the proposal.

¹¹ The IDI requirement would apply to an IDI of a U.S. IHC regardless of whether the U.S. IHC is subject to the Board's TLAC rule, provided the IDI meets the other requirements for applicability. *See* Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 *FR* 8266 (Jan. 24, 2017), <https://www.federalregister.gov/documents/2017/01/24/2017-00431/total-loss-absorbing-capacity-long-term-debt-and-clean-holding-company-requirements-for-systemically>.

¹² A subsidiary is considered a consolidated subsidiary based on U.S. generally accepted accounting principles (GAAP); consolidation generally applies when its holding company controls a majority (greater than 50 percent) of the outstanding voting interests.

would be permitted to issue eligible LTD to a company that controls the covered IDI or to investors that are not affiliates.

Third, the operations of covered entities would be subject to “clean holding company” requirements to further improve the resolvability of covered entities and their operating subsidiaries. This aspect of the proposal is being issued solely by the Board. In particular, the proposal would prohibit covered entities from issuing short-term debt instruments to third parties, entering into qualified financial contracts (QFCs) with third parties, having liabilities that are subject to “upstream guarantees”¹³ or that are subject to contractual offset against amounts owed to subsidiaries of the covered entity. The proposal would also cap the amount of a covered entity’s liabilities that are not LTD and that rank at either the same priority as or junior to its eligible external LTD at 5 percent of the sum of the covered entity’s common equity tier 1 capital, additional tier 1 capital, and eligible LTD amount.

Fourth, to limit the potential for financial sector contagion due to interconnectivity in the event of the failure of a covered entity or covered IDI, the proposed rule would expand the existing capital deduction framework for LTD issued by U.S. GSIBs and the IHCs of foreign GSIBs to include external LTD issued by covered entities and external LTD issued by covered IDIs. This aspect of the proposal is being issued by all of the agencies.

Finally, the proposal would make certain technical changes to the existing TLAC rule that applies to the U.S. GSIBs and U.S. IHCs of foreign GSIBs. This aspect of the proposal is being issued solely by the Board. These changes would harmonize provisions within the TLAC rule and address items that have been identified through the Board’s administration of the rule.

¹³ Upstream guarantees are when a parent company’s obligations are guaranteed by one of its subsidiaries.

The revisions introduced by the proposal would interact with the agencies' capital rule and proposed amendments to those rules.¹⁴

Question 1: The agencies invite comment on the implications of the interaction of the proposal with other existing rules and with other notices of proposed rulemaking. How do proposed changes to the agencies' capital rule affect the advantages and disadvantages of this proposed rule?

II. Advance Notice of Proposed Rulemaking

In October 2022, the Board and the FDIC published an ANPR to solicit public input regarding whether an extra layer of loss-absorbing capacity could improve optionality in resolving certain large banking organizations and their subsidiary IDIs, and the costs and benefits of such a requirement.¹⁵ The Board and the FDIC received nearly 80 comments on the ANPR from banking organizations, trade associations, public interest advocacy groups, members of Congress, and private individuals. Two members of the Senate Banking Committee as well as an advocacy group representing independent banks supported the proposal. Most commenters opposed or raised concerns regarding the proposal. However, most of the comments were received prior to the recent bank stress events involving SVB, SBNY, and First Republic and therefore did not take those events into consideration.

¹⁴ On July 27, 2023, the agencies' issued a notice of proposed rulemaking inviting comment on a proposal to amend the capital rule. *See* Joint press release: Agencies request comment on proposed rules to strengthen capital requirements for large banks (July 27, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm>.

¹⁵ Resolution-Related Resource Requirements for Large Banking Organizations, 87 *FR* 64170 (Oct. 24, 2022), <https://www.federalregister.gov/documents/2022/10/24/2022-23003/resolution-related-resource-requirements-for-large-banking-organizations>.

Many commenters asserted that an LTD requirement for covered entities and covered IDIs is unnecessary and that most covered entities and covered IDIs are prepared for orderly resolution pursuant to their existing resolution plans submitted to the FDIC and the Board. Specifically, commenters argued that covered entities are better capitalized and have stronger liquidity positions under post-crisis regulations, and that covered entities are non-complex and present minimal systemic risk. The commenters also maintained that recent balance sheet growth at covered entities is not concerning because such growth has involved increases in mostly low-risk, liquid assets. Further, commenters asserted that the resolution plans that have been submitted to the agencies by the covered entities and covered IDIs subject to such requirements are effective and already provide for optionality in resolution. The commenters argued that the imposition of a uniform LTD requirement would be inappropriate for the multiple point of entry (MPOE) resolution strategies followed by certain covered entities and could require covered entities to unnecessarily change their established resolution plans. Commenters also argued that anticipated stronger capital requirements that would be imposed pursuant to the anticipated Basel III finalization reforms would further diminish the need for an LTD requirement.

Multiple commenters, while supporting the spirit of the policy options raised in the ANPR, suggested the agencies should raise equity capital requirements rather than impose an LTD requirement to improve the resiliency of covered entities. Alternatively, some commenters argued that covered entities should be able to count any equity capital in excess of regulatory minimums toward any LTD requirement.

Several commenters argued that the benefits of an LTD requirement for covered entities would not outweigh its immediate costs. These commenters asserted that an excessive LTD

requirement could decrease the availability of credit to businesses and consumers. Further, a few commenters suggested that an LTD requirement could imply uninsured depositor protection for IDIs subject to such a requirement, thereby increasing moral hazard. Several commenters stressed that any LTD requirement should be supported by a rigorous cost-benefit analysis.

Finally, several commenters questioned whether the Board possesses the statutory authority to impose an LTD requirement on BHCs under section 165(b) of the Dodd-Frank Act, as amended.¹⁶ These commenters argued that the Board's authority under section 165 to issue enhanced prudential standards is limited to addressing financial stability risks. Commenters stated that covered entities do not pose a threat to financial stability and it is uncertain whether section 165(b) supports imposing an LTD requirement on covered entities.

The agencies considered these comments in developing the proposed rule. In light of recent experiences with SVB, SBNY, and First Republic, the agencies are extending the scope of the proposed rule to large banking organization with total consolidated assets of \$100 billion or more to reduce the likelihood of contagion from these banking organizations and to reduce the cost to the DIF should they fail. The agencies further note that both equity capital and LTD can be used to absorb losses and reduce the potential impact from the failure of a large banking organization; unlike equity capital, however, LTD can always be used as a fresh source of capital subsequent to failure and can afford the FDIC more options in resolving a failed bank.

¹⁶ Pub. L. 111-203; 124 Stat. 1376 (2010), codified at 12 U.S.C. 5365(b).

III. LTD Requirement for Covered Entities

A. Scope of application

The proposed rule would apply to Category II, III, and IV U.S. BHCs and SLHCs, and Category II, III, and IV U.S. IHCs of FBOs that are not currently subject to the existing TLAC rule as defined under the Board's Regulations LL and YY (covered entities).¹⁷ Under Regulations LL and YY, a Category II covered entity is one that has (i) at least \$700 billion or more in average total consolidated assets, or (ii) at least \$100 billion in average total consolidated assets and \$75 billion or more in average cross-jurisdictional activity.¹⁸ A Category III covered entity is one that has (i) at least \$250 billion in average total consolidated assets, or (ii) (A) \$100 billion in average total consolidated assets and (B) \$75 billion or more in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure.¹⁹ A Category IV covered entity is one that has at least \$100 billion in average total consolidated assets.²⁰

Given the size of covered entities, the agencies continue to believe that the failure of one or more covered entities or covered IDIs could potentially have a negative impact on U.S. financial markets and the broader U.S. economy. While several commenters to the ANPR downplayed this concern, this risk was demonstrated by the recent failures of SBNY, SVB, and

¹⁷ 12 CFR 252.2 (BHCs and U.S. IHCs under Regulation YY); 12 CFR 238.2(cc)–(ee) (SLHCs under Regulation LL).

¹⁸ 12 CFR 252.5(c) (BHCs and IHCs); 12 CFR 238.10(b) (SLHCs).

¹⁹ 12 CFR 252.5(d) (BHCs and IHCs); 12 CFR 238.10(c) (SLHCs).

²⁰ 12 CFR 252.5(e) (BHCs and IHCs); 12 CFR 238.10(d) (SLHCs).

First Republic,²¹ which contributed to depositor outflows at other banking organizations. In addition, some covered entities have operations that have been identified as critical operations by the Board and FDIC, the disorderly wind down of which could pose additional risks to U.S. financial stability. These financial stability implications may increase the likelihood regulators quickly resolve a covered entity by selling its assets to a larger acquirer, an approach that may itself add to long-term financial stability concerns from increased concentration in the banking sector.

Question 2: Does the proposed scope of application appropriately address the risks discussed above? What additional factors, if any, should the Board consider in determining which entities should be subject to the proposed rule, other than those that are used to determine whether a covered entity is placed within Categories II-IV? For example, what additional or alternate factors should the Board consider in setting requirements for IHCs (e.g., should the proposed rule only apply to IHCs with IDIs that would be subject to the proposed rule's IDI requirements)? Are there elements of the rule that should be applied differently to Category IV organizations as compared to Category II and III organizations, and what would be the advantages and disadvantages of such differences in requirements?

Question 3: What additional characteristics of banking organizations should the Board consider in setting the scope of the proposed rule and why? Should consideration be given to additional characteristics such as reliance on uninsured deposits; proportion of assets, income,

²¹ SBNY had total consolidated assets of around \$110 billion, SVB had total consolidated assets of just over \$200 billion, and First Republic had total consolidated assets of just over \$230 billion at the time of failure. The agencies note that neither SBNY nor First Republic had a holding company, so in those cases it was solely an IDI that failed. However, their failures illustrate the potential risk of contagion in the event of the material distress or failure of a large IDI.

and employees outside of the IDI; or to other aspects of a covered entity's balance sheet? How should these characteristics affect the proposed scope? Please explain.

B. Covered Savings and Loan Holding Companies

As noted above, the proposed rule would apply to Category II, III, and IV SLHCs, as defined in 12 CFR 238.10. Section 10(g) of the Home Owners' Loan Act (HOLA)²² authorizes the Board to issue such regulations and orders regarding SLHCs, including regulations relating to capital requirements, as the Board deems necessary or appropriate to administer and carry out the purposes of section 10 of HOLA. As the primary federal regulator and supervisor of SLHCs, one of the Board's objectives is to ensure that SLHCs operate in a safe-and-sound manner and in compliance with applicable law. Like BHCs, SLHCs must serve as a source of strength to their subsidiary savings associations and may not conduct operations in an unsafe and unsound manner.

Section 165 of the Dodd-Frank Act directs the Board to establish specific enhanced prudential standards for large BHCs and companies designated by the Financial Stability Oversight Council to prevent or mitigate risks to the financial stability of the United States.²³ Section 165 does not prohibit the application of standards to SLHCs and BHCs pursuant to other statutory authorities.²⁴

SLHCs that are covered HCs engage in many of the same activities and face similar risks as BHCs that are covered HCs. SLHCs that are covered HCs are substantially engaged in

²² 12 U.S.C. 1467a(g).

²³ 12 U.S.C. 5365(a)(1).

²⁴ Section 401(b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1356 (2018).

banking and financial activities, including deposit taking and lending.²⁵ Some SLHCs that are covered HCs engage in credit card and margin lending and certain complex nonbanking activities that pose higher levels of risk. SLHCs that are covered HCs may also rely on high levels of short-term wholesale funding, which may require sophisticated capital, liquidity, and risk management processes. Similar to BHCs that are covered HCs, SLHCs that are covered HCs conduct business across a large geographic footprint, which in times of stress could present certain operational risks and complexities. Subjecting SLHCs that are covered HCs to the proposed rule would improve their resolvability and promote their safe and sound operations.

Question 4: What are the advantages and disadvantages to applying the proposed rule to SLHCs that are covered HCs in addition to BHCs that are covered HCs? How are the risks that an SLHC poses in resolution different from the risks that a BHC poses in resolution? How might those differences warrant a different LTD requirement for SLHCs relative to BHCs?

C. Calibration of Covered Entity LTD Requirement

Under the proposal, a covered entity would be required to maintain outstanding eligible LTD in an amount that is the greater of 6.0 percent of the covered entity's total risk-weighted assets,²⁶ 3.5 percent of its average total consolidated assets,²⁷ and 2.5 percent of its total leverage

²⁵ The proposed rule would not apply to an SLHC with 25 percent or more of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit), an SLHC with a top-tier holding company that is an insurance underwriting company, or a grandfathered unitary SLHC that derives a majority of its assets or revenues from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)). See 12 CFR 238.2(ff).

²⁶ Total risk weighted assets would be defined as the greater of a bank's standardized total risk-weighted assets and advanced approaches total risk-weighted assets, if applicable.

²⁷ For purposes of the LTD minimum requirement, average total consolidated assets is defined as the denominator of the Board's tier 1 leverage ratio requirement. See 12 CFR 217.10(b)(4).

exposure if the covered entity is subject to the supplementary leverage ratio rule.²⁸ A covered entity would be prohibited from redeeming or repurchasing eligible LTD prior to its stated maturity date without obtaining prior approval from the Board where the redemption or repurchase would cause the covered entity's eligible LTD to fall below its LTD requirement.

The proposed eligible LTD requirement was calibrated primarily on the basis of a "capital refill" framework. Under that framework, the objective of the LTD requirement is to ensure that each covered entity has a minimum amount of eligible LTD such that, if the covered entity's going-concern capital is fully depleted and the covered entity fails and enters resolution, the eligible LTD would be sufficient to fully recapitalize the covered entity by replenishing its going-concern capital to at least the amount required to meet minimum leverage capital requirements and common equity tier 1 risk-based capital requirements plus the capital conservation buffer applicable to covered entities.

In terms of risk-weighted assets, a covered entity's common equity tier 1 capital level is subject to a minimum requirement of 4.5 percent of risk-weighted assets plus a capital conservation buffer equal to at least 2.5 percent.²⁹ Accordingly, a covered entity would be subject to an external LTD requirement equal to 7 percent of risk-weighted assets minus a 1 percentage point allowance for balance sheet depletion. This results in a proposed LTD requirement equal to 6 percent of risk-weighted assets. The 1 percentage point allowance for balance sheet depletion is appropriate under the capital refill theory because the losses that the covered entity incurs leading to its failure would deplete its risk-weighted assets as well as its capital. Accordingly, the pre-failure losses would result in a smaller balance sheet for the

²⁸ See 12 CFR 217.10(c)(2).

²⁹ See 12 CFR 217.11. A covered entity may be subject to a buffer greater than 2.5 percent under the capital rule due to the stress capital buffer or countercyclical capital buffer.

covered entity at the point of failure, meaning that a smaller dollar amount of capital would be required to restore the covered entity's pre-stress common equity tier 1 capital level. Although the specific amount of eligible external LTD necessary to restore a covered entity to its minimum required common equity tier 1 capital level plus minimum buffer in light of the diminished size of its post-failure balance sheet will vary, applying a uniform 1 percentage point allowance for balance sheet depletion avoids undue regulatory complexity.

The application of the capital refill framework to the leverage-based capital component of the LTD requirement is analogous. A covered entity's tier 1 leverage ratio minimum is 4 percent of average total consolidated assets and its supplementary leverage ratio minimum is 3 percent of total leverage exposure, if the covered entity is subject to the supplementary leverage ratio.³⁰ Under the proposal, a covered entity would be subject to an LTD requirement equal to 3.5 percent of average total consolidated assets and 2.5 percent of total leverage exposure, if applicable. These requirements, with a balance sheet depletion allowance of 0.5 percentage points, are appropriate to ensure that a covered entity has a sufficient amount of eligible LTD to refill its leverage ratio minimums in the event it depletes all or substantially all of its tier 1 capital prior to failing.

The proposed eligible LTD requirement would support an MPOE³¹ resolution through the process by which a covered IDI that is a consolidated subsidiary of a covered entity issues eligible LTD internally. The internally-issued LTD would be available to absorb losses that may

³⁰ Covered entities are not subject to a buffer requirement corresponding to their leverage ratio or SLR requirement.

³¹ Under an MPOE strategy, multiple entities within a consolidated organization would enter separate resolution proceedings. For example, many covered entities plan that the parent holding company would file a petition under chapter 11 of the U.S. Bankruptcy Code, and that the FDIC would resolve the IDI subsidiary under the FDI Act.

otherwise be borne by uninsured depositors and certain other creditors of the subsidiary IDI in the event of its failure, thereby supporting market confidence in the safety of deposits even in the event of resolution, thus limiting the potential for bank runs. The proposed calibration would increase optionality for the FDIC as the LTD amount would be sufficient to capitalize a bridge depository institution and increase its marketability, leading to greater resale value. To the extent that a covered entity has several operating subsidiaries, their recapitalization would support their orderly wind down. In a single point of entry (SPOE)³² resolution, the required LTD amount, in conjunction with a covered entity's existing equity capital, should be able to absorb losses and support recapitalization of the failed covered entity's material subsidiaries.

The calibration of the eligible LTD requirement is based on the capital refill framework, which depends on the precise structure and calibration of bank capital requirements. The Board will continue to evaluate the LTD requirement in light of any changes to capital requirements over time. In addition, the proposed rule would reserve the authority for the Board to require a covered entity to maintain more, or allow a covered entity to maintain less, eligible LTD than the minimum amount required by the proposed rule under certain circumstances. This reservation of authority would ensure that the Board could require a covered entity to maintain additional LTD if the covered entity poses elevated risks that the proposed rule seeks to address.

³² In an SPOE resolution, only the covered HC itself would enter resolution. In the case of a covered IHC, an SPOE resolution strategy for the U.S. operations of the covered IHC, where the parent FBO pursues a global MPOE strategy, involves only the covered IHC entering into resolution while its subsidiaries would continue to operate. The eligible external LTD issued by the covered IHC would be used to absorb losses incurred by the IHC and its operating subsidiaries, enabling the recapitalization of the operating subsidiaries that had incurred losses and allowing those subsidiaries—including any IDIs—to continue operating on a going-concern basis. SPOE is also an option for the resolution of a covered entity under the Orderly Liquidation Authority provisions of Title II of the Dodd-Frank Act.

The proposed rule would also prohibit a covered entity from redeeming or repurchasing any outstanding eligible LTD without the prior approval of the Board if after the redemption or repurchase the covered entity would not meet its minimum LTD requirement. The proposed rule would allow a covered entity to redeem or repurchase its eligible LTD without prior approval where such redemption or repurchase would not result in the covered entity failing to comply with the minimum eligible LTD requirement. This would give the covered entity flexibility to manage its outstanding debt levels without interfering with the underlying purpose of the proposed rule. In addition, the proposed rule also includes a provision that would allow the Board, after providing a covered entity with notice and an opportunity to respond, to order the covered entity to exclude from its outstanding eligible LTD amount any otherwise eligible debt securities with features that would significantly impair the ability of such debt securities to absorb loss in resolution.³³

In addition, the Board could take an enforcement action against a covered entity for falling below its minimum LTD requirement. This would be consistent with the Board's authority to pursue enforcement actions for violations of law, rules, or regulations.

Question 5: What alternative calibration, if any, should the Board consider for the eligible LTD requirement to be applied to covered entities? Is the capital refill framework the

³³ Section 263.83 of the Board's rules of procedure describes the notice and response procedures that apply if the Board determines that a company's capital levels are not adequate. *See* 12 CFR 263.83. The Board would follow the same procedures under the proposed rule to determine that a covered entity must exclude from its eligible LTD amount securities with features that would significantly impair the ability of such debt securities to absorb loss in resolution. For example, the Board would provide notice to a covered entity of its intention to require the covered entity to exclude certain securities from its eligible LTD amount and up to 14 days to respond before the Board would issue a final notice requiring that the covered entity to exclude the securities from its eligible LTD amount, unless the Board determines that a shorter period is necessary.

appropriate methodology for covered entities? Should the requirements be higher or lower? What other factors should the Board consider in determining the appropriate calibration? How should differences in a covered entity's resolution strategy influence the calibration of the required LTD amount, if at all? Please discuss the advantages and disadvantages of alternative calibrations the Board should consider.

Question 6: Should the Board consider increasing or decreasing the calibration of the eligible external LTD requirement applicable to covered entities based on any other factors, such as the level of uninsured deposits at their IDI subsidiaries? If so, how should the Board differentiate between different types of uninsured deposits (e.g., what features of one type of uninsured deposits make such deposits more stable than other types of uninsured deposits), if at all, and at what level of uninsured deposits should the Board increase or decrease calibration for the LTD requirement? What other differentiated consideration or treatment should be afforded uninsured deposits with these characteristics?

Question 7: The proposal would require covered IDIs to issue LTD, as discussed more fully below. There may be circumstances in which IDIs within a single consolidated group might be required to issue, in the aggregate, a greater amount of internal LTD to a covered entity than the covered entity's external LTD requirement. What would be the advantages or disadvantages of requiring the covered entity to issue an amount of LTD that is as large as the aggregate amount that its covered IDI subsidiaries are required to issue? What alternative approaches should the Board consider to address this circumstance? How might the absence of such a requirement impede the proposed LTD requirement in achieving its intended purposes, if at all?

Question 8: The Board is considering whether and how to specify a period for covered entities to raise additional LTD after the entity has been involved in a situation where the FDIC

has been appointed receiver. What are the advantages or disadvantages of permitting a period to raise additional LTD following such an event? How long should such a period reasonably be? Should the agencies specify a similar period for U.S. GSIBs and the U.S. IHCs of foreign GSIBs that are already subject to LTD and TLAC requirements?

IV. LTD Requirement for Covered IDIs

The proposed rule also would additionally create a new requirement for covered IDIs to issue eligible LTD. Requiring covered IDIs to maintain minimum amounts of eligible LTD, which would be available to absorb losses in the event of the failure of the IDI, would improve the FDIC's resolution options for the covered IDI. The objective of the IDI-level LTD requirement is to ensure that, if a covered IDI's equity capital is significantly or completely depleted and the covered IDI fails, the eligible IDI LTD would be available to absorb losses, which would help to protect depositors and certain other creditors and afford the FDIC additional optionality in resolving the IDI, including by supporting the transfer of all deposits to one or more acquirers. Where the failed bank is transferred to a bridge depository institution, the eligible LTD would help stabilize the operations of the bridge, thereby providing additional options for the FDIC to ultimately exit the bridge.

Several commenters to the ANPR suggested that increasing bank regulatory capital levels would be a more effective way to improve resiliency of covered entities and covered IDIs because additional capital would reduce their probability of default in the first place. While higher regulatory capital levels would reduce the probability of default of a covered IDI and may increase the chance that a covered entity or covered IDI would have remaining equity in the event of its failure, regulatory capital is likely to be significantly or completely depleted in the lead up to an FDI Act resolution. While eligible LTD would not help a troubled IDI remain

adequately capitalized on a going-concern basis, it would significantly reduce the likelihood of contagion and loss to the DIF in resolving the failed bank. For example, if in the lead up to resolution an IDI were to fall below its minimum tier 1 capital requirements, any eligible LTD outstanding at the IDI level would have significant gone-concern benefits in that it would help to recapitalize the IDI. Because eligible LTD of a covered IDI would be available to absorb losses and protect depositors in the event of the failure of the IDI, it would increase optionality for the FDIC in resolving the IDI while meeting the least-cost requirement of the FDI Act. By supporting the FDIC's transfer of assets and deposits to a bridge depository institution in accordance with the least-cost requirement, eligible LTD may help preserve the franchise value of a failed bank and enable the FDIC to pursue restructuring options such as the sale of subsidiaries, branch networks, or business lines, as well as other potential options for divestiture and exit.

A covered IDI that is a consolidated subsidiary of a covered entity would be required to issue its eligible LTD to a company in the United States that consolidates the IDI for accounting purposes. In practice, the proceeds raised by the issuance of eligible LTD by a covered entity would generally be "downstreamed" to its covered IDI subsidiary in return for eligible internal LTD that would satisfy such covered IDI's own eligible LTD requirement. A covered IDI that is not a controlled subsidiary of a parent entity would be required to issue its eligible LTD to a party that is not an affiliate of the covered IDI. A covered IDI that is a consolidated subsidiary of a further parent entity that is not a covered entity would be permitted to issue its eligible LTD to a parent that controls the covered IDI or to investors that are not affiliates.

A. Scope of Application

The proposed rule would require four categories of IDIs to issue eligible LTD. First, the proposed rule would apply to any IDI that has at least \$100 billion in total consolidated assets and is not controlled by a parent entity (mandatory externally issuing IDI). Second, the proposed rule would apply to any IDI that has at least \$100 billion in total consolidated assets and (i) is a consolidated subsidiary of a company that is not a covered entity, a U.S. GSIB or a foreign GSIB subject to the TLAC rule or (ii) is controlled but not consolidated by another company (permitted externally issuing IDI). Third, the proposed rule would apply to an IDI that has at least \$100 billion in total consolidated assets and that is a consolidated subsidiary of a covered entity or a foreign GSIB IHC (internally issuing IDI).³⁴ Lastly, the proposed rule would apply to any IDI that is affiliated with an IDI in one of the first three categories (together with mandatory and permitted externally issuing IDIs and internally issuing IDIs, covered IDIs).

The agencies propose to apply the IDI LTD requirement based on an IDI's size. While size is not the only indicator of complexity, it is a readily observable indicator, and, in general, IDIs with assets above \$100 billion tend to be more complex in terms of their businesses and operations, are more difficult to resolve, and have a smaller pool of prospective acquirers. As IDIs cross the \$100 billion threshold in total consolidated assets, their resolution can become increasingly costly to the DIF.

Covered IDIs under the proposed rule would include IDIs affiliated with IDIs that have at least \$100 billion in total consolidated assets because the FDIC may seek to resolve an IDI with at least \$100 billion in assets and its affiliated IDIs using either the same bridge depository

³⁴ IDIs with \$100 billion or more in total assets that are subsidiaries of Category II, III, and IV U.S. IHCs would be subject to the IDI-level requirement regardless of whether they ultimately are controlled by a global systemically important FBO.

institution or multiple bridge depository institutions. When an IDI in a group fails, it is likely that all IDIs in the group fail due to interconnectedness and the statutory cross-guaranty imposed on affiliated IDIs in the event of the failure of an IDI in the group.³⁵ In addition, affiliated IDIs may engage in complementary business activities, so placing them into a single bridge depository institution or coordinating marketing and resolution in multiple bridge depository institutions may improve marketability and attract a larger universe of potential acquirers. Therefore, the proposed rule would include affiliated IDIs in the definition of a covered IDI to help ensure that in the event the affiliated IDIs enter resolution together, a sufficient level of gone concern loss-absorbing resources will be present to enable the FDIC to use one or more bridge depository institutions to effectively resolve all of the affected covered IDIs.

The proposed rule would apply to mandatory and permitted externally issuing IDIs for the reasons discussed above concerning the risks associated with IDIs that have at least \$100 billion in total assets. The risks associated with the failure of a mandatory externally issuing IDI are not diminished because of the lack of a parent company and the risks associated with the failure of a permitted externally issuing IDI are not diminished because its parent is not subject to an LTD requirement. Mandatory and permitted externally issuing IDIs may not have the benefit of receiving the support of a holding company or being part of a regulated consolidated organization with diversified businesses. Applying the proposed rule to mandatory and permitted externally issuing IDIs in addition to those with a covered entity parent ensures competitive equality across all covered IDIs.

³⁵ See 12 U.S.C. 1815(e).

Question 9: What risks or resolution challenges are presented by IDIs with less than \$100 billion in total consolidated assets? In what way do those risks or resolution challenges differ from those presented by IDIs with at least \$100 billion in total consolidated assets?

Question 10: How should the agencies address any evasion concerns (e.g., holding companies managing their IDIs to stay below the \$100 billion threshold to avoid the IDI LTD requirement)? What would be the advantages and disadvantages of setting the applicability threshold to be based on whether the total assets of the IDIs within a consolidated organization are, in the aggregate, at least \$100 billion or more?

Question 11: What would be the advantages and disadvantages of allowing certain IDIs currently defined as internally issuing IDIs (e.g., covered IDIs that are consolidated subsidiaries of Category IV holding companies) to issue debt externally, even if they are a consolidated subsidiary of a covered entity? If the agencies were to allow some IDIs that are consolidated subsidiaries of a covered entity to issue debt externally, how should the agencies determine which IDIs may issue externally, and which would still be required to issue internally? Should such a requirement replace the requirement that the parent covered entity also issue debt externally?

Question 12: Are there special characteristics of mandatory externally issuing IDIs that affect whether a mandatory externally issuing IDI should be subject to a higher or lower LTD requirement than proposed? For example, should mandatory externally issuing IDIs be required to maintain an amount of LTD such that, if the IDI's equity capital is fully depleted and the LTD is used to capitalize a bridge depository institution, the bridge would be well-capitalized under the agencies' prompt corrective action rules?

Question 13: What would be the advantages and disadvantages to requiring permitted externally issuing IDIs to meet their minimum LTD requirement by issuing only eligible internal debt securities or eligible external debt securities rather than any combination of both? What would be the advantages and disadvantages to requiring such a permitted externally issuing IDI to meet its minimum LTD requirement by issuing eligible external LTD only, rather than allowing issuance to a parent holding company or other affiliates?

Question 14: Should the proposed rule require the holding company of a permitted externally issuing IDI that issues eligible LTD to its holding company to comply with the clean holding company requirements discussed in section VI?

Question 15: Should the agencies take into consideration the resolution plan of a covered entity submitted pursuant to Title I of the Dodd-Frank Act in determining which IDIs to scope into the proposed rule? For example, should the proposed IDI-level LTD requirement only apply to IDI subsidiaries of covered entities that have adopted an MPOE resolution strategy (i.e., (i) IDIs that are expected by the parent resolution plan filer to enter into receivership if its parent fails and (ii) where the Board and FDIC find that expectation to be reasonable)? What would be the advantages and disadvantages and potential incentive effects of applying an IDI-level LTD requirement to IDIs that are subsidiaries of covered entities that have adopted an SPOE resolution strategy? Certain covered IDIs are not subsidiaries of entities subject to a resolution planning requirement. Are there alternative approaches that might provide beneficial additional flexibility for these covered IDIs?

Question 16: What other methods could the agencies use to achieve the same benefits provided by the proposed rule concerning certainty of the ultimate availability of LTD resources at an IDI that ultimately enters resolution? Are there alternative approaches that might provide

beneficial additional flexibility for covered entities in an SPOE resolution? What factors, such as the size and significance of non-bank activities, should the agencies consider in determining whether any such alternative approaches or additional requirements are appropriate?

Question 17: What would be the advantages and disadvantages of requiring IDI subsidiaries of U.S. GSIBs to issue specified minimum amounts internal LTD? Should the agencies propose applying the same IDI-level requirements to these entities?

Question 18: For U.S. intermediate holding companies that are subject to the Board's TLAC rule, to what extent does the existing LTD requirement applicable at the IHC level already address the considerations underlying the proposed imposition of a further LTD requirement on any covered IDI subsidiary of such an IHC? For example, what would be the advantages or disadvantages of changing the proposal so that it would not require covered IDIs that are consolidated subsidiaries of IHCs owned by foreign GSIBs to issue internal LTD to the IHC?

Question 19: What are the advantages and disadvantages of requiring IDIs affiliated with IDIs that have at least \$100 billion in consolidated assets to issue LTD pursuant to the proposed rule? What standard should be used for determining whether an IDI is an affiliate of a covered IDI? For example, should the IDI be treated as an affiliate of a covered IDI only if it is consolidated by the same company as the covered IDI? Should two IDIs be treated as affiliates only if they are under the common control of a company (as opposed to a natural person)? What are the advantages and disadvantages of making subject to the proposed rule all affiliated IDIs as compared to only those that are consolidated by the same company as the covered IDI?

Question 20: Under the proposal, an IDI with less than \$100 billion in total consolidated assets would be subject to the proposed rule if it is affiliated with an IDI that has at least \$100 billion in total assets, including when the two IDIs are not consolidated by the same holding

company or the two IDIs are commonly controlled by a natural person. Should the proposed rule include a minimum size requirement for such an affiliated IDI to be subject to the proposed rule? For example, should only affiliated IDIs with at least an amount of assets set between \$1 billion and \$50 billion be subject to the proposed rule? What would be an appropriate threshold, or are there other parameters the proposed rule should employ to establish when an affiliated IDI would be subject to the proposed rule? As an alternative to an asset size threshold or other parameter, should the agencies consider reserving the authority to exempt certain IDIs from the LTD requirement?

B. Calibration of Covered IDI LTD Requirement

Under the proposal, a covered IDI would be required to maintain outstanding eligible LTD in an amount that is the greater of 6.0 percent of the covered IDI's total risk-weighted assets, 3.5 percent of its average total consolidated assets,³⁶ and 2.5 percent of its total leverage exposure if the covered IDI is subject to the supplementary leverage ratio.³⁷

The proposed IDI LTD requirement is calibrated by reference to the covered IDI's balance sheet and to ensure that sufficient LTD would be available at the covered IDI. The IDI LTD requirement is also calibrated to help ensure that the resolution of a covered IDI does not impose unduly high costs on the economy.

The proposed IDI LTD requirement has been calibrated so that, assuming a failed covered IDI's equity capital is significantly or completely depleted, the eligible LTD outstanding would be sufficient to capitalize a newly-formed bridge depository institution with an amount

³⁶ For purposes of the LTD minimum requirement, average total consolidated assets is defined as the denominator of the agencies' tier 1 leverage ratio requirement. *See* 12 CFR 3.10(b)(4) (OCC), 12 CFR 217.10(b)(4) (Board), 12 CFR 324.10(b)(4) (FDIC).

³⁷ *See* 12 CFR 3.10(c)(2) (OCC), 12 CFR 217.10(c)(2) (Board), 12 CFR 324.10(c)(2) (FDIC).

necessary to comply with the minimum leverage capital requirements and common equity tier 1 risk-based capital requirements plus buffers applicable to ordinary non-bridge IDIs after accounting for some balance sheet depletion.

The proposed calibration would appropriately support the FDIC in resolving covered IDIs under the FDI Act because the eligible LTD at the IDI could improve market confidence, improve the marketability of the failed IDI, and stabilize the bridge depository institution, thereby providing more optionality in resolution. Importantly, it could also provide for an exit from resolution by enabling a recapitalized bridge depository institution to exit from resolution as a newly chartered IDI following a period of stabilization and restructuring.

The amount of LTD required to be positioned at the covered IDI is based upon the balance sheet of the covered IDI and will reflect the size and importance of the covered IDI relative to the group. Thus, it improves the optionality of resolution at an IDI level while also potentially supporting an SPOE resolution of the covered entity in the event that option is available and would be effective.³⁸ Externally issuing IDIs would be subject to the same calibration as other covered IDIs, as they can have similar risk profiles, asset compositions, and liability structures as other covered IDIs and hence should have similar resolution-related resource needs.

The proposed rule would authorize an agency to require a covered IDI that it supervises to maintain an amount of eligible LTD that is greater than the minimum requirement in the proposed rule under certain circumstances. This would ensure that a covered IDI that presents

³⁸ For example, in an SPOE resolution, if the covered IDI is a consolidated subsidiary of a covered entity, the covered entity could support the covered IDI by forgiving the eligible internal LTD issued by the covered IDI.

elevated risk that the proposed rule seeks to address would be required to maintain a corresponding amount of eligible LTD.

The proposed rule would include a provision that would allow the appropriate Federal banking agency, after providing a covered IDI with notice and an opportunity to respond, to order the covered IDI to exclude from its outstanding eligible LTD any otherwise eligible debt securities with features that would significantly impair the ability of such debt securities to absorb losses in resolution.³⁹

In addition, the appropriate Federal banking agency could take an enforcement action against a covered IDI for falling below a minimum IDI LTD requirement. This would be consistent with the agencies' authority to pursue enforcement actions for violations of law, rules, or regulations.

Question 21: What alternative calibrations should the agencies consider for the IDI LTD requirement? What other factors should the agencies consider in determining the appropriate calibration? The proposed rule would require covered IDIs to maintain an amount of LTD so that, if the LTD were written off, it would recapitalize a covered IDI to the well capitalized standards for IDIs under the common equity tier 1 risk-based capital requirements (after accounting for expected balance sheet depletion). What would be the advantages and disadvantages of requiring a covered IDI to maintain an amount of LTD that would be sufficient to recapitalize the covered IDI to "well-capitalized" standards relative to (1) tier-1 risk-based capital requirements, (2) total risk-based capital requirements, and (3) average total consolidated assets under the agencies' prompt corrective action standards in the event of failure?

³⁹ See 12 CFR 3.404 (OCC), 12 CFR 263.83 (Board), and 12 CFR 324.5(c) (FDIC).

Question 22: What would be the advantages and disadvantages of proposing a different calibration for mandatory and permitted externally issuing IDIs, which do not have a parent holding company that is subject to an external LTD requirement?

Question 23: How should the calibration for the IDI LTD requirement relate, if at all, to the level of uninsured deposits outstanding at a covered IDI, either in absolute terms or relative to the IDI's liabilities? If such an approach were taken, at what level(s) of uninsured deposits should the agencies modify the calibration for the IDI LTD requirement?

Question 24: The agencies are considering whether and how to specify a period for covered IDIs to raise additional LTD after the entity has been involved in a situation in which the FDIC has been appointed receiver. What are the advantages or disadvantages of permitting a period for the covered IDI to raise additional LTD following such an event? How long should such a period reasonably be?

V. Features of Eligible LTD

The proposal would require LTD to satisfy certain eligibility criteria to qualify as eligible LTD. Although the requirements for all eligible LTD generally would be the same under the proposed rule, eligible external LTD would have certain features not applicable to eligible LTD issued within a consolidated organization (eligible internal LTD). As discussed above, covered HCs and mandatory externally issuing IDIs may only issue eligible external LTD to satisfy the proposed LTD requirement. Internally issuing IDIs and nonresolution covered IHCs must issue eligible internal LTD, while permitted externally issuing IDIs and resolution covered IHCs may issue either (see section V, subsection C for discussion of nonresolution and resolution covered IHCs). The general purpose of these requirements is to ensure that LTD used to satisfy the

proposed rule is in fact able to be used effectively and appropriately to absorb losses in support of the orderly resolution of the issuer. The proposed requirements for eligible LTD are generally the same as those required for firms subject to the TLAC rule.⁴⁰

Question 25: What are the advantages and disadvantages of limiting the types of instruments that qualify as eligible LTD? Would any of the proposed required features for eligible LTD be unnecessary or counterproductive as applied to any of the covered entities or covered IDIs? If so, explain why.

A. Eligible External LTD

Under the proposed rule, eligible external LTD issued by covered HCs, mandatory and permitted externally issuing IDIs, and resolution covered IHCs (together, external issuers) must be paid in and issued directly by the external issuer, be unsecured, have a maturity of greater than one year from the date of issuance, have “plain vanilla” features (that is, the debt instrument has no features that would interfere with a smooth resolution proceeding), be issued in a minimum denomination of \$400,000, and be governed by U.S. law.⁴¹ In addition, principal due to be paid on eligible external LTD in one year or more and less than two years would be subject to a 50 percent haircut for purposes of the external LTD requirement. Principal due to be paid on eligible external LTD in less than one year would not count toward the external LTD

⁴⁰ See 12 CFR 252.61 and .161 “Eligible debt security.”

⁴¹ If a national bank or Federal savings association intends for LTD to qualify as tier 2 capital, the instrument must also satisfy the requirements for subordinated debt at 12 CFR 5.47 (for national banks) and 12 CFR 5.56 (for Federal savings associations). If the national bank or Federal savings association does not intend to treat the LTD as subordinated debt that qualifies as tier 2 capital, the LTD does not need to satisfy these requirements. In any event, all offers and sales of securities by a national bank or Federal savings association are subject to the disclosure requirements set forth at 12 CFR part 16.

requirement. Tier 2 capital that meets the definition of eligible external LTD would continue to count toward the external LTD requirement.

Consistent with this purpose, the proposed rule would authorize the agencies, after providing an external issuer with notice and an opportunity to respond, to order the external issuer to exclude from its outstanding LTD amount any otherwise eligible debt securities with features that would significantly impair the ability of such debt securities to absorb losses in resolution.⁴² This provision would enable the agencies to respond to new types of LTD instruments, ensuring the proposed rule remains responsive to developments in LTD instruments.

1. External Debt Issuance Directly by Covered Entities and Covered IDIs

Eligible external LTD would be required to be paid in and issued directly by the external issuer. Thus, debt instruments issued by a subsidiary of a covered entity or covered IDI would not qualify as eligible external LTD.

The requirement that eligible external LTD be issued directly by the covered entity or covered IDI and not a subsidiary would serve several purposes. In the case of eligible external LTD issued by a covered entity that is in turn matched by eligible internal LTD at a covered IDI subsidiary, the requirement would make sure that the covered entity has an amount of stable funding that is sourced externally and that could be used to purchase the LTD issued by the covered IDI subsidiary to meet the IDI's minimum LTD requirement.

Additionally, requiring eligible external LTD to be issued by the covered entity (or, in the case of a permitted or mandatory externally issuing IDI, the covered IDI) and not a subsidiary would simplify administration of the proposed rule by preventing a banking organization from

⁴² The Board would exercise this authority with respect to covered entities. For covered IDIs, a bank's primary Federal banking agency would exercise this authority.

issuing external LTD from multiple entities, which could complicate the firm's internal monitoring and examiner monitoring for compliance with the proposed rule. This requirement also would take advantage of the fact that, within a consolidated organization, the holding company generally is the entity used as a capital raising vehicle.

Finally, for external issuers that are covered entities, issuance directly from the covered entity and not a subsidiary would provide flexibility to support a range of resolution strategies. For instance, use by an external issuer (such as a covered HC) of proceeds from the issuance of eligible external LTD to purchase eligible internal LTD from a covered IDI subsidiary would support resolution of the covered IDI under the FDI Act. Where SPOE is an available option, the issuer's eligible external LTD could be used to absorb losses incurred throughout the banking organization, enabling the recapitalization of operating subsidiaries that had incurred losses and enabling those subsidiaries to continue operating on a going-concern basis. For an SPOE approach to be implemented successfully, the eligible external LTD must be issued directly by the covered entity because debt issued by a subsidiary generally cannot be used to absorb losses, even at the issuing subsidiary itself, unless that subsidiary enters a resolution proceeding.

Eligible external LTD also may only be held by certain investors. In the case of covered entities, eligible external LTD must be held by a nonaffiliate. The requirement for eligible external LTD to not be held by an affiliate ensures that LTD issuance generates new loss-absorbing capacity that is truly held externally from the issuer. This requirement also helps ensure that LTD holders are positioned to serve as a source of market discipline for the external issuer. LTD holders may be less likely to critically monitor the performance of the issuer if the holders are affiliated with the issuer. Eligible external LTD issued by a permitted or mandatory externally issuing IDI likewise could not be issued to an affiliate, except an affiliate that controls

but does not consolidate the covered IDI (*e.g.*, where a company owns at least 25 percent of, but does not meet the accounting standard to consolidate, a covered IDI). Without this exception for upstream affiliates, eligible LTD of a permitted externally issuing IDI could be held by a company that consolidates the covered IDI (in the form of eligible internal LTD), but not a company that controls without consolidating the covered IDI. Such a prohibition would serve no purpose. Accordingly, the proposal permits a permitted or mandatory externally issuing IDI to issue eligible external LTD to such an affiliate.

2. Unsecured

Eligible external LTD would be required to be unsecured, not guaranteed by the external issuer or a subsidiary or an affiliate of the external issuer, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument (such as a credit enhancement provided by an affiliate).

The primary rationale for these restrictions is to ensure that eligible external LTD can serve its intended purpose of absorbing losses incurred by the banking organization in resolution. To the extent that a creditor is secured, or provided with credit support of any type, it can avoid suffering losses by seizing the collateral that secures the debt. The debt being secured would thwart the purpose of eligible external LTD by leaving losses with the external issuer (which would lose the collateral) rather than imposing them on the eligible external LTD creditor (which could take the collateral). As a result, this requirement ensures that losses can be imposed on eligible LTD in resolution in accordance with the standard creditor hierarchy under bankruptcy or an FDI Act resolution, under which secured creditors are paid ahead of unsecured creditors.

A secondary purpose of these restrictions is to prevent eligible external LTD from contributing to the asset fire sales that can occur when a financial institution fails and its secured

creditors seize and liquidate collateral. Asset fire sales can drive down the value of the assets being sold, which can undermine financial stability by transmitting financial stress from the failed firm to other entities that hold similar assets.

3. “Plain Vanilla”

Eligible external LTD instruments would be required to be “plain vanilla” instruments. Exotic features could create complexity and thereby diminish the prospects for an orderly resolution of the external issuer. These limitations would help to ensure that eligible external LTD represents loss-absorbing capacity with a definite value that can be quickly determined in resolution. In a resolution proceeding, claims represented by such “plain vanilla” debt instruments are more easily ascertainable and relatively certain compared to more complex and volatile instruments. Permitting exotic features could engender uncertainty as to the level of the issuer’s loss-absorbing capacity and could increase the complexity of the resolution proceeding and potentially result in a disorderly resolution.

Under the proposed rule, external LTD instruments would be excluded from treatment as eligible external LTD if they: (i) are structured notes; (ii) have a credit-sensitive feature; (iii) include a contractual provision for conversion into or exchange for equity in the issuer; or (iv) include a provision that gives the holder a contractual right to accelerate payment (including automatic acceleration), other than a right that is exercisable (1) on one or more dates specified in the instrument, (2) in the event of the issuer entering into insolvency or resolution proceedings, or (3) the issuer’s failure to make a payment on the instrument when due that continues for 30 days or more.⁴³

⁴³ This limitation would be subject to an exception that would permit eligible external LTD instruments to give the holder a future put right as of a date certain, subject to the provisions discussed below regarding when the debt is due to be paid.

a. Structured Notes

The proposed rule would exclude structured notes, including principal-protected structured notes, from treatment as eligible external LTD. Structured notes contain features that could make their valuation uncertain, volatile, or unduly complex. In addition, they are often liabilities held by retail investors (as opposed to institutional investors) and, as discussed in greater detail below in the context of minimum denomination requirements, holdings of LTD by more sophisticated investors can better ensure that LTD holders understand the risks of LTD and that such holders are in a position to provide market discipline with respect to LTD issuers. To promote resiliency and market discipline, it is important that external issuers maintain a minimum amount of loss-absorbing capacity with a value that is easily ascertainable at any given time. Moreover, in resolution, debt instruments that will be subjected to losses must be capable of being valued accurately and with minimal risk of dispute. The requirement that eligible external LTD not contain the features associated with structured notes advances these goals.

For purposes of the proposed rule, a “structured note” is defined as a debt instrument that: (i) has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset,⁴⁴ entity, index, or embedded derivative or similar embedded feature; (ii) has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities; (iii) does not have a minimum principal amount that becomes due and payable upon acceleration or early termination; or (iv) is not classified as debt under U.S. GAAP. The definition of a structured note does not include a non-dollar-denominated instrument or an instrument whose interest payments are based on an interest rate index (for example, a floating-rate note linked to the federal funds rate or to the

⁴⁴ Assets would include loans, debt securities, and other financial instruments.

secured overnight financing rate), in each case that satisfies the proposed requirements in all other respects.

Structured notes with principal protection often combine a zero-coupon bond, which pays no interest until the bond matures, with an option or other derivative product, whose payoff is linked to an underlying asset, index, or benchmark.⁴⁵ For external issuances by covered entities, the derivative feature violates the intent of the clean holding company requirements (described below), which prohibit derivatives entered into by covered entities with third parties. Moreover, investors in structured notes tend to pay less attention to issuer credit risk than investors in other LTD, because structured note investors use structured notes to gain exposure unrelated to the market discipline objective of the minimum LTD requirements.

b. Contractual provision for conversion into or exchange for equity

The proposed rule would exclude from treatment as eligible external LTD debt that includes contractual provisions for its conversion into equity or for it to be exchanged for equity. The fundamental objective of the external LTD requirement is to ensure that external issuers will have a minimum amount of loss-absorbing capacity available to absorb losses upon the issuer's entry into resolution. Debt instruments that could convert into equity prior to resolution may not serve this goal, since the conversion would reduce the amount of debt that will be available to absorb losses in resolution. In addition, debt with features to allow conversion into equity is often complex and thus may not be characterized as "plain vanilla." Convertible debt instruments may be viewed as debt instruments with an embedded equity call option. The embedded equity call option introduces a derivative-linked feature to the debt instrument that is

⁴⁵ U.S. Securities and Exchange Commission, Structured Notes with Principal Protection: Note the Terms of Your Investment (June 1, 2011), <https://www.sec.gov/investor/alerts/structurednotes.htm>.

inconsistent with the purpose of the clean holding company requirements (described below) and introduces uncertainty and complexity into the value of such securities. For these reasons, eligible external LTD may not include contractual provisions allowing for its conversion into equity or for it to be exchanged for equity prior to the issuer's resolution under the proposed rule.

c. Credit-sensitive features and acceleration clauses

Under the proposal, eligible external LTD cannot have a credit-sensitive feature or provide the holder of the instrument a contractual right to the acceleration of payment of principal or interest at any time prior to the instrument's stated maturity (an acceleration clause), other than upon the occurrence of either a receivership, liquidation, or similar proceeding,⁴⁶ or a payment default event. However, eligible external LTD instruments would be permitted to give the holder a put right as of a future date certain, subject to the remaining maturity provisions discussed below.

The restriction on acceleration clauses serves the same purpose as several of the other restrictions discussed above, *i.e.*, to ensure that the required amount of LTD will indeed be available to absorb losses in resolution. Early acceleration clauses, including cross-acceleration clauses, could undermine an orderly resolution by forcing the issuer to make payment on the full value of the debt prior to the entry of the issuer into resolution, potentially depleting the issuer's eligible external LTD immediately prior to resolution. This concern does not apply to acceleration clauses that are triggered by an insolvency or resolution event, however, because the insolvency or resolution that triggers the clause would generally occur concurrently with the issuer's entry into an insolvency or a resolution proceeding.

⁴⁶ For the avoidance of doubt, this provision should not be construed to mean that eligible external LTD could be accelerated upon an IDI merely being insolvent.

Senior debt instruments issued by external issuers commonly also include payment default event clauses. These clauses provide the holder with a contractual right to accelerate payment upon the occurrence of a “payment default event”—that is, a failure by the issuer to make a required payment when due. Payment default event clauses, which are not permitted in tier 2 regulatory capital, raise more concerns than insolvency or resolution event clauses because a payment default event may occur (triggering acceleration) before the institution has entered a resolution proceeding and a stay has been imposed. Such a pre-resolution payment default event could cause a decline in the issuer’s loss-absorbing capacity.

Nonetheless, the proposed rule would permit eligible external LTD to be subject to payment default event acceleration rights for two reasons. First, default or acceleration rights upon a borrower’s default on its direct payment obligations are a standard feature of senior debt instruments, such that a prohibition on such rights could be unduly disruptive to the potential market for eligible external LTD. Second, the payment default of an issuer on an eligible external LTD instrument would likely be a credit event of such significance that whatever diminished capacity led to the payment default event would also be a sufficient trigger for an insolvency or a resolution event acceleration clause, in which case a prohibition on payment default event acceleration clauses would have little or no practical effect.

In addition, the proposed rule would provide that an acceleration clause relating to a failure to pay principal or interest must include a “cure period” of at least 30 days. During this cure period, the issuer could make payment on the eligible external LTD before such debt could be accelerated and if the issuer satisfies its obligations on the eligible external LTD within the cure period, the instrument could not be accelerated. This would ensure that an accidental or temporary failure to pay principal or interest does not trigger immediate acceleration. Moreover,

this cure period for interest payments is found in many existing debt instruments and is consistent with current market practice.

4. Minimum Remaining Maturity and Amortization

Under the proposal, the amount of eligible external LTD that is due to be paid between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and the amount of eligible external LTD that is due to be paid in less than one year would not count toward the external LTD requirement.

The purpose of these restrictions is to limit rollover risk of debt instruments that qualify as eligible external LTD and ensure that eligible external LTD provides stable funding and will be reliably available to absorb losses in the event that the issuer fails and enters resolution. Debt that is due to be paid in less than one year does not adequately serve these purposes because of the possibility that the debt could mature during the period between the time when the issuer begins to experience extreme stress and the time when it enters a resolution proceeding. If the debt matures during that period, then it would be likely that the creditors would be unwilling to maintain their exposure to the issuer and would therefore refuse to roll over the debt or extend new credit, and the distressed issuer would likely be unable to replace the debt with new LTD that would be available to absorb losses in resolution. This run-off dynamic could result in a case where the covered entity enters resolution with materially less loss-absorbing capacity than would be required to support or recapitalize its IDIs or other subsidiaries, potentially resulting in a disorderly resolution. To protect against this outcome, eligible external LTD would cease to count toward the external LTD requirement upon being due to be paid in less than one year, so

that the full required amount of loss-absorbing capacity would be available in resolution even if the resolution period were preceded by a year-long stress period.⁴⁷

For the same reasons, eligible external LTD that is due to be paid in less than two years but greater than or equal to one year is subject to a 50 percent haircut under the proposed rule for purposes of the external LTD requirement, meaning that only 50 percent of the value of its principal amount would count toward the external LTD requirement. This amortization provision is intended to protect an issuer's loss-absorbing capacity against a run-off period in excess of one year (as might occur during a financial crisis or other protracted stress period) in two ways. First, it requires issuers that rely on eligible external LTD that is vulnerable to such a run-off period (because it is due to be paid in less than two years) to maintain additional loss-absorbing capacity in the form of eligible external LTD. Second, it leads issuers to reduce or eliminate their reliance on loss-absorbing capacity that is due to be paid in less than two years. An issuer could reduce its reliance on eligible external LTD that is due to be paid in less than two years by staggering its issuance, by issuing eligible external LTD that is due to be paid after a longer period, or by redeeming and replacing eligible external LTD once the residual maturity falls below two years.

The proposed rule also provides similar treatment for eligible external LTD that could become subject to a "put" right—that is, a right of the holder to require the issuer to redeem the debt on demand—prior to reaching its stated maturity. Such an instrument would be treated as if it were due to be paid on the day on which it first became subject to the put right, since on that

⁴⁷ This requirement also accords with market convention, which generally defines "long-term debt" as debt with maturity in excess of one year.

day the creditor would be capable of demanding payment and thereby subtracting the value of the instrument from the issuer's loss-absorbing capacity.⁴⁸

5. Governing Law

Eligible external LTD instruments would be required to consist only of liabilities that can be effectively used to absorb losses during the resolution of the external issuer without giving rise to material risk of successful legal challenge. To this end, the proposal would require eligible external LTD to be governed by the laws of the United States or any State.⁴⁹ LTD that is subject to foreign law would potentially be subject to legal challenge in a foreign jurisdiction, which could jeopardize the orderly resolution of the issuer. Foreign courts might not defer to actions of U.S. courts or U.S. resolution authorities that would impair the eligible LTD, for example, where such actions negatively impact foreign bondholders or foreign shareholders. While the presence of recognition regimes abroad does improve the likelihood that these actions would be enforced, it does not guarantee it.

6. Minimum Denomination and Investor Limitations

The proposed rule also would require eligible external LTD to be issued through instruments with minimum principal denominations and would exclude from eligible external LTD instruments that can be exchanged by the holder for smaller denominations.⁵⁰ The purpose

⁴⁸ The date on which principal is due to be paid would be calculated from the date the put right would first be exercisable regardless of whether the put right would be exercisable on that date only if another event occurred (*e.g.*, a credit rating downgrade).

⁴⁹ Consistent with the definition of "State" in the TLAC rule and the Board's Regulation YY, "State" would be defined to mean "any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands." *See* 12 CFR 252.2.

⁵⁰ The Board also is proposing to introduce an identical requirement for external LTD issued pursuant to the TLAC rule, as discussed in Section IX.B below.

of this requirement is to limit direct investment in eligible LTD by retail investors. Significant holdings of LTD by retail investors may create a disincentive to impose losses on LTD holders, which runs contrary to the agencies' intention that LTD holders expect to absorb losses in resolution after equity shareholders. Imposing requirements that will tend to limit investments in LTD to more sophisticated investors will help ensure that LTD holders will monitor the performance of the issuer and thus support market discipline. These more sophisticated investors are more likely to appreciate that LTD that satisfies the requirements of the proposed rule may present different risks than other types of debt instruments issued by covered entities, covered IDIs, or other firms.

The agencies propose setting the minimum denomination requirement at \$400,000. A required minimum denomination of \$400,000 would fall in the range of reasonable minimum denomination levels described below and would generally disincentivize direct holdings of such investments by retail investors without preventing institutional investors from purchasing eligible external LTD. In the agencies' experience, most institutional investors are able to purchase instruments in minimum denominations of \$400,000. In addition, according to the 2019 Survey of Consumer Finances, the median value of the total portfolio of directly-held bonds for households that had at least one bond and had household incomes in the 90th to 100th percentiles was \$400,000.⁵¹ Setting the minimum denomination at this level would likely substantially limit the amount of households that would directly invest in eligible LTD.

⁵¹ Board of Governors of the Federal Reserve System, Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances (Sept. 2020), <https://www.federalreserve.gov/publications/files/scf20.pdf>. This number reflects households that have at least one bond. In this context, "bonds" include only those held directly (not part of a managed investment account or bond fund) and include corporate and mortgage-backed bonds; federal state, and local government bonds; and foreign bonds. *Id.*

The agencies considered alternative minimum denomination thresholds between \$100,000 and \$1 million. There are several arguments to support the reasonableness of a minimum denomination requirement at thresholds between \$100,000 and \$1 million. Setting the minimum denomination at \$100,000 would likely result in well over half of retail investors not participating in the market for direct purchases of eligible LTD, which would meaningfully accomplish the agencies' goal of generally reducing the degree of direct retail investor holdings of eligible LTD. According to the Survey of Consumer Finances, the median value of the total portfolio of directly-held bonds for households that had at least one bond in 2019 was \$121,000.⁵² If eligible LTD is issued in minimum denominations of \$100,000, it would be possible but unlikely that a household that directly holds an aggregate amount of individual bonds equal to this \$121,000 figure would include within such holdings any eligible LTD instruments because, in that case, the minimum denomination associated with the eligible LTD instrument would cause such instrument to represent nearly the entirety of such bond holdings. A minimum denomination requirement of \$1 million could therefore also be reasonable. As noted above, the 2019 Survey of Consumer Finances found that the median value of the aggregate amount of individual, directly-held bonds for households that held at least one bond and with household incomes in the 90th to 100th percentiles was \$400,000.⁵³ Setting the minimum denomination threshold at \$1 million could thus be expected to exclude most households. The agencies also would not expect a minimum \$1 million denomination requirement to exclude a material number of institutional investors from purchasing LTD.

⁵² *Id.*

⁵³ *Id.*

Question 26: What would be the advantages and disadvantages of limiting direct retail investor exposure to eligible external LTD? To what extent would retail investors be likely to directly own eligible external LTD? Do retail investors, investing on a direct basis as opposed to through institutional funds, constitute a substantial portion of the market for debt instruments such as eligible external LTD, such that prohibiting their direct investment would meaningfully reduce the market for eligible LTD?

Question 27: To what extent would limiting direct retail holdings of eligible external LTD contribute to concentration of eligible external LTD holdings by certain market participants?

Question 28: What minimum denomination amount is most appropriate in the range of \$100,000 to \$1 million? Would an amount greater than \$400,000 be appropriate to provide further assurance these instruments will generally be held by investors who are well positioned to exercise market discipline and bear loss in the event of the failure of the issuer? Should the agencies require the debt instrument for eligible LTD to expressly prohibit their exchange into smaller denominations? Please explain.

Question 29: What would be the advantages and disadvantages to limiting indirect exposures to eligible LTD by retail investors?

7. Subordination of Eligible LTD issued by IDIs

The proposed rule would require eligible LTD issued by a covered IDI to be contractually subordinated so that the claim represented by the LTD in the receivership of the IDI would be junior to deposit and general unsecured claims.⁵⁴ This requirement would ensure that eligible LTD absorbs losses prior to depositors and other unsecured creditors, which increases the

⁵⁴ The proposed rule would define “deposits” to have the same meaning as in the FDI Act. See 12 U.S.C. 1813(l). The eligible LTD would rank in priority in an FDIC receivership after deposits and general unsecured liabilities, as established at 12 U.S.C. 1821(d)(11)(A)(iv).

FDIC's optionality when acting as a receiver for a failed IDI. For example, as discussed above, the presence of eligible LTD at an IDI would increase the likelihood that the FDIC could transfer all of the deposit liabilities (insured and uninsured) of a failed bank to a bridge depository institution, thereby preserving the IDI's franchise value.

Requiring contractual subordination would also provide further clarity about the priority of the claim represented by eligible LTD in a receivership of the issuing institution, which facilitates an orderly resolution. The FDIC may need to transfer certain general unsecured claims, which could include trade creditors (if any) and non-dually-payable foreign deposits,⁵⁵ to a newly-established bridge depository institution in order to facilitate its operations. By requiring that eligible LTD issued by IDIs be contractually subordinated to general unsecured creditor claims, the eligible LTD would also serve to protect those claims, providing greater optionality to the FDIC in structuring a resolution. While the eligible LTD requirement for covered entities does not include a contractual subordination requirement, in the case that the IDI fails, eligible LTD issued by covered entities will be structurally subordinated to creditor claims against the subsidiary IDI.

Question 30: What would be the advantages and disadvantages of requiring eligible LTD issued by covered IDIs to be subordinated to general unsecured creditors? What implications, if any, would subordination of eligible LTD to general unsecured creditors have for other requirements?

Question 31: What are the advantages and disadvantages of limiting the types of instruments that qualify as eligible external LTD? Would any of the proposed features for

⁵⁵ See Final Rule on "Deposit Insurance Regulations; Definition of Insured Deposit," 78 *FR* 56583 (Sept. 13, 2013), <https://www.govinfo.gov/content/pkg/FR-2013-09-13/pdf/2013-22340.pdf>.

eligible external LTD not be appropriate for any covered entities or covered IDIs? What characteristics of the specific types of institutions required to issue internal LTD under the proposed rule would caution against requiring eligible internal LTD to meet any of the proposed eligibility requirements?

B. Eligible Internal LTD

The requirements for eligible internal LTD are generally the same as those for eligible external LTD. However, eligible internal debt securities are subject to two key distinctions from eligible external debt securities under the proposed rule. First, eligible internal LTD issued by an IDI must be issued to and remain held by a company that consolidates the covered IDI, generally an upstream parent. Second, eligible internal LTD would not be subject to the minimum principal denomination requirement. As discussed further below, eligible internal LTD issued by a covered IHC would be required to include a contractual conversion trigger and would not include a prohibition against credit sensitive features.

Where a covered IDI issues eligible internal LTD, such eligible internal LTD would be required to be paid in and issued to a company that consolidates the covered IDI.⁵⁶ This helps ensure that eligible internal LTD issued by the covered IDI is supported by stable funding from its parent, which in turn is generally required to issue eligible external LTD. Accordingly, a covered entity could use the proceeds from the issuance of external LTD to purchase internal LTD issued by its IDI subsidiary.

For a covered IDI that is a consolidated subsidiary of a covered IHC, the proposed rule would require that eligible internal LTD of the covered IDI be issued to the covered IHC, or a

⁵⁶ As discussed above, permitted externally issuing IDIs would be permitted to issue eligible LTD to affiliates and to nonaffiliates.

subsidiary of the covered IHC that consolidates the IDI. In other words, to constitute eligible internal LTD, the LTD of such an IDI could not be directly issued to a foreign affiliate that controls the IDI; doing so would mean that losses could be imposed on foreign affiliates through the IDI's LTD, rather than passing up to the covered IHC, which in turn has issued outstanding loss-absorbing LTD. This requirement is consistent with the design of internal eligible LTD issued by a covered IHC to its foreign parent or a wholly owned subsidiary of that foreign parent. Internal LTD issued by a covered IHC to a foreign parent must contain a contractual conversion trigger, which is discussed below.

Certain covered IHCs that would not be expected to enter into resolution upon the failure of their parent FBOs would be required to issue eligible internal LTD to a foreign company that directly or indirectly controls the covered IHC, or to a wholly owned subsidiary of a controlling foreign company.⁵⁷ This would ensure that losses incurred by a covered IHC would be distributed to a foreign affiliate that is not a subsidiary of the covered IHC, which would allow the foreign top-tier parent to manage the resolution strategy for its global operations and manage how the IHC would fit into this global resolution strategy. The requirement also would mitigate the risk that conversion of the eligible LTD to equity, as discussed below, would result in a change in control of the covered IHC, which could create additional regulatory and management complexity during a failure scenario.

⁵⁷ Consistent with the TLAC rule, a “wholly owned subsidiary” of a FBO would be one where the foreign parent owns 100 percent of the subsidiary’s outstanding ownership interests, except that 0.5 percent could be owned by a third party for purposes of establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns. This recognizes the practice of FBOs to own all but a small part of a subsidiary for corporate practice purposes with which the proposed rule is not intended to interfere. Moreover, allowing a very small amount of a foreign parent’s subsidiary to be owned by a third party would not undermine the purposes of this proposed rule.

The proposed rule would not require eligible internal LTD to be issued in minimum denominations. As discussed above, the purpose of the minimum denomination requirement is to increase the chances that LTD holders are sophisticated investors that can provide market discipline for covered entities and covered IDIs. These concerns do not apply in the case of eligible internal LTD, which by definition cannot be held by retail or outside investors.

Question 32: What would be the advantages and disadvantages of permitting all covered IDIs (or certain covered IDIs other than just mandatory or permitted externally issuing IDIs) to satisfy their LTD requirements with external LTD? If covered IDIs were able to satisfy their LTD requirements with external LTD, what would be the advantages and disadvantages of permitting any such eligible external LTD to count towards the LTD requirement of the covered IDI's consolidating parent?

Question 33: What are the advantages and disadvantages of permitting a covered IDI to issue eligible internal LTD to additional non-subsidiary affiliates, beyond consolidating parent entities?

Question 34: What are the advantages and disadvantages of limiting the types of instruments that qualify as eligible internal LTD? Which, if any, of the proposed features for eligible internal LTD instruments would not be appropriate for covered IDIs or covered IHCs and why? What characteristics of any specific types of entities required to issue internal LTD under the proposed rule would caution against requiring eligible internal LTD to meet any of the proposed eligibility requirements?

C. Special Considerations for Covered IHCs

The proposed rule would set forth certain requirements for eligible internal LTD that are specific to covered IHCs. Specifically, the proposed rule would require certain covered IHCs to

issue only eligible internal LTD, where the resolution strategy of the covered IHC's foreign parent follows an SPOE model. In addition, eligible internal LTD issued by covered IHCs must include a contractual provision that is approved by the Board that provides for immediate conversion or exchange of the instrument into common equity tier 1 capital of the covered IHC upon issuance by the Board of an internal debt conversion order. Finally, eligible internal LTD issued by covered IHCs would not be subject to a prohibition on credit-sensitive features.

Only certain covered IHCs would have the option to issue debt externally to third-party investors. Specifically, covered IHCs of FBOs with a top-tier group-level resolution plan that contemplates their covered IHCs or subsidiaries of their covered IHCs entering into resolution, receivership, insolvency, or similar proceedings in the United States (resolution covered IHCs), are permitted to issue eligible LTD externally. Such resolution covered IHCs are more analogous to covered HCs, because both have established resolution plans that involve these entities entering resolution proceedings in the United States. Covered IHCs of FBOs with top-tier group-level resolution plans that do not contemplate their covered IHCs or the subsidiaries of their covered IHCs entering into resolution, receivership, insolvency, or similar proceedings (non-resolution covered IHCs) must issue LTD internally within the FBO, from the covered IHC to a foreign parent or a wholly owned subsidiary of the foreign parent.

1. Identification as a Resolution or Non-Resolution Covered IHC

This proposal would require the top-tier FBO of a covered IHC to certify to the Board whether the planned resolution strategy of the top-tier FBO involves the covered IHC or its subsidiaries entering resolution, receivership, insolvency, or similar proceedings in the United States. The certification must be provided by the top-tier FBO to the Board six months after the effective date of the proposed rule. In addition, the top-tier FBO with a covered IHC must

provide an updated certification to the Board upon a change in resolution strategy. The proposed identification process is similar to the process used for U.S. IHCs subject to the TLAC rule.⁵⁸

A covered IHC is a “resolution covered IHC” under the proposed rule if the certification provided indicates that the top-tier FBO’s planned resolution strategy involves the covered IHC or its subsidiaries entering into resolution, receivership, insolvency or similar proceeding in the United States. A covered IHC is a “non-resolution covered IHC” under the proposed rule if the certification provided to the Board indicates that the top-tier FBO’s planned resolution strategy does not involve the covered IHC or its subsidiaries entering into resolution, receivership, insolvency, or similar proceedings in the United States.

In addition, under the proposed rule, the Board may determine in its discretion that an entity that is certified to be a non-resolution covered IHC is a resolution covered IHC, or that an entity that is certified to be a resolution covered IHC is a non-resolution covered IHC. In reviewing certifications provided with respect to covered IHCs, the Board would expect to review all the information available to it regarding a firm’s resolution strategy, including information provided to it by the firm. The Board would also expect to consult with the firm’s home-country resolution authority in connection with this review. In addition, the Board may consider a number of factors including but not limited to: (i) whether the FBO conducts substantial U.S. activities outside of the IHC chain; (ii) whether the group’s capital and liability structure is set up in a way to allow for losses to be upstreamed to the top-tier parent; (iii) whether the top-tier parent or foreign affiliates provide substantial financial or other forms of support to the U.S. operations (*e.g.*, guarantees, contingent claims and other exposures between group entities); (iv) whether the covered IHC is operationally independent (*e.g.*, costs are

⁵⁸ See 12 CFR 252.164.

undertaken by the IHC itself and whether the IHC is able to fund itself on a stand-alone basis); (v) whether the covered IHC depends on the top-tier parent or foreign affiliates for the provision of critical shared services or access to infrastructure; (vi) whether the covered IHC is dependent on the risk management or risk-mitigating hedging services provided by the top-tier parent or foreign affiliates; and (vii) the location where financial activity that is conducted in the United States is booked.

A covered IHC would have one year or a longer period determined by the Board to comply with the requirements of the proposed rule applicable to non-resolution covered IHCs if it would become a non-resolution covered IHC because it either changes its resolution strategy or if the Board disagrees with the covered IHC's certification of its resolution strategy. For example, if the Board determines that a firm that had certified it is a resolution covered IHC is a non-resolution covered IHC for purposes of the rule, the IHC would have up to one year from the date on which the Board notifies the covered IHC in writing of such determination to comply with the requirements of the rule. Since under the proposed rule a resolution covered IHC has the option to issue LTD externally to third parties but non-resolution covered IHCs do not, the one-year period would provide the covered IHC with time to make any necessary adjustments to the composition of its LTD so that all of its LTD would be issued internally.

As noted, under the proposed rule, the Board may extend the one-year period discussed above. In acting on any requests for extensions of this time period, the Board would consider whether the covered IHC had made a good faith effort to comply with the requirements of the rule.

2. Contractual Conversion Trigger

The proposed rule would require eligible internal LTD, whether issued by resolution covered IHCs or non-resolution covered IHCs, to contain a contractual conversion feature. The contractual trigger would allow the Board to require the covered IHC to convert or exchange all or some of the eligible internal LTD into common equity tier 1 capital on a going-concern basis (that is, without the covered IHC's entry into a resolution proceeding) under certain circumstances. These include if the Board determines that the covered IHC is "in default or in danger of default" and any of the three following additional circumstances applies.⁵⁹ First, the top-tier FBO or any of its subsidiaries is placed into resolution proceedings. Second, the home country supervisory authority consents to the exchange or conversion, or did not object to the exchange or conversion following 24 hours' notice. Third and finally, the Board makes a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the covered IHC under Title II of the Dodd-Frank Act.⁶⁰ The terms of the contractual conversion provision in the debt instrument would have to be approved by the Board.⁶¹

⁵⁹ The phrase "in default or in danger of default" would be defined consistently with the standard provided by section 203(c)(4) of Title II of the Dodd-Frank Act. *See* 12 U.S.C. 5383(c)(4). Consistent with section 203's definition of the phrase, a covered IHC would be considered to be in default or in danger of default upon a determination by the Board that (A) a case has been, or likely will promptly be, commenced with respect to the covered IHC under the U.S. Bankruptcy Code; (B) the covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (C) the assets of the covered IHC are, or are likely to be, less than its obligations to creditors and others; or (D) the covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

⁶⁰ *See* 12 U.S.C. 5383.

⁶¹ The Board has delegated authority to approve these triggers to the General Counsel, in consultation with the Director of the Division of Supervision and Regulation, under certain circumstances. *See* 12 CFR 265.6(j).

The principal purpose of this requirement is to ensure that losses incurred by the covered IHC are shifted to a foreign parent without the covered IHC having to enter a resolution proceeding. If the covered IHC's eligible internal LTD is sufficient to recapitalize the covered IHC in light of the losses that the covered IHC has incurred, this goal could be achieved through conversion of the eligible internal LTD into equity upon the occurrence of the trigger conditions.

Eligible external LTD issued by resolution covered IHCs is not required to contain a contractual conversion trigger. The proposed rule gives resolution covered IHCs the option to issue debt externally to third-party investors under the proposed rule on the same terms as covered HCs.

Question 35: The Board maintains an expectation that, following receipt of an internal debt conversion order, the FBO parent of a covered IHC should take steps to preserve the going concern value of the covered IHC, consistent with the resolution strategy of the top-tier FBO. Accordingly, the Board would expect that, following receipt of an internal debt conversion order, a covered IHC would not make any immediate distributions of cash or property, or make immediate payments to repurchase, redeem, or retire, or otherwise acquire any of its shares from its shareholders or affiliates. Should the Board codify this expectation in the proposed rule for covered IHCs and the U.S. IHCs of global systemically important FBOs? If so, should the regulation text specify that any such distributions or payments are subject to the Board's prior approval?

3. Allowance of Certain Credit-Sensitive Features

The proposed rule would not require eligible internal LTD issued by covered IHCs to include the prohibition against including certain credit-sensitive features that applies to other eligible LTD. This would match the requirements for eligible internal LTD issued by U.S. IHCs

subject to the Board's TLAC rule.⁶² Internal LTD, which by definition is issued between affiliates, is less likely to have a credit-sensitive feature. In addition, in contrast to eligible internal LTD of covered IDIs, eligible internal LTD of a covered IHC could be converted to equity by the Board. The presence of the credit-sensitive feature for the eligible LTD of a covered IHC would be less problematic once the LTD is converted to equity.

Question 36: What would be the advantages and disadvantages of making eligible internal LTD issued by all covered IHCs subject to the proposed rule or the TLAC rule subject to the same prohibition on credit-sensitive features that applies to eligible external LTD?

D. Legacy External LTD Counted Towards Requirements

The agencies anticipate that some covered entities and their subsidiary IDIs, as well as potentially certain other covered IDIs, will have external LTD outstanding at the time of finalization of the proposed rule. To enable covered entities and covered IDIs to most readily and effectively meet minimum LTD requirements as the proposed requirements are phased in, the proposed rule would allow some of this legacy external LTD to count toward the minimum requirements in the proposed rule, even where such legacy external LTD does not meet certain eligibility requirements. Specifically, the proposal would provide an exception for the following categories of outstanding external LTD instruments issued by covered HCs, resolution covered IHCs, and their subsidiary IDIs, and permitted and required externally issuing IDIs, that do not conform to all of the eligibility requirements that will apply to issuances of eligible internal or external LTD going forward once notice of the final rule resulting from this proposal is published in the *Federal Register*: (i) instruments that contain otherwise impermissible acceleration clauses, (ii) instruments issued with principal denominations that are less than the

⁶² See 12 CFR 252.161.

proposed \$400,000 minimum amount, and (iii) in the case of legacy instruments issued externally by a covered IDI, are not contractually subordinated to general unsecured creditors (collectively, eligible legacy external LTD). In addition, eligible legacy external LTD issued by a consolidated subsidiary IDI of a covered entity may be used to satisfy the minimum external LTD requirement applicable to its parent covered HC or resolution covered IHC, as well as any internal LTD requirement applicable to the subsidiary IDI itself. Eligible legacy external LTD cannot be used to satisfy the internal LTD requirement for nonresolution covered IHCs. To qualify as eligible legacy external LTD, an instrument must have been issued prior to the date that notice of the final rule resulting from this proposal is published in the *Federal Register*.

The allowance for eligible legacy external LTD would reduce the costs of modifying the terms of existing outstanding debt or issuing new debt to meet applicable minimum LTD requirements. Over time, debt that is subject to the legacy exception will mature and be replaced by LTD that must meet all of the proposal's eligibility requirements. This approach is consistent with the intent of the legacy exceptions that were made available to entities subject to the TLAC rule in relation to LTD instruments issued prior to December 31, 2016.⁶³

As noted above, the proposal would authorize the agencies, after providing a covered entity or covered IDI with notice and an opportunity to respond, to order the covered entity or covered IDI to exclude from its outstanding eligible LTD amount any otherwise eligible debt securities. These provisions would also apply to eligible legacy external LTD.

Question 37: What are the advantages and disadvantages of creating this exception for certain outstanding legacy external LTD issued by covered entities for purposes of the proposed rule?

⁶³ See 12 CFR 252.61 "Eligible debt security."

Question 38: What are the advantages and disadvantages of establishing the date that notice of the final rule resulting from this proposal is published in the Federal Register as the date before which external LTD must have been issued to qualify as legacy external LTD, as opposed to the date that the rule becomes effective?

Question 39: The agencies welcome quantitative information about outstanding LTD issuances by covered entities or covered IDIs. What amount of LTD do covered entities or covered IDIs have outstanding? What amount would qualify as LTD if all the requirements applied upon finalization of the rule? What amount would qualify as LTD under the proposed exception?

VI. Clean Holding Company Requirements

To promote the resiliency of covered entities and minimize the knock-on effects of the failure of a covered entity to its counterparties and the financial system, the Board proposes to impose “clean holding company” requirements on covered entities. These requirements are similar to those imposed on U.S. GSIBs and U.S. IHCs subject to the TLAC rule.⁶⁴ Specifically, the proposal would prohibit covered entities from having the following categories of outstanding liabilities: third-party debt instruments with an original maturity of less than one year (short-term debt); QFCs with a third party (third-party QFCs); guarantees of a subsidiary’s liabilities if the covered entity’s insolvency or entry into a resolution proceeding (other than resolution under Title II of the Dodd-Frank Act) would create default rights for a counterparty of the subsidiary (subsidiary guarantees with cross-default rights); and liabilities that are guaranteed by a subsidiary of the covered entity (upstream guarantees) or that are subject to rights that would

⁶⁴ See 12 CFR 252.64 and .166.

allow a third party to offset its debt to a subsidiary upon the covered entity's default on an obligation owed to the third party. Additionally, the proposal would limit the total value of a covered entity's (*i.e.*, parent-only, on an unconsolidated basis) non-eligible LTD liabilities owed to nonaffiliates that would rank at either the same priority as or junior relative to eligible LTD to 5 percent of the value of the covered entity's common equity tier 1 capital (excluding common equity tier 1 minority interest), additional tier 1 capital (excluding tier 1 minority interest), and eligible LTD amount. The proposed prohibitions and cap would apply only to the corporate practices and liabilities of the covered entity itself. They would not directly restrict the corporate practices and liabilities of the subsidiaries of the covered entity.

As discussed further below, these provisions provide benefits independent of the resolution strategy of a covered entity, including by improving the resiliency of covered entities, limiting certain transactions that can give rise to financial stability risks before a covered entity fails, and simplifying a covered entity so that it and its relevant subsidiaries can be resolved in a prompt and orderly manner.

These provisions may also advance several goals in connection with the resolution of the covered entity. In the case of SPOE resolution, these provisions support the goal of that resolution strategy to achieve the rapid recapitalization of the material subsidiaries of a covered entity with minimal interruption to the ordinary operations of those subsidiaries. The proposed clean holding company restrictions would advance this goal by prohibiting transactions that would distribute losses that should be borne solely by a covered entity to the covered entity's subsidiaries.

In the case of an MPOE resolution, in which a covered entity and its subsidiary IDI would enter into resolution, these provisions would limit the extent to which a subsidiary of a

covered entity would experience losses or disruptions in its operations as a result of the failure of the covered entity prior to and during resolution. In particular, the prohibition on covered entity liabilities that are subject to upstream guarantees or offset rights would prevent a failed covered entity's creditors from passing their losses on to the covered entity's subsidiaries. Furthermore, covered entities that currently plan for an MPOE resolution strategy may nevertheless be resolved pursuant to an SPOE resolution strategy or adopt an SPOE resolution strategy in the future. Applying the clean holding company requirements to covered entities that currently plan for an MPOE resolution ensures that the benefits of these requirements that may be more significant for covered entities with an SPOE resolution strategy are readily available to covered entities with an MPOE resolution strategy that ultimately are resolved with an SPOE resolution strategy or eventually change their resolution strategy to an SPOE strategy.

Question 40: What would be the advantages and disadvantages of imposing clean holding company requirements on covered entities? What would be the costs or consequences on business practices of imposing these requirements?

Question 41: Under the existing TLAC rule, U.S. IHCs of foreign GSIBs already comply with clean holding company requirements. What characteristics about U.S. IHCs that would be subject to the proposed rule (i.e., not subject to the existing TLAC rule), if any, would make it appropriate or inappropriate to apply such requirements?

Question 42: To what extent are the clean holding company requirements appropriate for a firm that employs an MPOE resolution strategy? What specific challenges, if any, would result from applying the clean holding company requirements to these firms?

Question 43: What changes, if any, would result to an IDI's business model if its parent company is a covered entity that becomes subject to the clean holding company requirements, where the covered entity proposes an MPOE resolution strategy?

A. No External Issuance of Short-Term Debt Instruments

The proposed rule would prohibit covered entities from externally issuing debt instruments with an original maturity of less than one year. Under the proposed rule, a liability has an original maturity of less than one year if it would provide the creditor with the option to receive repayment within one year of the creation of the liability, or if it would create such an option or an automatic obligation to pay upon the occurrence of an event that could occur within one year of the creation of the liability (other than an event related to the covered entity's insolvency or a default related to failure to pay that could trigger an acceleration clause).

The prohibition on external issuance of short-term debt instruments would improve the resiliency of covered entities and their subsidiaries and help mitigate the financial stability risks presented by destabilizing funding runs. A covered entity with significant short-term obligations is less resilient because, in the event of real or perceived stress, short-term creditors can refuse to roll over their loans to the covered entity. In that case, the covered entity must either find replacement funding or sell assets in order to pay its short-term creditors. Both of these outcomes normally would weaken the covered entity because replacement funding is likely to be at a premium and the assets would likely be sold at a loss in order to quickly generate cash. In response to the termination or curtailment of a covered entity's short-term funding or the covered entity's asset sales, counterparties or customers of the covered entity's subsidiaries may also lose confidence in those subsidiaries and unwind transactions with or withdraw funding from them. This issue may be acute for IDIs because their main creditors—depositors—generally have the

ability to demand their funds on short notice. Prohibiting external issuance of short-term debt instruments by covered entities decreases the likelihood of these outcomes, improving the resiliency of a covered entity and its subsidiaries. For example, a covered entity is better able to serve as a source of managerial and financial strength to its subsidiary IDI if the covered entity is not experiencing a run on its short-term liabilities.

Decreasing the likelihood of a funding run also benefits financial stability. The sale of assets by a covered entity to repay its short-term creditors can be a key channel for the propagation of stress through the financial system. If those assets are widely held by other firms, then the sale by a covered entity of those assets can depress the fair value of those assets, thereby significantly affecting other firms' balance sheets, which could precipitate stress at those institutions, which could require further asset sales. The proposed rule would help mitigate these financial stability risks by prohibiting covered entities from relying on short-term funding and reducing run risk.

The prohibition against short-term funding in the proposed rule applies to both secured and unsecured short-term borrowings. Although secured creditors are less likely to take losses in resolution than unsecured creditors, secured creditors may nonetheless be unwilling to maintain their exposure to a covered entity that comes under stress in order to avoid potential disruptions in access to the collateral during resolution proceedings.

Question 44: What are the advantages and disadvantages to the proposed prohibition on external issuance by covered entities of short-term debt instruments? To what extent do covered entities that would be subject to the proposed rule rely on liabilities that would be subject to this prohibition?

B. Qualified Financial Contracts with Third Parties

Under the proposal, covered HCs would be permitted to enter into QFCs only with their subsidiaries and covered IHCs would be permitted to enter into QFCs only with their affiliates, with the exception described below of entry into certain credit enhancement arrangements with respect to QFCs between a covered entity's subsidiary and third parties. The proposal defines QFCs by reference to Title II of the Dodd-Frank Act, which defines QFCs to include securities contracts, commodities contracts, forward contracts, repurchase agreements, and swap agreements, consistent with the TLAC rule.⁶⁵

The failure of a large banking organization that is a party to a material amount of third-party QFCs could pose a substantial risk to the stability of the financial system. Specifically, it is likely that many of that institution's QFC counterparties would respond to the institution's default by immediately liquidating their collateral and seeking replacement trades with third-party dealers, which could cause fire sale effects and propagate financial stress to other firms that hold similar assets by depressing asset prices. The proposed restriction on third-party QFCs would mitigate this threat to financial stability for covered entities under both MPOE and SPOE strategies. In the case of a successful SPOE resolution, covered entities' operating subsidiaries, which may be parties to large quantities of QFCs, should remain solvent and not fail to meet any ordinary course payment or delivery obligations. Therefore, assuming that the cross-default provisions of the QFCs engaged in by the operating subsidiaries of covered entities are appropriately structured, their QFC counterparties generally would have no contractual right to terminate or liquidate collateral on the basis of the covered entity's entry into resolution proceedings. The proposed restrictions also would support successful MPOE resolution as they

⁶⁵ 12 U.S.C. 5390(c)(8)(D).

would encourage covered entities to migrate any external QFC activity currently being conducted at the covered entity level to the relevant operating subsidiaries, a structure that would be better aligned with the activities of the underlying subsidiaries and will enable, in the case of IDI subsidiaries, the direct application of statutory QFC stay provisions provided under the FDI Act with regard to such QFCs. This migration of covered entity QFCs to the subsidiary level should simplify resolution proceedings and enable continuity of necessary QFC activities in resolution. Further, a covered entity itself would have, subject to the exceptions discussed below, no further QFCs with external counterparties, if any, and so the covered entity's entry into resolution proceedings could result in limited or no direct defaults on QFCs and related fire sales, assuming the covered entity complies with the cross-default and upstream guarantee restrictions discussed below. The proposed restriction on third-party QFCs would therefore materially diminish the fire sale risk and contagion effects associated with the failure of a covered entity.

The proposal would only apply prospectively to new agreements entered into after the post-transition period effective date of a final rule. The proposed rule would also exempt certain contracts from the prohibition on third-party QFCs for covered HCs. These exemptions, which are also being proposed for U.S. GSIBs and U.S. IHCs of foreign GSIBs, are discussed further below and would apply to certain underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements.

Question 45: What are the advantages and disadvantages to the proposed prohibition on third-party QFCs? To what extent do covered entities that would be subject to the proposed rule currently enter into QFCs?

Question 46: What would be the cost or consequences on business practices of imposing a prohibition on third-party QFCs?

C. Guarantees that are Subject to Cross-Defaults

The proposal would prohibit a covered entity from guaranteeing (including by providing credit support for) any liability between a direct or indirect subsidiary of the covered entity and an external counterparty if the covered entity's insolvency or entry into resolution (other than resolution under Title II of the Dodd-Frank Act) would directly or indirectly provide the subsidiary's counterparty with a default right. The proposal defines the term "default right" broadly. Guarantees by covered entities of subsidiary liabilities, in the case of covered HCs, and of affiliates, in the case of covered IHCs, that are not subject to such cross-default rights would be unaffected by the proposal. The proposal would only apply prospectively to new agreements established after the effective date of a final rule.

This proposal would improve the resolvability and resilience of covered entities that have adopted MPOE and SPOE strategies. The proposed requirements would support the ability of a covered entity's subsidiaries to continue to operate normally or undergo an orderly wind-down upon the covered entity's entry into resolution. For example, an obstacle to resolution would occur if a covered entity's entry into resolution or insolvency operated as a default by the subsidiary and empowered the subsidiary's counterparties to take default-related actions, such as ceasing to perform under the contract or liquidating collateral. Were subsidiary QFC counterparties to take such actions, the subsidiary could face liquidity, reputational, or other stress that could undermine its ability to continue operating normally, including by placing short-term funding strain on the subsidiary. This could have destabilizing effects, even for a subsidiary of a covered entity with an MPOE resolution strategy as it could erode the franchise

or market value of the subsidiary and pose obstacles to its orderly resolution or wind-down. The proposed prohibition would also complement other work that has been done to facilitate GSIB resolution through the stay of cross-defaults, including the agencies' final rule imposing restrictions on QFCs and the ISDA Protocol.⁶⁶

The prohibition on entry by covered entities into guarantee arrangements covering subsidiary liabilities that contain cross-default rights would exempt guarantees subject to a rule of the Board restricting such cross-default rights or any similar rule of another U.S. Federal banking agency.⁶⁷ For example, the proposal would exempt from this prohibition subsidiary guarantees with cross-default rights that would be stayed if the underlying contracts were subject to the Board, OCC, or FDIC's rules requiring stays of QFC default rights in certain resolution scenarios.⁶⁸ However, these rules currently do not apply to covered entities. Although the Board has not adopted a rule regarding cross-default provisions of financial contracts that would apply to covered entities, the proposal leaves open the possibility that in the future certain guarantees would be permitted to the extent they are authorized under a rule of the Board or another Federal banking agency.

Question 47: Would modifications to the scope of the agencies' existing QFC stay rules be necessary to support the implementation of this provision? What are the advantages and

⁶⁶ See 12 CFR part 47 (OCC); 12 CFR 252 subpart I (Board); 12 CFR part 382 (FDIC); ISDA Universal Resolution Stay Protocol (Nov. 12, 2015), <https://www.isda.org/protocol/isda-2015-universal-resolution-stay-protocol>; ISDA 2018 U.S. Resolution Stay Protocol (Aug. 22, 2018), <https://www.isda.org/protocol/isda-2018-us-resolution-stay-protocol>.

⁶⁷ Liabilities would be considered "subject to" such a rule even if those liabilities were exempted from one or more of the requirements of the rule.

⁶⁸ See, e.g., 12 CFR part 47 (OCC); 12 CFR 252 subpart I (Board); 12 CFR part 382 (FDIC).

disadvantages of doing so? Should such a rulemaking permit certain guarantee arrangements to contain cross-default provisions, consistent with 12 CFR 252 subpart I?

D. Upstream Guarantees and Offset Rights

The proposed rule would prohibit covered entities from having outstanding liabilities that are subject to a guarantee from any direct or indirect subsidiary of the holding company (upstream guarantees). Both MPOE and SPOE resolution strategies are premised on the assumption that a covered entity's operating subsidiaries face no claims from the creditors of the holding company as those subsidiaries either continue to operate normally or undergo separate resolution proceedings. This arrangement could be undermined if a liability of the covered entity is subject to an upstream guarantee because the effect of such a guarantee is to expose the guaranteeing subsidiary (and, ultimately, its creditors) to the losses that would otherwise be imposed on the holding company's creditors. A prohibition on upstream guarantees would facilitate both MPOE and SPOE resolution strategies by increasing the certainty that the covered entity's eligible external LTD holders will be exposed to loss separately from the creditors of a covered entity's subsidiaries.

Upstream guarantees do not appear to be common among covered entities. Section 23A of the Federal Reserve Act already limits the ability of an IDI to issue guarantees on behalf of its parent holding company.⁶⁹ The principal effect of the prohibition would therefore be to prevent the future issuance of such guarantees by material non-bank subsidiaries.

Similarly, the proposed rule prohibits covered entities from issuing an instrument if the holder of the instrument has a contractual right to offset the holder's liabilities, or the liabilities

⁶⁹ Transactions subject to the quantitative limits of section 23A of the Federal Reserve Act and Regulation W include guarantees issued by a bank on behalf of an affiliate. *See* 12 U.S.C. 371c(b)(7)(E); 12 CFR 223.3(h)(5).

of an affiliate of the holder, to any of the covered entity's subsidiaries against the covered entity's liability under the instrument. The prohibition includes all such offset rights regardless of whether the right is provided in the instrument itself. Such offset rights are another device by which losses that are expected to flow to the covered entity's external LTD holders in resolution could instead be imposed on operating subsidiaries and their creditors.

E. Cap on Certain Liabilities

For covered HCs, the proposed rule would limit the amount of non-contingent liabilities to third parties (*i.e.*, persons that are not affiliates of the covered entity) that are not eligible LTD, common equity tier 1 capital, or additional tier 1 capital and that would rank at either the same priority as or junior to the covered entity's eligible LTD in the priority scheme of either the U.S. Bankruptcy Code or Title II of the Dodd-Frank Act to no more than 5 percent of the sum of a covered HC's common equity tier 1 capital (excluding common equity tier 1 minority interest), additional tier 1 capital (excluding tier 1 minority interest), and eligible LTD amount.⁷⁰ The cap would not apply to instruments that were eligible external LTD when issued and have ceased to be eligible (because their remaining maturity is less than one year) as long as the holder of the instrument does not have a currently exercisable put right; nor would it apply to payables (such as dividend- or interest-related payables) that are associated with such liabilities (related liabilities). Liabilities that would be expected to be subject to the cap include debt instruments with derivative-linked features (*i.e.*, structured notes); external vendor and operating liabilities, such as for utilities, rent, fees for services, and obligations to employees; and liabilities arising other than through a contract (*e.g.*, liabilities created by a court judgment) (collectively, unrelated liabilities).

⁷⁰ See 11 U.S.C. 507; 12 U.S.C. 5390(b).

The purpose of this requirement is to limit the amount of liabilities that are not common equity tier 1 capital, additional tier 1 capital, or eligible LTD that would rank at either the same priority as or junior relative to eligible LTD in a bankruptcy or resolution proceeding. This ensures that eligible LTD absorbs losses prior to almost all other liabilities of the covered entity and mitigates the legal risk that non-LTD creditors of a failed covered entity object to or otherwise complicate the imposition of losses in bankruptcy on the class of creditors that includes the eligible LTD of the covered entity. As a practical matter, the cap also would result in a significant portion of a covered entity's unsecured liabilities being composed of eligible LTD, which is preferable because eligible LTD has the features discussed above that more readily absorb loss and facilitate a simpler resolution relative to other types of unsecured debt.

The proposal would not subject a covered entity to this cap if the covered entity elects to subordinate all of its eligible LTD to all of the covered entity's other liabilities. Subordinating all of a covered entity's eligible LTD also would address the risk that non-LTD creditors might object to or otherwise complicate imposing losses on investors in eligible LTD. Permitting covered entities a choice between adhering to the cap on unrelated liabilities or instead contractually subordinating all eligible LTD to all of the covered entity's other liabilities provides greater flexibility in choosing how to comply with the proposed rule.

The proposed calibration of 5 percent is consistent with the 5 percent calibration for the similar cap on unrelated liabilities that applies to the parent holding companies of U.S. GSIBs and U.S. IHCs of foreign GSIBs.⁷¹ Like the cap for U.S. GSIBs and the U.S. IHCs of foreign GSIBs, the proposed cap for a covered entity would be specified as a percentage of the sum of

⁷¹ See 12 CFR 252.64(b)(1) (cap on unrelated liabilities for U.S. GSIBs); 12 CFR 252.166(b)(1) (cap on unrelated liabilities for U.S. IHCs of foreign GSIBs).

the covered entity's common equity tier 1 capital, additional tier 1 capital, and eligible LTD amount. The proposed 5 percent cap would apply to the parent-only balance sheets of covered entities. Specifically, Board staff estimates that, on average, the amount of liabilities that would be subject to this cap as a percentage of the sum of a firm's tier 1 capital and minimum LTD requirement under the proposal would be less than the proposed 5 percent cap.⁷²

Under the proposed rule, the set of liabilities that would count towards the unrelated liabilities cap for a resolution covered IHC would be different than the liabilities that would count towards the cap for non-resolution covered IHCs (discussed below) because resolution covered IHCs are permitted to issue eligible LTD externally to third parties. The cap for resolution covered IHCs applies to unrelated liabilities owed to parent and sister affiliates, as well as to unaffiliated third parties, because these IHCs have the option to issue external LTD that will be expected to bear losses in the resolution covered IHC's individual resolution proceeding and that may rank at either the same priority as or senior to such unrelated liabilities. Thus, these firms may owe significant amounts of unrelated liabilities to their FBO parents or another affiliate that would remain outstanding when the IHC enters resolution, because such entities are not anticipated to support the IHC under the resolution plan of the parent FBO.⁷³ The cap on unrelated liabilities owed to parents and sister affiliates limits the amount of these

⁷² Estimated to be approximately 4.6 percent. Calculated by dividing the average of the numerator and denominator for covered HCs and covered IHCs. The liabilities included in the numerator for this calculation are reported, as of December 31, 2022, as line items 13 and 17 from the FR Y-9LP. The tier 1 capital and total consolidated asset amount used to estimate the minimum LTD requirement for the denominator are from line items HC-R.26 and HC-R.46.a of the FR Y-9C, respectively.

⁷³ This inclusion of liabilities owed to parents of the resolution covered IHC also aligns with the cap on liabilities of covered HCs, which would include liabilities held by shareholders of the covered HC.

liabilities that would be outstanding at the time that a resolution covered IHC enters into resolution.

The cap on unrelated liabilities for non-resolution covered IHCs does not include liabilities owed to foreign affiliates because for such entities, the eligible LTD held by foreign affiliates should, in a resolution scenario, convert to equity of the covered IHC, either through actions of the parent or the Board. Therefore, in contrast to resolution covered IHCs, concern about liabilities owed to the FBO parent or other affiliated parties is minimal.

Question 48: What would be the advantages and disadvantages of the proposed cap on unrelated liabilities? Could the objectives of the cap be achieved through other means? For example, instead of imposing a cap on unrelated liabilities, should the Board require that the LTD required under this rule be contractually subordinated so that it represents the most subordinated debt claim in receivership, insolvency, or similar proceedings? Would a different threshold for the cap be more appropriate for covered HCs or covered IHCs? For example, should the cap be calibrated to be modestly higher than the cap for U.S. GSIBs and the U.S. IHCs of foreign GSIBs because GSIBs are required to maintain outstanding a greater percentage of equity capital?

Question 49: What are the advantages and disadvantages of the proposed calibration of 5 percent of the sum of common equity tier 1 capital, additional tier 1 capital, and eligible LTD amount? Would an alternative value in the range of 4 percent to 15 percent be more appropriate? If so, why?

VII. Deduction of Investments in Eligible External LTD from Regulatory Capital

In 2021, the agencies adopted an amendment to the capital rule that required U.S. GSIBs, their subsidiary depository institutions, and Category II banking organizations to make certain

deductions from regulatory capital for investments in LTD issued by U.S. GSIBs under the Board's TLAC rule to meet the minimum TLAC requirements.⁷⁴ Among other requirements, under the current capital rule a U.S. GSIB, U.S. GSIB subsidiary, or Category II banking organization is required to deduct investments in LTD issued by banking organizations that are required to issue LTD to the extent that aggregate investments by the investing U.S. GSIB, U.S. GSIB subsidiary, or Category II banking organization in the capital and LTD of other financial institutions exceed a specified threshold of the investing banking organization's regulatory capital. For purposes of the threshold deduction, U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations are permitted to exclude a limited amount of LTD investments, with U.S. GSIBs and U.S. GSIB subsidiaries only permitted to exclude LTD investments held for market making purposes. The deduction framework in the current capital rule is intended to reduce interconnectedness and contagion risk by discouraging U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations from investing in the capital of other financial institutions and in the LTD issued by banking organizations that are required to issue LTD.

Distress at a covered entity or IDI that issues externally, and the associated write-down or conversion into equity of its eligible LTD, could have a direct negative impact on the capital of investing banking organizations, potentially at a time when such banking organizations may

⁷⁴ In addition to LTD issued by U.S. GSIBs under the Board's TLAC rule, the 2021 amendments to the capital rule covered LTD issued by foreign global systemically important banking organizations and their U.S. IHCs. *See* Regulatory Capital Treatment for Investments in Certain Unsecured Debt Instruments of Global Systemically Important U.S. Bank Holding Companies, Certain Intermediate Holding companies, and Global Systemically Important Foreign Banking Organizations; Total Loss-Absorbing Capacity Requirements, 86 *FR* 708 (Jan. 6, 2021). This rule also provided for deduction of debt instruments that are ranked at either the same priority as or subordinated to LTD instruments and debt instruments issued by global systemically important FBOs under foreign standards similar to the Board's TLAC rule.

themselves be experiencing financial stress. Requiring that U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations apply the deduction framework to the LTD of a covered entity or IDI that issues externally would discourage these banking organizations from investing in such instruments, and would thereby help to reduce both interconnectedness within the financial system and systemic risk. Therefore, the proposal would expand the current deduction framework in the capital rule for U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations to also apply to eligible external LTD issued by covered entities and mandatory or permitted externally issuing IDIs to meet the minimum LTD requirement set forth in this proposal by amending the capital rule's definition of covered debt instrument. The expanded deduction framework would apply to all legacy external LTD, including externally issued LTD of an internally issuing IDI that was issued prior to the date that the notice of the final rule resulting from this proposal is published in the *Federal Register*. The proposal would not itself otherwise amend the capital rule's deduction framework. Notably, however, the recently released Basel III reforms proposal⁷⁵ would subject Category III and IV banking organizations to the LTD deduction framework that currently only applies to U.S. GSIBs, U.S. GSIB subsidiaries, and Category II banking organizations and would apply a heightened risk weight to investments in LTD that are not deducted. Thus, if both this proposal and the Basel III reforms proposal are adopted as proposed, Category III and IV banking organizations will newly become subject to the capital rule's deduction framework for investments in LTD and the deduction framework

⁷⁵ On July 27, 2023, the agencies issued a proposal to amend the capital requirements for banking organizations with total assets of \$100 billion or more and their subsidiary depository institutions (*i.e.*, banking organizations subject to category I-IV standards), and to banking organizations with significant trading activity (Basel III reforms proposal). See Joint press release: Agencies request comment on proposed rules to strengthen capital requirements for large banks (July 27, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm>.

would be expanded to apply to eligible LTD issued by covered entities and mandatory and permitted externally issuing IDIs.

Question 50: What are the advantages and disadvantages of expanding the deduction framework to apply to eligible external LTD issued to satisfy the LTD requirements set forth in the proposal? To what extent would the proposed deduction from regulatory capital of investments in eligible external LTD restrict the ability of external issuers to issue eligible external LTD?

Question 51: What would be the advantages or disadvantages of an alternative approach of requiring the deduction of eligible external LTD of only certain external issuers? For example, should eligible LTD of only larger firms within Categories I-IV be subject to the deduction framework? Should eligible external LTD issued by IDIs that are covered IDIs solely due to their affiliation with another covered IDI not be subject to the deduction framework? What considerations should affect whether an external issuer's eligible external LTD should be subject to the deduction framework?

Question 52: What would be the advantages and disadvantages of amending the proposed application of the deduction framework to exclude from deduction eligible legacy external LTD?

VIII. Transition Periods

The agencies propose to provide a transition period for covered entities and covered IDIs that would be subject to the rule when it is finalized, and a transition period for covered entities and covered IDIs that become subject to the rule after it is finalized. The purpose of these proposed transition periods is to minimize the effect of the implementation of the proposal on

covered entities and covered IDIs, as well as on credit availability and credit costs in the U.S. economy.

The agencies propose to provide covered entities and covered IDIs three years to achieve compliance with the final rule. The three-year transition period would be the same for all covered IDIs, regardless of whether a covered IDI is required to issue internally to a parent or externally. Three years would provide covered entities and covered IDIs adequate time to make necessary arrangements to comply with the final rule without creating undue burden that would have unreasonable adverse impacts for covered entities and covered IDIs. The agencies may accelerate or extend this transition period in writing for the covered IDIs for which they are the appropriate Federal banking agency, and the Board may accelerate or extend this transition period in writing for covered entities.

Over that three-year period, covered entities and covered IDIs would need to meet 25 percent of their LTD requirements by one year after finalization of the rule, 50 percent after two years of finalization, and 100 percent after three years. This required phase-in schedule would apply to covered entities and covered IDIs that are subject to the rule beginning on the effective date of the finalized rule, and would likewise apply upon a firm becoming subject to the rule sometime after finalization. The proposed rule would provide additional clarifications regarding the three-year transition period to prevent evasion of the rule. The three-year transition period would not restart for a covered IDI that changes charters. For example, a national bank subject to the OCC's proposed rule would not have an additional three years to transition into compliance with the FDIC's proposed rule if the national bank changes its charter to a state-chartered savings association. Likewise, the holding company of such a bank would not have an additional three years to transition to the Board's rule for SLHCs. Covered entities that

transition from being subject to the proposed LTD requirement to the requirements applicable to U.S. GSIBs or U.S. IHCs controlled by foreign GSIBs that are codified in the Board's existing TLAC rule would have three years to comply with those requirements. However, during that three-year period, such entities would be required to continue to comply with the LTD requirement and other requirements of the proposed rule. That is, a covered entity that is subject to the proposed rule and then becomes subject to the TLAC rule must continue to satisfy the minimum LTD and other requirements of the proposed rule during the three-year transition period for the TLAC rule. During this transition period, the covered entity would be required to issue new eligible LTD if necessary to maintain the minimum eligible LTD requirement set forth in the proposed rule.

Question 53: Is three years an appropriate amount of time for firms that become subject to the proposed rule immediately upon finalization and those that become subject after the date on which the rule is finalized to transition into full compliance? Would a shorter period, such as two years, be an adequate transition period? If so, should a shorter transition period also include a phase-in of 50 percent of the LTD requirement by year one and 100 percent by year two? Alternatively, would a longer period, such as four years, be appropriate?

Question 54: Should the agencies consider a longer transition specifically for Category IV covered entities and their covered IDI subsidiaries, which may have less existing LTD than larger covered entities and covered IDIs? For example, should these companies have four years to transition to the proposed requirements?

Question 55: During the three-year period proposed by the agencies, what would be the advantages and disadvantages of requiring covered entities and covered IDIs to submit an implementation plan for complying with the proposed requirements at the end of the three-year

period rather than or in addition to satisfying the specified phased in percentages of the LTD requirement on the timeline proposed?

Question 56: Should the agencies consider requiring a different phase in, or a phase in that requires partial compliance at a different date? For example, should the agencies consider a phase in that requires covered entities and covered IDIs to meet 30 percent of their LTD requirement by year one, 60 percent by year two, and 100 percent by year three? What factors should the agencies consider in determining the appropriateness of a phase in requirement (for example, how should the agencies account for the fact that some covered entities already have existing LTD instruments that would be eligible LTD) or in structuring the phase-in requirement?

Question 57: If the agencies revise the proposed transition period to be less than three years or retain the phase-in requirement, should the Board amend the requirements in the existing TLAC rule for U.S. GSIBs and U.S. IHCs of global systemically important FBOs to include the same transition periods or phase-in requirement?⁷⁶

IX. Changes to the Board’s TLAC rule

In 2017, the Board finalized a TLAC and LTD requirement for the top-tier parent holding companies of domestic U.S. GSIBs (TLAC HCs) and IHCs of foreign GSIBs (TLAC IHCs and, together with TLAC HCs, “TLAC companies”) to improve the resiliency and resolvability of TLAC companies and thereby reduce threats to financial stability.⁷⁷ The TLAC rule is intended

⁷⁶ Under the TLAC rule, U.S. GSIBs and U.S. IHCs of global systemically important FBOs have three years from when they meet the scope of application requirements for that rule. *See* 12 CFR 252.60(b)(2) and .160(b)(2).

⁷⁷ Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate

to improve the resolvability of GSIBs without extraordinary government support or taxpayer assistance by establishing “total loss-absorbing capacity” standards for the GSIBs and requiring them to issue a minimum amount of LTD. The TLAC rule requires TLAC companies to maintain outstanding minimum levels of TLAC and eligible LTD;⁷⁸ establishes a buffer on top of both the risk-weighted asset and leverage components of the TLAC requirements, the breach of which would result in limitations on a TLAC company’s capital distributions and discretionary bonus payments;⁷⁹ and applies “clean holding company” limitations to TLAC companies to further improve their resolvability and the resiliency of their operating subsidiaries.⁸⁰

Since adopting the TLAC rule in 2017, the Board has gained experience administering the rule, including by responding to questions from TLAC companies and monitoring compliance by TLAC companies with the rule. In light of that experience, the Board is proposing to make several amendments to the TLAC rule, as discussed in greater detail below. These amendments generally are technical or intended to improve harmony between provisions within the TLAC rule and address items that have been identified through the Board’s administration of the TLAC rule.

Holding Companies of Systemically Important FBOs, 82 *FR* 8266 (Jan. 24, 2017), <https://www.federalregister.gov/documents/2017/01/24/2017-00431/total-loss-absorbing-capacity-long-term-debt-and-clean-holding-company-requirements-for-systemically#citation-102-p8300>.

⁷⁸ 12 CFR part 252, subparts G and P.

⁷⁹ 12 CFR 252.63(c) and .165(d).

⁸⁰ 12 CFR 252.64 and .166.

A. Haircut for LTD Used to Meet TLAC Requirement

The TLAC rule requires TLAC companies to maintain a minimum amount of TLAC and a minimum amount of eligible LTD.⁸¹ Eligible LTD generally can be used to satisfy both these requirements. However, eligible LTD must have minimum maturities to count towards the requirements, and the minimum maturity required to count towards each requirement is different. For both the TLAC and LTD requirements, 100 percent of the amount of eligible LTD that is due to be paid in two or more years counts towards the requirements, and zero percent of the amount of eligible LTD that is due to be paid within one year counts towards the requirements. However, while 100 percent of the amount of eligible LTD that is due to be paid in one year or more but less than two years counts towards the TLAC requirement, only 50 percent of the amount counts towards the LTD requirement.⁸²

When it adopted the TLAC rule, the Board stated that the purpose of the 50 percent haircut applied for purposes of the LTD requirement with respect to the amount of eligible LTD that is due to be paid between one and two years is to protect a TLAC company's LTD loss-absorbing capacity against a run-off period in excess of one year (as might occur during a financial crisis or other protracted stress period) in two ways. First, the 50 percent haircut requires TLAC companies that rely on eligible LTD that is vulnerable to such a run-off period (because it is due to be paid in less than two years) to maintain additional LTD loss-absorbing capacity. Second, it incentivizes TLAC companies to reduce or eliminate their reliance on LTD loss-absorbing capacity that is due to be paid in less than two years, since by doing so they avoid being required to issue additional eligible LTD in order to account for the haircut. A TLAC

⁸¹ See 12 CFR 252.62-.62, .162, and .165.

⁸² Compare 12 CFR 252.62(b)(1)(ii) and .162(b)(1)(ii) with 12 CFR 252.63(b)(3), .165(c)(1)(iii), and .165(c)(2)(iii).

company could reduce its reliance on eligible LTD that is due to be paid in less than two years by staggering its issuance, by issuing eligible LTD that is due to be paid after a longer period, or by redeeming and replacing eligible LTD once the amount due to be paid falls below two years.

The Board is proposing to amend the TLAC rule to change the haircuts that are applied to eligible LTD for purposes of compliance with the TLAC requirement to conform to the haircuts that apply for purposes of the LTD requirement. Accordingly, the proposed rule would allow only 50 percent of the amount of eligible LTD with a maturity of one year or more but less than two years to count towards the TLAC requirement. This change would simplify the rule so that the same haircut regime applies across the TLAC and LTD requirements. Adopting the 50 percent haircut for the TLAC requirement also would support the goals the Board noted for applying the haircut for purposes of the LTD rule. Applying the haircut to the TLAC requirement would improve TLAC companies' management of the tenor of their eligible LTD. The proposed change would incentivize firms to reduce reliance on eligible LTD with maturities of less than two years and increase the TLAC requirement for firms that rely heavily on eligible LTD with maturities of less than two years.

Staff analyzed the change in TLAC ratios that would be implied by this proposed 50 percent haircut on eligible LTD maturing between one and two years. Seventeen entities are currently subject to TLAC requirements, eight of which are U.S. GSIBs and nine of which are foreign GSIB IHCs. The staff analysis relied on data from the FR Y-9C as of March 2023. On this basis, overall aggregate TLAC at these seventeen GSIBs would decline by roughly \$65 billion (some 2.7 percent) as a result of the proposed change to the eligible LTD haircut.

Based on these estimates, staff projects that all GSIBs would meet or nearly meet their TLAC requirements under the proposed change.⁸³ Staff did not consider whether the proposal might prompt behavioral changes at the seventeen GSIBs, primarily because the magnitudes of possible declines in TLAC and the potential associated effects appear to be modest, as discussed above. However, staff would anticipate that impacted entities would adjust their issuance to mitigate the impact of this change.

The agencies invite comment on the implications of the interaction of the proposal to modify the eligible LTD haircut with proposed changes to the agencies' capital rule under the Basel III proposal.

Question 58: How would a different remaining maturity requirement or amortization schedule better achieve the objectives of the TLAC rule?

B. Minimum Denominations for LTD Used to Satisfy TLAC Requirements

The Board proposes to amend the TLAC rule so that eligible LTD must be issued in minimum denominations for the same reasons discussed in section III.C.7 of this supplementary information section.

Question 59: Should the Board impose a higher minimum denomination for TLAC companies subject to the TLAC rule? Should the minimum denomination be higher (e.g., \$1 million) for companies subject to the TLAC rule than for covered entities subject to the newly proposed LTD requirement?

⁸³ The agencies recognize that their Basel III reforms proposal would, if adopted, increase risk-weighted assets for this group of firms, which would mechanically increase TLAC requirements and create moderate projected shortfalls in TLAC at several GSIBs. The change in eligible LTD proposed here could modestly increase the size and number of TLAC shortfalls beyond those projected as a result of the Basel III proposal.

C. Treatment of Certain Transactions for Clean Holding Company Requirements

The TLAC rule applies clean holding company requirements to the operations of TLAC HCs to further improve their resolvability and the resiliency of their operating subsidiaries.⁸⁴ One of these requirements is that a TLAC HC must not enter into a QFC, with the exception of entry into certain credit enhancement arrangements with respect to QFCs between a TLAC HC's subsidiary and third parties, with a counterparty that is not a subsidiary of the TLAC HC (the "QFC prohibition").⁸⁵ The final rule defined QFC as it is defined in 12 U.S.C. § 5390(c)(8)(D).⁸⁶ This definition includes a "securities contract," which is further defined to mean "a contract for the purchase, sale, or loan of a security,... a group or index of securities,... or any option on any of the foregoing, including any option to purchase or sell any such security,... or option."⁸⁷

The Board explained that the QFC prohibition would mitigate the substantial risk that could be posed by the failure of a large banking organization that is a party to a material amount of third-party QFCs. First, the Board noted that TLAC HCs' operating subsidiaries, which are parties to large quantities of QFCs, are expected to remain solvent under an SPOE resolution and not expected to fail to meet any ordinary course payment or delivery obligations during a successful SPOE resolution. Therefore, assuming that the cross-default provisions of the QFCs engaged in by the operating subsidiaries of TLAC HCs are appropriately structured, their QFC counterparties generally would have no contractual right to terminate or liquidate collateral on the basis of the TLAC HC's entry into resolution proceedings. Second, the TLAC HCs

⁸⁴ See 12 CFR 252.64 and 12 CFR 252.166.

⁸⁵ See 12 CFR 252.64(a)(3).

⁸⁶ See 12 CFR 252.61 "Qualified financial contract."

⁸⁷ *Id.*

themselves would be subject to a general prohibition on entering into QFCs with external counterparties, so their entry into resolution proceedings would not result in substantial QFC terminations and related fire sales. The restriction on third-party QFCs would therefore materially diminish the fire sale risk and contagion effects associated with the failure of a TLAC HC.

In its administration of the rule since it was finalized, the Board has gained experience with agreements that may constitute QFCs and which the Board believes may not present the risks intended to be addressed by the clean holding company requirements. Accordingly, the Board proposes to amend the clean holding company requirements so that TLAC HCs may enter into underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements, each described below. The Board also proposes to amend the rule so that the Board may determine, upon request, that additional agreements are not subject to the QFC prohibition.

These changes would also be applied to the clean holding company requirements proposed for covered HCs, discussed in section VI.B of this supplementary information.

1. Underwriting Agreements

An underwriting agreement is an agreement between an issuer of securities, in this case, a U.S. GSIB, and one or more underwriters, dealers, brokers or other purchasers for the purpose of issuing or distributing securities of the issuer, whether by means of an underwriting syndicate or through an individual dealer or broker. These agreements generally will not represent a risk to the orderly resolution of a U.S. GSIB because the underwriter, not the U.S. GSIB, has the payment obligations in connection with the issuance of securities by the U.S. GSIB, which limits the potential adverse impact on the liquidity of the U.S. GSIB and, therefore, its resolvability.

2. Fully Paid Structured Share Repurchase Agreements.

Defined as an arrangement between an issuer (*e.g.*, the top level parent holding company of a U.S. GSIB) and a third-party broker-dealer in connection with a stock repurchase plan of the issuer where the issuer enters into a forward contract with the broker-dealer that is fully prepaid by the issuer and where the broker-dealer agrees to purchase the issuer's stock in the market over the term of the agreement in order to deliver the shares to the issuer. These agreements may not present risks to the orderly resolution of a U.S. GSIB because the full purchase price of the stock is paid in advance and the firm has no ongoing liability, again limiting potential future liquidity impacts.

3. Employee and Director Compensation Agreements

A stock option represents the right of an employee to purchase a specific number of the issuer's (*e.g.*, U.S. GSIB) shares at a fixed price, also known as a strike price (or exercise price), within a certain period of time (or, if the stock option is to be cash-settled, to receive a cash payment reflecting the difference between the strike price and the market price at the time of exercise). These agreements also are unlikely to present risks to the orderly resolution of a U.S. GSIB because the exercise of such a QFC in times of material financial distress or pending bankruptcy is unlikely to have any material effect on the cash position of the issuer. If the stock options are not exercised, the employee becomes a creditor in the bankruptcy proceedings that will be effectively subordinated to the same level as common stock under § 510(b) of the U.S. Bankruptcy Code.

4. Other Agreements as Determined by the Board.

The Board also proposes to reserve the authority to determine that additional agreements would not be subject to the QFC prohibition if the Board determines that exempting the

agreement from the QFC prohibition would not pose a material risk to the orderly resolution of the U.S. GSIB or the stability of the U.S. banking or financial system. This would provide the Board flexibility to exempt other agreements from the QFC prohibition in the future. The Board expects it would delegate authority to act on these requests to staff.

Question 60: Would exempting underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements from the QFC prohibition present risk to the orderly resolution of a TLAC HC?

Question 61: Should the Board include in the regulation factors it would consider in determining to exempt additional agreements from the QFC prohibition?

Question 62: Would permitting a TLAC HC to enter into these agreements undermine the purposes of the clean holding company requirements? For example, would it complicate the orderly resolution of U.S. GSIBs or pose financial stability risks?

Question 63: Should the proposed exemptions from the QFC prohibition be available for the similar QFC prohibition applicable to TLAC IHCs?⁸⁸ Should they be extended to covered IHCs? To what extent do TLAC and covered IHCs engage in underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements?

D. Disclosure templates for TLAC HCs

The Board has long supported meaningful public disclosure by TLAC HCs. Public disclosures of a TLAC HC's activities and the features of its risk profile work in tandem with the regulatory and supervisory frameworks applicable to TLAC HCs by helping to support robust

⁸⁸ See 12 CFR 252.166(a)(3).

market discipline. In this way, meaningful public disclosures help to support the safety and soundness of TLAC HCs and the financial system more broadly.

The proposal would require a TLAC HC to make certain quantitative and qualitative disclosures related to the creditor ranking of the TLAC HC's liabilities. The proposal would not subject a banking organization that is a consolidated subsidiary of a TLAC HC to the proposed public disclosure requirements. The proposal would require a TLAC HC to comply with the same standards related to internal controls and verification of disclosures, as well as senior officer attestation requirements, as applied to the disclosure requirements of banking organizations under the Board's capital rule. A TLAC HC could leverage existing systems it has in place for other public disclosures, including those set forth in the agencies' regulatory capital rule.

1. Frequency of Disclosures

The proposal would require that disclosures be made at least every six months on a timely basis following the disclosure as of date. In general, where a TLAC HC's fiscal year end coincides with the end of a calendar quarter, the Board would consider disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10-K annual report.

2. Location of Disclosures

The last three years of the proposed disclosure would be required to be made publicly available (for example, included on a public website). Except as discussed below, management would have some discretion to determine the appropriate medium and location of the disclosures. Furthermore, a TLAC HC would have flexibility in formatting its public disclosures, subject to the requirements for using the disclosure template, discussed below.

The Board encourages management to provide the disclosure on the same public website where it provides other required disclosures. This approach, which is broadly consistent with current disclosure requirements, is intended to maximize transparency by ensuring that disclosure data is readily accessible to market participants while reducing burden on TLAC HCs by permitting a certain level of discretion in terms of how and where data are disclosed.

3. Specific Disclosure Requirements

The purpose of the proposed disclosure requirement is to display in an organized fashion the priority of a TLAC HC's creditors. TLAC HCs may alter the formatting of the template to conform to publishing styles used by the TLAC HCs. However, the text set forth in the template must be used by the TLAC HC.

Table 1 to § 252.66, "Creditor ranking for resolution entity," would require a TLAC HC to disclose information regarding the TLAC HC's creditor ranking individually and in aggregate at the TLAC HC's resolution entity. Specifically, the table would require a TLAC HC to identify and quantify liabilities and outstanding equity instruments that have the same or a junior ranking compared to all of the TLAC HC's eligible LTD, ranked by seniority in the event of resolution and by remaining maturity for instruments that mature.

Question 64: To what extent do the disclosure tables proposed increase the likelihood that market participants fully understand the creditor hierarchy? Should the Board additionally require all Category II, III, and IV covered entities to provide the proposed disclosures?

Question 65: Should the Board require a similar disclosure for liabilities of material subgroup entities of a TLAC HC?

Question 66: What information, if any, that could be subject to disclosure under the proposal might be confidential business information that a TLAC HC should not be required to

disclose? If there is any such information, should the Board provide the ability for a TLAC HC to not disclose particular information that is confidential business information, as is provided in 12 CFR 217.62(c)?

E. Reservation of Authority

In addition, the proposed rule would reserve the authority for the Board to require a TLAC company to maintain eligible LTD or TLAC instruments that are greater than or less than the minimum requirement currently required by the rule under certain circumstances. This reservation of authority would ensure that the Board could require a company entity to hold additional LTD or TLAC instruments if the company poses elevated risks that the rule seeks to address.

F. Technical Changes to Accommodate New Requirements

The Board also proposes to make technical changes to simplify the regulation text, where possible. Among other things, these technical changes would (i) move definitions that currently are shared between subparts G and P of Regulation YY to the common definition section in section 252.2 of Regulation YY; (ii) move the transition provisions for the certification provided by covered IHCs to the transition section of the TLAC rule; and (iii) eliminate instances where the regulation text referred to a number of years and a number of days, as not all years have 365 days. These changes are not intended to affect the substance of the rule.

X. Economic Impact Assessment

A. Introduction and Scope of Application

The proposed rule would increase the amount of loss absorbing capacity in the event a covered IDI fails, thereby reducing costs to the DIF and increasing the likelihood of least-cost

resolutions in which all deposits are transferred to an acquiring entity. As noted below, the experience in recent bank failures suggests that these benefits could be substantial.

The agencies examined the benefits and costs of the proposed rule. The economic analysis discussed here examines the proposal with an emphasis on a steady-state perspective, meaning that it evaluates the long run effect of the fully phased-in requirement. Because current borrowing practices of covered entities and covered IDIs may not be representative of long run behavior, the agencies consider the phased-in requirement relative to two alternative assumptions about the level of LTD that covered entities and covered IDIs would choose to maintain in the absence of the proposal. One approach (the “incremental shortfall approach”) assumes that the current reported principal amount of LTD issuance at covered entities and covered IDIs is a reasonable proxy for the levels of such debt that would be maintained in future periods in the absence of the proposed rule. An alternate approach (the “zero baseline approach”) assumes that covered entities and covered IDIs would, in the absence of the proposed rule, choose to maintain no instruments that satisfy the proposed rule’s requirements in future periods. Under both forms of analysis, the agencies conclude that the proposal is likely to moderately increase funding costs for covered entities and covered IDIs because LTD – which is generally more expensive than the short-term funding that the agencies anticipate it would replace – would be required as part of the funding structure of a covered entity or covered IDI.

Under the incremental shortfall approach, the estimated steady-state cost of the proposal would derive from the additional LTD the covered entities would need to issue to meet any long-term shortfalls, which as described below would imply only a modest increase in funding costs. Under the zero baseline approach, the steady-state cost of the proposal is the anticipated cost associated with the full estimated amount of LTD that would be currently required if the

regulation were fully phased-in. Under this more conservative zero baseline approach, the estimated decrease in profitability would be greater than under the incremental shortfall approach, though, as described below, the decrease is estimated to be moderate.

The primary benefit of the proposed rule is that it supports wider options for the orderly resolution of covered entities and covered IDIs in the event of their failure. Loss-absorbing LTD may facilitate the ability of the FDIC to resolve an IDI in a manner that minimizes loss to the DIF. By expanding resolution options available to regulators, the LTD requirement may also reduce the need to rely on merger-based resolutions that can potentially increase the systemic footprint of the acquiring institution or that may raise other types of concerns, such as those related to safety and soundness or consumer issues.

The proposed LTD requirement would apply to Category II, III, and IV banking organizations, including (i) IDIs with at least \$100 billion in total consolidated assets that are consolidated by a covered entity or are subsidiaries of a foreign GSIB, and their affiliated IDIs and, (ii) IDIs with at least \$100 billion in total consolidated assets that are not controlled subsidiaries of a further parent entity (mandatory externally issuing IDIs), and their affiliated IDIs, and (iii) IDIs with at least \$100 billion in total consolidated assets and (a) that are consolidated subsidiaries of a company that is not a covered entity, a U.S. GSIB or a foreign GSIB subject to the TLAC rule, or (b) that are controlled but not consolidated by another company (permitted externally issuing IDIs) and the affiliated IDIs of the foregoing.⁸⁹ As of June 1, 2023, top-tier companies that would become newly subject to LTD requirements under the proposal are projected to comprise 18 covered HCs, 1 covered IHC, and 1 permitted

⁸⁹ Covered entity statistics are from the FR Y-9C as of March 31, 2023. Total covered IDI assets are from the Call Report as of March 31, 2023. Both reflect estimated effects of changes in organizational structure (*e.g.*, mergers) through June 1, 2023.

externally issuing IDI. Accordingly, the agencies analyzed estimated measures of aggregate costs for these companies (the “analysis population”). Within these organizations, there are 24 covered IDIs.⁹⁰ In aggregate, IDIs consolidated by organizations that would be subject to external LTD requirements held a combined \$5.3 trillion in total assets, with an average asset amount of \$220 billion, and the asset amounts ranged between \$8 million and \$690 billion.⁹¹

This impact assessment builds on organization-level analysis that focuses on the highest level of consolidation at which banking organizations within the scope of the proposal would be subject to its requirements.

B. Benefits

The benefits of this proposal fall into two broad categories. First, LTD provides a “gone-concern” benefit that mitigates the spillovers, dislocations, and welfare costs that could arise from the failure of a covered entity. As noted in section I.A.2, by augmenting loss-absorbing capacity, LTD can provide firms and banking regulators greater flexibility in responding to the failure of covered entities and covered IDIs. The availability of eligible LTD may increase the likelihood of an orderly resolution for an IDI that fails and thereby help minimize costs to the DIF. Even where the amount of outstanding LTD is insufficient to absorb enough losses so that all depositor claims at the IDI are fully satisfied, the presence of such gone-concern loss-

⁹⁰ For purposes of the aggregate analysis in this section, the number of covered IDIs does not include IDIs that are fully consolidated subsidiaries of other covered IDIs.

⁹¹ In addition to the IDI subsidiaries of non-GSIB LBOs that are newly made subject to LTD requirements under the provisions of the proposal, there are 6 IDI subsidiaries of IHCs owned by foreign GSIBs that would become subject to new internal LTD requirements under the proposal. These IDI subsidiaries of foreign GSIB IHCs held a combined \$821 billion in total assets as of March 31, 2023. These IDIs are not separately included in the analysis population since the proposal does not change the nature or quantum of LTD that already apply at the parent IHC level for these IDIs.

absorbing capacity would reduce potential costs to the DIF and may expand the range of resolution options available to policymakers.

The recent failures of SVB, SBNY, and First Republic highlight the risks posed by the failure of a covered IDI, including systemic contagion, as well as the challenges that the FDIC can face in executing an orderly resolution for covered IDIs. This proposal, if it had been in place and fully-phased-in when these failures occurred, would have provided billions of dollars of loss absorbing capacity. The agencies believe that the presence of a substantial layer of liabilities that absorbs losses ahead of uninsured depositors could have reduced the likelihood of those depositors running, might have facilitated resolution options that were not otherwise available, and could have made systemic risk determinations unnecessary.

Second, LTD provides a “going-concern” benefit by supporting resilience of covered entities and covered IDIs, further promoting financial stability. The proposed LTD requirement would improve the resilience of covered entities and covered IDIs by enhancing the stability of their funding profiles. Further, investors in LTD could also exercise market discipline over issuers of LTD, supporting market signals that will be of value to both regulators and market participants. From either perspective, the increased range of options for resolution resulting from the proposal could help to alleviate the possible contagion effects of one or more covered entities approaching default. This section examines these potential benefits in further detail.

1. Benefits of LTD-Enhanced Orderly Resolutions (Going-Concern)

If adopted, the proposed rule would help improve the likelihood that, in the event a covered IDI fails, a sufficient amount of non-deposit liabilities will be available to absorb losses that otherwise might be imposed on uninsured depositors in resolution (*e.g.*, if LTD helps to enable whole bank resolution) and to potentially facilitate other resolution options without

invoking the systemic risk exception. This includes increasing the likelihood of a least-cost resolution scenario in which all deposits can be transferred to the acquiring entity, thereby maintaining depositor access to financial services and supporting financial stability. The magnitude of these benefits in any future IDI resolution would depend on the extent of losses incurred by the failing institution and the extent of its reliance on uninsured deposits. As a general matter, achievement of these benefits, including the policy goals and any attendant effects on the DIF, may also be influenced by future regulatory developments and the operation of bank supervision and regulation more broadly.

More specifically, the agencies examined three channels by which an LTD requirement may provide gone-concern economic benefit.

First, the additional loss-absorbing capacity from LTD in resolution may increase the likelihood that some or all uninsured deposits are protected from losses, even under the least-cost test. This outcome can be beneficial because interruption of access to uninsured deposits and associated services, already harmful to deposit customers, may also have spillover effects that can adversely affect a broader set of economic activity (*e.g.*, if businesses use uninsured deposits to conduct payroll service).⁹² Further, because the LTD requirement for covered entities and covered IDIs can expand regulators' options to reduce or eliminate the potential losses to uninsured deposits, whether in ex-ante (market) expectation or in ex-post outcomes, the requirement may help to limit or reduce the risk of financial contagion, dislocations, and deadweight costs associated with the failure of a covered entity or covered IDI.

⁹² Deposit insurance already protects the access to financial services and assets of insured depositors. This protection would not change under the proposed rule.

Second, by providing additional loss-absorbing capacity, LTD may increase the likelihood that the least cost resolution option is one that does not involve a merger that results in a sizable increase in the systemic footprint or market concentration of the combined organization, thereby producing potential economic costs. By creating a substantially larger combined successor firm, a merger-based or sale-of-business-line acquisition by another large banking or nonbank financial firm may meaningfully increase the acquiring firm's systemic footprint. While the existing regulatory and supervisory framework is designed to address the expansion of systemic footprints, there may be unexpected costs to be borne by the public. However, increasing the likelihood that a different solution is the least cost resolution option could result in policymakers avoiding transactions that could raise other concerns.

Third, the loss-absorption afforded by LTD may lower the risk that multiple concurrent failures of covered entities or covered IDIs might occur and impose high costs on the DIF, necessitating higher assessments to refill it and potentially requiring other extraordinary actions to stabilize banking conditions.

2. Strengthening Bank Resilience (Going-Concern Benefit)

The agencies analyzed two channels for going-concern benefits of the proposed rule. First, the establishment of an LTD requirement and the associated increase in loss-absorbing capacity improves the funding stability of covered entities and covered IDIs and provides firms and banking regulators greater flexibility in resolution. These features in turn further reinforce confidence in the safety of deposits at U.S. covered IDIs. For example, LTD may increase the likelihood of whole bank resolutions of covered IDIs, in which all deposits are transferred to acquiring entities. In this way, the agencies believe the proposal may also reduce the risk of sudden, large, and confidence-related deposit withdrawals (commonly known as bank runs) at

covered IDIs. Liquidity transformation, a core banking activity, can make banks vulnerable to bank runs that harm uninsured depositors and may have negative externalities on the financial system and broader economy.⁹³ Market awareness of measures that improve resiliency or protect deposits from losses in resolution can reduce or eliminate the first-mover advantage that motivates depositors to run when their banks are distressed. It is therefore possible that the enhanced loss-absorbing capacity from LTD may, as discussed above, mitigate run risk for covered entities and covered IDIs.

For the banking system, this strengthened resilience can reduce negative externalities associated with runs. Lowering the risk of runs at covered IDIs may reduce the risk of contagion, thereby reducing risk for the broader banking system. In addition, the increased resilience can reduce fire sale risk by discouraging bank runs on covered entities and covered IDIs that compel them to liquidate assets to meet withdrawals. The economic harms from these channels could be substantial for a run on a large banking organization. LTD requirements may deliver a significant reduction in run risk for covered IDIs, generating considerable benefits.

Second, the proposed LTD requirement may enhance market discipline with respect to covered entities and covered IDIs, incentivizing prudent behavior. The proposed LTD requirement would represent a substantial liability on covered entities' and covered IDIs' balance sheets that is subordinated to deposits, subject to credible threat of default risk, and whose value may be ascertained readily from market prices. If eligible LTD becomes a somewhat more common source of funding relative to instruments held by less sophisticated creditors, then it may strengthen market-based incentives for covered entities and covered IDIs to moderate excessive risk-taking. There is some evidence that TLAC-eligible debt securities are increasing

⁹³ See, e.g., Diamond and Dybvig (1983), and Gertler and Kiyotaki (2015).

market discipline of GSIBs.⁹⁴ LTD prices may also provide regulators and other stakeholders with valuable signals about the riskiness of covered entities and covered IDIs.

The agencies believe that harnessing the power of markets to price LTD issued by covered entities and covered IDIs creates a mechanism for firms that take excess risks to appropriately face higher funding costs. These market disciplining effects are incremental to the risk sensitivity already present in DIF premiums. There is a substantial literature over recent decades exploring the potential for enhanced market discipline for large banks based on subordinated LTD. For example, DeYoung, Flannery, Lang and Sorescu (2001) argue that subordinated debt prices reflect the information available to market participants (such as public indicators of bank condition, management concerns, and potential expected loan losses). M. Imai (2007) shows that subordinated debt investors exerted market discipline over weak banks by requiring higher rates at weaker banks. Chen and Hasan (2011) show that subordinated debt requirements and bank capital requirements can be used as complements for mitigating moral hazard problems. The literature on subordinated bank debt does not always find historically that price signals from such debt led such banks to limit their growth or take action to improve their safety and soundness. The findings of the literature may also not be completely applicable because they generally consider more generic subordinated long debt, that is, without some of the key loss absorption features of eligible LTD under this proposal.

The agencies note that the scope for these effects is uncertain for a number of reasons including but not limited to potential lack of understanding and experience among market participants with LTD-based protection for deposits. However, the agencies believe the

⁹⁴ See Lewrick et al. (2019).

increased resiliency and market discipline afforded by the proposed LTD requirements provide meaningful additional financial stability benefits.

3. Changes in Deposit Insurance Assessments

Under the FDIC's current regulations, any issuance of additional LTD associated with the proposed rule could reduce deposit insurance assessments for the IDIs of covered entities. Given the current framework for deposit insurance pricing, the FDIC estimates that the proposed rule could result in reductions in deposit insurance assessments for the covered IDIs of approximately \$800 million per year, in aggregate. In light of the recent failures of three large banks, however, the FDIC will consider revisions to its large bank pricing methodology, including the treatment of unsecured debt and concentrations of uninsured deposits.⁹⁵

C. Costs

1. LTD Requirements and Shortfalls

The agencies analyzed the cost impact of the proposed rule for the analysis population. This section details that analysis. First, it approximates the proposed requirements for the analysis population. Second, given these requirements, it estimates the shortfalls in eligible external LTD currently outstanding among firms in the analysis population. Third, it estimates how these requirements would shift bank funding behavior and the consequences of those shifts on bank funding costs. Finally, it discusses the potential implications of these costs.

Agency estimates of LTD requirements and shortfalls are based on organization-level time series averages for the Q4 2021 – Q3 2022 period. More recent data are excluded from the

⁹⁵ The agencies' analysis of steady-state costs (section X.C.2) as well as gone-concern and going-concern benefits (sections X.B.1 and X.B.2) does not consider whether, or to what extent, deposit insurance assessments, or a change in the level of deposit insurance assessments, could have indirect effects on estimated costs and benefits of this proposal.

sample. This is in part because shortfall estimates may be distorted by debt issuance carried out by covered entities and covered IDIs in anticipation of the rule following the Q4 2022 ANPR. Recent substitution away from deposits due to adverse banking conditions in early 2023 may also overstate the long run prominence of LTD in funding structures for these organizations. Time series averages are used to produce an estimate the agencies believe is more appropriate because it mitigates the variability in point-in-time cross section data.⁹⁶

According to this methodology, staff estimate that the total principal value of external LTD required of firms in the analysis population, irrespective of existing LTD, would be approximately \$250 billion. Among Category II and III covered entities, the total requirement would be approximately \$130 billion. For Category IV covered entities and externally issuing IDIs, the aggregate requirement would be approximately \$120 billion. These requirements will form the basis for the cost estimates under the zero baseline approach.⁹⁷

For purposes of the incremental shortfall approach, the agencies estimate the level of future eligible LTD for the analysis population in the absence of the proposed rule as equal to the current level of outstanding LTD at the analysis population that is unsecured, has no exotic features, and is issued externally at any level of the organization (that is, either by a covered

⁹⁶ This is of particular importance for shortfall estimates, which can be more vulnerable to this measurement problem.

⁹⁷ The agencies recognize that their Basel III reforms proposal would, if adopted, increase risk-weighted assets across covered entities. The increased risk-weighted assets would lead mechanically to increased requirements for LTD under the LTD proposal. The increased capital that would be required under the Basel III proposal could also reduce the cost of various forms of debt for impacted firms due to the increased resilience that accompanies additional capital (which is sometimes referred to as the Modigliani-Miller offset). The size of the estimated LTD needs and costs presented in this section do not account for either of these potential effects of the Basel III proposal.

entity itself or a subsidiary IDI).⁹⁸ Implicit in this definition is the assumption that over the long term, it will be costless to substitute external holding company-issued debt for external IDI-issued debt, as well as to downstream resources from holding companies to IDIs through eligible internal debt securities, to fulfill the requirements of the proposed rule and general funding needs.⁹⁹ It is assumed, in other words, that there are no additional costs for IDIs to maintain eligible internal debt securities to holding companies beyond those attributable to any external holding company LTD that may be passed through to IDIs.

Based on averages for the Q4 2021 – Q3 2022 period, the agencies estimate under the incremental shortfall approach that some firms would need to issue additional eligible external LTD over the long term in order to comply with the proposed rule. Staff estimate that the aggregate shortfall under the incremental approach in the analysis population is approximately \$70 billion. For Category II and III covered entities, this total shortfall is approximately \$20

⁹⁸ The agencies estimate current eligible external LTD outstanding using a variety of data sources. Unsecured holding company-issued LTD outstanding is estimated with issue-level data from the Mergent Fixed Income Securities Database (FISD), where available. Where FISD issue-level data are not available, the agencies compute proxies for existing LTD issued by holding companies using FR Y-9LP data. The agencies proxy for eligible IDI-issued LTD using the lesser of long-term unsecured debt as recorded in the Call Reports and total external IDI-issued LTD reported in the Call Report data. The total current eligible debt estimated is therefore the sum of this proxy for external IDI-issued unsecured LTD and total holding company-issued unsecured LTD. Working within the limitations of the data, this approach generally yields more conservative estimates for eligible external LTD outstanding compared to alternative definitions.

⁹⁹ An implication of this and the other simplifying assumptions noted is that the proposed requirement that eligible external LTD generally be issued at the holding company level would be no costlier to covered entities than an alternative rule that would also allow firms to meet the external requirement with LTD issued externally out of IDIs. This may not always be true. Some covered entities might, if permitted, prefer to partially meet the requirement with external IDI debt, for example, if they believed such a choice could incrementally lower their LTD interest cost. The agencies believe the effect of such choices on cost, if any, are likely small in the long run, and may be one of many potential influences on the cost estimates under both the incremental shortfall and zero baseline approaches.

billion. Among Category IV covered entities and externally issuing IDIs, the aggregate shortfall under the proposal is approximately \$50 billion.

The agencies estimate that current average annual LTD issuance by U.S. banking organizations (with an initial term of two years or greater but not necessarily satisfying all qualifying characteristics of eligible external LTD under the proposed rule) is approximately \$230 billion, including \$70 billion by non-Category I firms. Depending on the term of eligible external LTD used to meet requirements under the proposed rule and how firms use early call features of these securities, the agencies anticipate that the annual issuance market for banking organization LTD will have to increase by five to seven percent.¹⁰⁰ If the market for LTD is defined to exclude the issuance conducted by Category I firms, then the current non-GSIB annual issuance market would have to increase by sixteen to 24 percent. Note that, in both cases, the agencies' projections of the necessary eligible external LTD market expansion are based on their estimates of shortfalls under the proposal. The true growth in eligible external LTD issuance under the proposed rule could be somewhat greater than the estimated shortfall, especially in the long run, for several reasons (including the likely use of management buffers) explored later. In the next subsection of this analysis, the agencies expand upon these results to assess the funding cost impact of the proposal.

2. Steady-State Funding Cost Impact

Building on the requirement and shortfall estimates described above, the agencies evaluated the impact of the proposal on steady-state funding costs. Because LTD is generally

¹⁰⁰ The market for external LTD was defined as all debt with a term (ignoring call features) of two years or longer in selected banking-related NAICS codes. The average term for these bonds is approximately seven years, and we assume banking organizations will generally call such debt one to three years prior to maturity. We therefore assume that the additional annual issuance needed is between one-fourth and one-sixth of the estimated LTD shortfall.

more expensive than the short-term funding banking organizations could otherwise use, the proposal is likely to raise funding costs in the long run. This analysis assumes that firm assets are held fixed, and the proposed rule therefore permanently shifts firm liabilities to include less short-term funding and more LTD.¹⁰¹ The estimated change in funding costs is the estimated quantity of required new eligible external LTD issuance multiplied by the estimated increased funding cost per dollar of issuance (*i.e.*, the difference between the long-term and short-term funding rates). For the purposes of this analysis, interest rates for individual funding sources (*e.g.*, short-term or long-term debt) are assumed to be unaffected by funding structure changes. For example, the analysis does not allow for possible reductions in the cost of uninsured deposits resulting from the additional layer of loss absorbing LTD (which may be material).¹⁰² The steady-state setting abstracts from continuing adjustment costs that may arise from maintaining eligible external LTD at the required level, for instance through retirement and reissuance of eligible external LTD over time. Accordingly, the analysis also does not consider short-term transition costs.

Based on market observables from the post-2008 period, the agencies estimate the eligible external LTD funding cost spread as the difference between yields on five-year debt and the national aggregate interest rate on bank non-jumbo three-month certificates of deposit

¹⁰¹ This is a simplifying assumption. Staff believes that results would be broadly similar if balance sheet expansion were modeled under reasonable assumptions about how the expansion would occur (*e.g.*, investment selection) and funding opportunity costs.

¹⁰² See Alanis et al. (2015), Jacewitz and Pogach (2015).

(CDs).^{103, 104} The five-year debt is more expensive than three-month CDs because it includes premiums for term and for credit risk (reflecting its structural subordination in the capital structure).¹⁰⁵ Over time, the premium for subordination will reflect the credit risk of the individual covered firms, while the premium for term will also reflect changes in the general interest rate markets. In the agencies' steady state analysis, about one third of the cost of the LTD requirement is attributable to subordination, with the remainder attributable to the term premium.

The agencies estimate that the eligible external LTD requirement would increase pre-tax annual steady-state funding costs for the analysis population by \$1.5 billion in the incremental shortfall approach.¹⁰⁶ The agencies estimate that this cost would represent a permanent three-

¹⁰³ For the analysis, yields on five-year debt are estimated for each firm in the analysis population as the sum of the average five-year CDS credit spread and the average yield on five-year Treasuries. CDS pricing data in this sample, provided by IHS Markit, use spreads on single-name contracts referencing holding companies. CDS data are available for only a subset of firms in the analysis population; when CDS pricing is unavailable, then averages for Category I – IV firms in the analysis population are used instead. The agencies utilize the average approach for externally issuing IDIs, for which CDS data is unavailable; this produces generally conservative estimates. The agencies obtained aggregate interest rate data for Treasuries and CD rates from the Federal Reserve Economic Data (FRED) website maintained by the Federal Reserve Bank of St. Louis.

¹⁰⁴ In recent years, these CD rates have been lower on average than one-month Treasury Bill yields, consistent with academic literature that studies the funding advantages of deposits. *See* Drechsler, Savov, and Schnabl (2017).

¹⁰⁵ Existing LTD for covered entities and covered IDIs does not always include the specific features designed to facilitate loss absorption that are required under the proposed rule. Lewrick, Serena, and Turner (2019) and Lindstrom and Osborne (2020) find that, in the United States and Europe, the “bail-in premium” on TLAC debt that includes such features is 15–45 basis points. The agencies did not include a bail-in premium in funding cost estimates because these costs appear to be small. The agencies estimate that including a 45 basis point bail-in premium would cause NIMs at covered companies to fall by an additional 0.5 to 2 basis points.

¹⁰⁶ After-tax funding cost increases are approximately 25 percent lower than the corresponding pre-tax value.

basis point decline in aggregate net interest margins (NIMs).¹⁰⁷ For Category II and III covered entities, this estimated pre-tax annual funding cost increase is approximately \$460 million, representing a two-basis point permanent decline in NIMs. Among Category IV covered entities and externally issuing IDIs, the estimated increase in pre-tax annual funding costs based on the incremental shortfall approach is approximately \$1.1 billion, representing a five-basis point permanent decline in NIMs.

Under the zero baseline approach, based on total eligible external LTD requirement quantities, the agencies estimate that the proposal would increase pre-tax annual steady-state funding costs by approximately \$5.6 billion for the analysis population.¹⁰⁸ Staff estimate that this approach would result in a permanent eleven-basis point decline in aggregate NIMs.

Among Category II and III covered entities, this estimated pre-tax annual funding cost increase is approximately \$2.7 billion, representing a ten-basis point permanent decline in NIMs. For Category IV covered entities and externally issuing IDIs, this estimated pre-tax increase in annual funding costs based on the zero baseline approach is \$2.9 billion, representing a twelve-basis point permanent decline in NIMs.

The agencies believe that the funding cost impact of the proposal is likely between the lower-end estimate from the incremental shortfall approach and the higher-end estimate from the

¹⁰⁷ For simplicity, the agencies assume that pricing any eligible internal debt securities would be consistent with market pricing and terms for eligible external LTD (including but not limited to the eligibility requirements under the proposal).

¹⁰⁸ In addition to the total increase in funding costs, the agencies also estimate the credit risk component of these funding costs. Because credit spreads reflect the market expectation of losses that would be absorbed by eligible LTD investors in per annum terms, the component speaks directly to the proposal's expansion of loss absorbing capacity. In the incremental shortfall (zero baseline) approach, the annual steady-state interest expenditure on eligible LTD due to credit risk would be \$550 million (\$2.1 billion).

zero baseline approach. The incremental shortfall approach may provide a more accurate near-term perspective on funding cost impact. However, even in the short run, this may underestimate the costs because the proxy for eligible external LTD in this analysis may not satisfy all of the proposal's requirements for eligible external LTD and, therefore, may overestimate the quantity of truly eligible external LTD outstanding among covered entities.¹⁰⁹ In the long run, current funding structures may differ substantially from what firms would choose in the absence of the rule. The upper range of estimates based on total required eligible external LTD quantities under the zero baseline approach is in deference to, among other considerations, the possibility that prohibiting covered entities and covered IDIs from maintaining lower levels of LTD in the future may carry additional funding costs.¹¹⁰

An increase in funding costs associated with the rule may be absorbed to varying degrees by stakeholders of covered entities and covered IDIs, including equity holders, depositors, borrowers, employees, or other stakeholders. Covered entities and covered IDIs could seek to offset the higher funding costs from an LTD requirement by lowering deposit rates or increasing interest rates on new loans. Alternatively, the higher funding costs could indirectly affect covered entities and covered IDIs' loan growth, or result in some migration of banking activity from covered entities and covered IDIs to other banks or nonbanks. The modest to moderate range of funding cost impacts presented above suggests a similarly limited scope for these types of indirect effects.

¹⁰⁹ The incremental shortfall approach also does not account for the presence of management buffers which are likely to be nonzero. It should be noted that, among other purposes, management buffers can help covered entities and covered IDIs mitigate recurring LTD issuance and retirement costs. These additional costs are not estimated by the agencies.

¹¹⁰ The benefits of the rule, discussed above, may also be larger to the extent firms would have chosen lower LTD levels in the future in the absence of the rule.

3. Transition Effects

This analysis does not attempt to quantitatively assess the proposal's phase-in effects, such as changes in asset holdings or market conditions for long-term unsecured debt instruments, because the agencies do not possess the necessary information to do so. Estimates of the phase-in effects depend upon the future financial characteristics of each covered entity and covered IDI, future economic and financial conditions, and the decisions and behaviors of covered entities and covered IDIs. However, the agencies believe that, if the proposal is phased-in gradually, the transition-related costs and risks of the proposal's adoption are likely to be small relative to long-run effects. These considerations notwithstanding, this subsection provides a brief overview of potential phase-in effects.

Due to the considerable scope of the proposal, there is a risk that efforts by covered entities and covered IDIs to issue a large volume of LTD over a limited period could strain the market capacity to absorb the full amount of such issuance if issuance volume exceeds debt market appetite for LTD instruments.¹¹¹ If banking organizations are unable to spread out their issuance activity to avoid this problem, they may be forced to issue a significant quantity of LTD at relatively higher yields.¹¹² These costs could be exacerbated if they coincide with periods of adverse funding market conditions such as those that followed recent bank failures. It is also worth noting that a strain on debt markets due to the proposal phase-in may also impose negative funding externalities on non-covered institutions, both inside and outside of the financial sector.

¹¹¹ However, as discussed in section X.C.1, the agencies' estimated eligible external LTD shortfall is a small to moderate fraction of the average total annual bank LTD issuance.

¹¹² Due to practical restrictions on call eligibility, a portion of LTD issued in this fashion at unattractive rates may remain on the balance sheets of covered entities and covered IDIs for a few years.

Other simplifying assumptions that are appropriate for the long run perspective of the funding cost analysis may be less suited for the study of phase-in effects. Recall that the funding cost methodology treats the proposed requirement as a liability side substitution with assets held fixed. In the short run, covered entities are in fact likely to expand their balance sheets, to at least some degree, as a result of the proposed requirements. Under some circumstances this expansion could impose upward pressure on leverage ratios (presumably temporary). It may also take some time for covered entities and covered IDIs to invest the proceeds from sizable LTD issuance productively, which could add to the phase-in costs. Other steady-state simplifying assumptions about the migration of external LTD among entities within organizations and the repositioning of resources at IDIs are likely to understate short-term disruption due to the proposal. Organizations most exposed to phase-in costs of this kind are those with limited existing external LTD issued out of their holding companies and those with limited internal LTD between their IDIs and holding companies.

4. Conclusion

The discussion in this section highlights a range of gone-concern and going-concern benefits that could derive from the LTD required by the proposal: providing additional coverage for losses and greater optionality in resolution events, and alleviating some of the pressures that could arise as a covered entity comes under significant stress. The extent of these benefits is roughly proportional to the overall loss-absorbing capability of the LTD that the rule would add. As discussed previously, the face value of additional LTD that would be available for loss absorption is estimated to be approximately between \$70 billion and \$250 billion. For comparison, the current level of aggregate tier 1 capital at covered entities that can absorb going-concern losses is approximately \$470 billion.

In addition, the loss-absorbing capacity provided by the required LTD may provide savings to the DIF in the future relative to resolutions conducted without benefit of the additional loss absorbing capacity of the long term debt required by the proposed rule.

The direct costs of the proposal derive from the requirements that the LTD be both subordinated and longer term than current sources of funding. In total, these costs are estimated to be moderate. It is possible that alternate means exist to raise loss absorbing resources, such as subordinated debt of a shorter term, that could be less costly to covered entities and covered IDIs. Compared to the LTD requirements of the proposed rule, however, such alternatives would likely be less effective in providing a stable enough source of loss absorption to achieve the objectives of the proposal. The agencies have concluded that the direct loss absorption capacity of the LTD combined with the meaningful intangible benefits of the LTD described in this section justify the overall cost of the proposal.

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XI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).¹¹³ In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this joint notice of proposed rulemaking only pertain to information collections administered by the Board; the OCC and FDIC have reviewed the proposal and certify that no information collection administered by either agency are implicated by the proposal. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains revisions to current information collections subject to the PRA. To implement these requirements, the Board would revise and extend for three years the

¹¹³ 44 U.S.C. 3501 *et seq.*

(1) Financial Statements for Holding Companies (FR Y-9; OMB No. 7100-0128), and (2) Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (FR YY; OMB No. 7100-0350). In addition, the agencies, under the auspices of the FFIEC, would also propose related revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557-0081; 3064-0052, and 7100-0036). The proposed revisions to the FFIEC reports will be addressed in a separate *Federal Register* notice.

Comments are invited on the following:

(a) whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) the accuracy of the agencies estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Commenters may submit comments regarding any aspect of the proposed rule's collections of information, including suggestions for reducing any associated burdens, to the addresses listed under the **ADDRESSES** heading of this Notice. All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW,

#10235, Washington, DC 20503; by facsimile to 202-395-5806; or by email to:

oira_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

Proposed Revisions, With Extension, of the Following Information Collections (Board only)

(1) *Collection title:* Financial Statements for Holding Companies.

Collection identifier: FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, and FR Y-9CS.

OMB control number: 7100-0128.

General description of report: The FR Y-9 family of reporting forms continues to be the primary source of financial data on holding companies (HCs) on which examiners rely between on-site inspections. Financial data from these reporting forms is used to detect emerging financial problems, review performance, conduct pre-inspection analysis, monitor and evaluate capital adequacy, evaluate HC mergers and acquisitions, and analyze an HC's overall financial condition to ensure the safety and soundness of its operations. The FR Y-9C, FR Y-9LP, and FR Y-9SP serve as standardized financial statements for the consolidated HC. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y-9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the FR Y-9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y-9C on a quarterly basis, the FR Y-9LP quarterly, the FR Y-9SP semiannually, the FR Y-9ES annually, and the FR Y-9CS on a schedule that is determined when this supplement is used.

Frequency: Quarterly, semiannually, and annually.

Affected Public: Businesses or other for-profit.

Respondents: BHCs, SLHCs, securities holding companies (SHCs), and IHCs (collectively, holding companies (HCs)).

Estimated number of respondents: FR Y-9C (non-advanced approaches holding companies with less than \$5 billion in total assets): 107; FR Y-9C (non-advanced approaches with \$5 billion or more in total assets) 236; FR Y-9C (advanced approached holding companies): 9; FR Y-9LP: 411; FR Y-9SP: 3,596; FR Y-9ES: 73; FR Y-9CS: 236.

Estimated average hours per response: FR Y-9C (non-advanced approaches holding companies with less than \$5 billion in total assets): 36.16; FR Y-9C (non-advanced approaches holding companies with \$5 billion or more in total assets): 45.26, FR Y-9C (advanced approached holding companies): 50.54; FR Y-9LP: 5.27; FR Y-9SP: 5.45; FR Y-9ES: 0.50; FR Y-9CS: 0.50.

Estimated annual burden hours: FR Y-9C (non advanced approaches holding companies with less than \$5 billion in total assets): 15,476; FR Y-9C FR Y-9C (non advanced approaches holding companies with \$5 billion or more in total assets): 42,725. FR Y-9C (advanced approaches holding companies): 1,819; FR Y-9LP: 8,664; FR Y-9SP: 39,196; FR Y-9ES: 37; FR Y-9CS: 472.

Current Actions: The proposed rule would make certain revisions to the FR Y-9C, Schedule HC-R, Part I, Regulatory Capital Components and Ratios, to amend the instructions to allow covered entities to publicly report information regarding their amounts of eligible LTD. Specifically, the instructions for item 54 would be amended to require covered entities to report outstanding eligible LTD. In addition, the proposal would create a new line item for a covered entity and a U.S. GSIB to report the subset of eligible LTD that has a maturity of between one year and two years.

The proposed rule would also create a new line item and instruction to allow U.S. GSIBs to report certain information regarding their TLAC requirements. Specifically, a new line item would be created to allow a U.S. GSIB to report its deductions of investments in own other TLAC liabilities. The proposal would also make technical amendments to the FR Y-9C instructions relating to the calculation of the TLAC buffer (item 62a). The proposal also would amend line items that exclude “additional tier 1 minority interests” to exclude instead “tier 1 minority interests” to match the corresponding provision in the existing TLAC rule. The revisions are proposed to be effective for the as of the effective date of the final rule resulting from this proposal.

The Board estimates that revisions to the FR Y-9C would increase the estimated annual burden by 316 hours. The respondent count for the FR Y-9C would not change because of these changes. The draft reporting forms and instructions are available on the Board’s public website at <https://www.federalreserve.gov/apps/reportingforms>.

(2) Collection title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Collection identifier: FR YY.

OMB control number: 7100-0350.

General description of report: Section 165 of the Dodd-Frank Act requires the Board to implement Regulation YY - Enhanced Prudential Standards (12 CFR Part 252) for BHCs and FBOs with total consolidated assets of \$250 billion or more. Section 165 of the Dodd-Frank Act also authorizes the Board to impose such standards to BHCs and FBOs with greater than \$100 billion and less than \$250 billion in total consolidated assets if certain conditions are met. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity

standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council (FSOC) has determined pose a grave threat to financial stability.

Frequency of Response: Annual, semiannual, quarterly, one-time, and event-generated.

Affected Public: Business or other for-profit.

Respondents: State member banks, U.S. BHCs, nonbank financial companies, FBOs, IHCs, foreign SLHCs, and foreign nonbank financial companies supervised by the Board.

Estimated number of respondents: 63

Estimated average hours per response for new disclosures: 20

Total estimated change in burden hours: 330

Estimated annual burden hours: 28,082

Current Actions: The proposal would make certain revisions to the FR YY information collection. Specifically, the proposal would require that U.S. GSIBs disclose qualitative and quantitative information regarding their creditor rankings. See section X.D of this Supplementary Information for a more detailed discussion of the required U.S. GSIB disclosures regarding creditor rankings. The revised disclosure requirement is found in section 252.66 of the proposed rule. Section 252.164 of the proposed rule would require each top-tier FBO of an IHC subject to the proposed rule or the existing TLAC rule to submit to the Board a certification indicating whether the planned resolution strategy of the top-tier FBO involves the U.S. IHC or its subsidiaries entering resolution, receivership, insolvency, or similar proceedings in the United States. The rule requires the top-tier FBO to update this certification when its resolution strategy changes.

B. Regulatory Flexibility Act

OCC

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 661 small entities.¹¹⁴

The OCC estimates that the proposed rule would impact none of these small entities, as the scope of the rule only applies to banking organizations with total assets of at least \$100 billion. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Board

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies

¹¹⁴ The OCC bases its estimate of the number of small entities on the SBA's size standards for commercial banks and savings associations, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated banks when determining whether to classify an OCC-supervised bank as a small entity. The OCC used December 31, 2022, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See*, FN 8 of the SBA Table of Size Standards.

that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the *Federal Register*.

The Board is providing an IRFA with respect to the proposed rule. For the reasons described below, the Board does not believe that the proposal will have a significant economic impact on a substantial number of small entities. The Board invites public comment on all aspects of this IRFA.

1. Reasons Action is Being Considered

The proposed rule would require covered entities and covered IDIs to maintain minimum levels of LTD funding in order to improve the resolvability of these firms in light of the risks that are posed when a covered entity or covered IDI fails. Further discussion of the rationale for the proposal is provided in section I.A of this Supplementary Information.

2. Objectives of the Proposed Rule

The agencies' objective in proposing this rule is to expand the options available to policymakers in resolving a failed covered entity and its covered IDI subsidiaries and thereby increase the likelihood that such a resolution will occur in an orderly fashion. By increasing the prospects for orderly resolutions of a failed covered entity and its covered IDI subsidiaries, the proposed rule is also intended to achieve the agencies' objective of promoting resiliency among banking organizations and safeguarding stability in the financial system.

3. Description and Estimate of the Number of Small Entities Impacted

The proposed rule would only apply to covered entities, which are Category II, III, and IV BHCs and SLHCs, as well as Category II, III, and IV U.S. IHCs of FBOs that are not global systemically important FBOs. The proposal would also apply to covered IDIs, which are IDIs

that are not consolidated subsidiaries of U.S. GSIBs and that (i) have at least \$100 billion in consolidated assets or (ii) are affiliated with IDIs that have \$100 billion or more in consolidated assets.

Under regulations promulgated by the Small Business Administration (SBA), a small entity, for purposes of the RFA, includes a depository institution, a BHC, or an SLHC with total assets of \$850 million or less (small banking organization).¹¹⁵ As of March 31, 2023, there were approximately 96 small SLHCs and 2,607 small BHCs. Because only domestic SLHCs and BHCs and U.S. IHCs of FBOs with total consolidated assets of \$100 billion or more would be subject to the proposed rule, all covered entities substantially exceed the \$850 million asset threshold at which a banking entity would qualify as a small banking organization. However, some IDIs are subject to the proposed IDI-level requirement by virtue of being affiliated with an IDI with \$100 billion or more in consolidated assets that is subject to the IDI-level requirement. These affiliated IDIs are not subject to a minimum size threshold. Accordingly, small state member banks could be subject to the proposed rule. As of March 31, 2023, there were approximately 466 small state member banks. However, the Board believes that no small state member banks would be affiliated with a covered IDI.¹¹⁶ Therefore, the Board believes that no covered entity or covered IDI that is state member bank that would be subject to the proposed rule would be considered a small entity for purposes of the RFA.

¹¹⁵ See 13 CFR 121.201 (NAICS codes 522110–522210).

¹¹⁶ In any event, consistent with the SBA’s General Principles of Affiliation, the Board may count the assets of affiliated IDIs together when determining whether to classify a state member bank that could be subject to the proposed rule by virtue of an affiliate relationship with an IDI with \$100 billion or more in total assets as a small entity for purposes of the RFA. See 13 CFR 121.103(a). In such a case, the combined assets of the affiliated IDIs would far exceed the \$850 million total asset threshold below which a banking organization qualifies as a small entity.

4. Estimating Compliance Requirements

The proposal would introduce a requirement that covered entities and covered IDIs issue and maintain minimum amounts of LTD that satisfies the eligibility conditions described in section V of this Supplementary Information, as applicable. The proposal would also require covered entities to comply with “clean holding company” limitations on certain corporate practices and transactions that could complicate the orderly resolution of such firms, as described in section VI of this Supplementary Information. Further, the proposal would require banking organizations subject to the capital deduction framework contained in the agencies’ capital rule to deduct from regulatory capital external LTD issued by covered entities and externally issuing IDIs to meet the proposal’s LTD requirements. Finally, as described in section X of this Supplementary Information, TLAC companies would have to comply with the primarily technical and harmonizing amendments to the Board’s TLAC rule. For U.S. GSIBs, these proposed amendments to the TLAC rule would require the public disclosures of certain qualitative and quantitative information regarding their creditor rankings.

With respect to the impact of the proposal on small banking organizations, as discussed above, the Board believes that no such small banking organizations will be subject to the proposal’s compliance requirements. Because no small banking organizations will bear additional costs under the proposal, the Board believes that the proposal will not have a significant economic impact on a substantial number of small entities.

5. Duplicative, Overlapping, and Conflicting Rules

The agencies are not aware of any federal rules that may be duplicative, overlap with, or conflict with the proposed rule.

6. Significant Alternatives Considered

The Board did not consider any significant alternatives to the proposed rule. The Board believes that requiring the availability of LTD funding at covered entities and covered IDIs is the best way to achieve the Board's objectives of safeguarding financial stability by ensuring the orderly resolution of covered entities and covered IDIs should such an entity fail.

FDIC

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.¹¹⁷ However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to \$850 million.¹¹⁸ Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons described below and under section

¹¹⁷ 5 U.S.C. 601 *et seq.*

¹¹⁸ The SBA defines a small banking organization as having \$850 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is "small" for the purposes of RFA.

605(b) of the RFA, the FDIC certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As of March 31, 2023, the FDIC supervised 3,012 depository institutions, of which 2,306 the FDIC identifies as a “small entity” for purposes of the RFA.¹¹⁹

As described above in subsection A. “Scope of Application” of sections III and IV of this Supplementary Information, the proposed rule would require three categories of IDIs to issue eligible LTD. The proposed rule would apply to Category II, III, and IV BHCs, SLHCs, and U.S. IHCs that are not currently subject to the existing TLAC rule as defined under the Board’s Regulations LL and YY and their consolidated IDI subsidiaries. The proposed rule would also apply to IDIs that are not consolidated subsidiaries of U.S. GSIBs and that (i) have at least \$100 billion in consolidated assets or (ii) are affiliated with IDIs that have at least \$100 billion in consolidated assets. As of March 31, 2023, there are no small, FDIC-supervised institutions that are covered IDIs.¹²⁰ In light of the foregoing, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section.

Question 67: In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

¹¹⁹ FDIC Call Report data, March 31, 2023.

¹²⁰ *Id.*

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),¹²¹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.¹²²

The agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

D. Solicitation of Comments on the use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹²³ (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed

¹²¹ 12 U.S.C. 4802(a).

¹²² 12 U.S.C. 4802(b).

¹²³ Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

rule in a simple and straightforward manner and invite comment on the use of plain language and whether any part of the proposed rule could be more clearly stated. For example:

- Have the agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?
- Are the requirements in the notice of proposed rulemaking clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the agencies do to make the proposed rule easier to understand?

E. OCC Unfunded Mandates Reform Act of 1995 determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of \$100 million or more in any one year (adjusted annually for inflation). The OCC has prepared an impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analysis will be available at: [http:// www.regulations.gov](http://www.regulations.gov), Docket ID OCC–2023–0011.

F. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the Internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the Internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, the bank regulatory agencies request comment on a proposal to improve the resolvability and resilience of large banking organizations. The proposal would require certain banking organizations to maintain outstanding a minimum amount of long-term debt that could absorb losses in resolution. The proposal would also impose requirements on the corporate practices of certain holding companies to improve their resolvability, and apply a stringent capital treatment to large banking organizations' holdings of long-term debt issued by other banking organizations. Lastly, the proposal would amend existing total loss absorbing capacity requirements for global systemically important banks.

The proposal and the required summary can be found at <https://www.regulations.gov>, <https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html>, <https://www.federalreserve.gov/supervisionreg/reglisting.htm>, and <https://www.fdic.gov/resources/regulations/federal-register-publications/>.

Text of Common Rule

(All Agencies)

Part [__]—LONG-TERM DEBT REQUIREMENTS

Sec.

__.1 Applicability, reservations of authority, and timing.

__.2 Definitions.

__.3 Long-term debt requirement.

Authority: [AGENCY AUTHORITY].

§__.1 Applicability, reservations of authority, and timing.

(a) *Applicability.*

(1) *[BANKS] that are consolidated subsidiaries of companies subject to a long-term debt requirement.* A [BANK] is subject to the requirements of this part if the [BANK]:

(i) Has \$100 billion or more of total consolidated assets, as reported on the [BANK's] most recent Call Report; and

(ii) Is a consolidated subsidiary of:

(A) A depository institution holding company that is subject to a long-term debt requirement set forth in §§ 238.182 or 252.62 of this title and that is not a global systemically important BHC; or

(B) A U.S. intermediate holding company that is subject to a long-term debt requirement set forth in § 252.162 of this title.

(2) *[BANKS] that are not consolidated subsidiaries of companies subject to a long-term debt requirement.*

(i) A [BANK] is subject to the requirements of this part if the [BANK]:

(A) Is not a consolidated subsidiary of a depository institution holding company or U.S. intermediate holding company that is subject to a long-term debt requirement set forth in §§ 238.182, 252.62, or 252.162 of this title; and

(B) Has total consolidated assets, calculated based on the average of the [BANK's] total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$100 billion or more. If the [BANK] has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable.

(ii) After meeting the criteria in paragraphs (a)(2)(i)(A) and (B) of this section, a [BANK] continues to be subject to the requirements of this part pursuant to paragraph (a)(2) of this section until the [BANK] has less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

(3) *[BANKS] affiliated with insured depository institutions subject to the rule.* A [BANK] is subject to the requirements of this part if the [BANK] is an affiliate of an insured depository institution described in paragraphs (a)(1) or (2) of this section, or [OTHER AGENCIES' SCOPING PARAGRAPHS].

(b) *Timing.* A [BANK] must comply with the requirements of this part beginning three years after the date on which the [BANK] becomes subject to this part, [OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT], except that a [BANK] must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § __.3 by one year after the date on which the [BANK] first becomes subject to this part, [OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT]; and

(2) 50 percent of the amount required under § __.3 by two years after the date on which the [BANK] first becomes subject to this part, [OTHER AGENCIES' LONG-TERM DEBT REQUIREMENT].

(c) *Reservation of authority.* The [AGENCY] may require a [BANK] to maintain an eligible long-term debt amount greater than otherwise required under this part if the [AGENCY] determines that the [BANK's] long-term debt requirement under this part is not commensurate with the risk the activities of the [BANK] pose to public and private stakeholders in the event of material distress and failure of the [BANK]. In making a determination under this paragraph (c), the [AGENCY] will apply notice and response procedures in the same manner as the notice and response procedures in [AGENCY NOTICE PROVISION].

§__.2 Definitions.

For purposes of this part, the following definitions apply:

Affiliate means, with respect to a company, any company that controls, is controlled by, or is under common control with, the company.

Average total consolidated assets means the denominator of the leverage ratio as described in [AGENCY LEVERAGE RATIO].

Bank holding company means a bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841).

Call Report means Consolidated Reports of Condition and Income.

Control. A person or company controls a company if it:

(1) Owns, controls, or holds with the power to vote 25 percent or more of a class of voting securities of the company; or

(2) Consolidates the company for financial reporting purposes.

Deposit has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Depository institution holding company means a bank holding company or savings and loan holding company.

Eligible debt security means an eligible internal debt security except that, with respect to an externally issuing [BANK], eligible debt security means an eligible external debt security and an eligible internal debt security.

Eligible external debt security means:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the [BANK] to, and remains held by, a person that is not an affiliate of the [BANK], unless the affiliate controls but does not consolidate the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the [BANK]; or

(B) A failure of the [BANK] to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(ix) Is not issued in denominations of less than \$400,000 and must not be exchanged for smaller denominations by the [BANK]; and

(x) Is contractually subordinated to claims of depositors and general unsecured creditors in a receivership, for purposes of 12 U.S.C. 1821(d)(11)(A)(iv), or any similar proceeding.

(2) *Legacy external long-term debt.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], that:

(i) Is paid in, and issued by the [BANK] to, and remains held by, a person that is not an affiliate of the [BANK], unless the affiliate controls but does not consolidate the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note;

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(viii) Would represent a claim in a receivership or similar proceeding that is subordinated to a deposit.

Eligible internal debt security means:

(1) *New issuances*. A debt instrument that:

(i) Is paid in, and issued by the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the [BANK]; or

(B) A failure of the [BANK] to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Is issued to and remains held by a company:

(A) Of which [BANK] is a consolidated subsidiary; and

(B) In the case of a [BANK] that is a consolidated subsidiary of a U.S. intermediate holding company, that is domiciled in the United States;

(ix) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(x) Is contractually subordinated to claims of depositors and general unsecured creditors in a receivership, for purposes of 12 U.S.C. 1821(d)(11)(A)(iv), or any similar proceeding.

(2) *Legacy internal long-term debt.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] that:

(i) Is paid in, and issued by the [BANK] to, and remains held by, a person that is not an affiliate of the [BANK], unless the affiliate controls but does not consolidate the [BANK];

(ii) Is not secured, not guaranteed by the [BANK] or an affiliate of the [BANK], and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the [BANK's] credit quality, but may have an interest rate that is adjusted periodically independent of the [BANK's] credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note;

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the [BANK]; and

(viii) Would represent a claim in a receivership or similar proceeding that is subordinated to a deposit.

Externally issuing [BANK] means a [BANK] subject to this part that is not a consolidated subsidiary of a depository institution holding company or U.S. intermediate holding company that is subject to a long-term debt requirement set forth in §§ 238.182, 252.62, or 252.162 of this title.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means generally accepted accounting principles as used in the United States.

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to § 217.402 of this title.

Insured depository institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Person includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Structured note –

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) A non-dollar-denominated instrument, or

(ii) An instrument whose interest payments are based on an interest rate index.

Subsidiary means, with respect to a company, a company controlled by that company.

Supplementary leverage ratio has the same meaning as in [AGENCY SUPPLEMENTARY LEVERAGE RATIO].

Total leverage exposure has the same meaning as in [AGENCY TOTAL LEVERAGE EXPOSURE].

Total risk-weighted assets means—

(1) For a [BANK] that has completed the parallel run process and received notification from the [AGENCY] pursuant to [AGENCY AA NOTIFICATION PROVISION], the greater of:

(i) Standardized total risk-weighted assets as defined in [AGENCY CAPITAL RULE DEFINITIONS]; and

(ii) Advanced approaches total risk-weighted assets as defined in [AGENCY CAPITAL RULE DEFINITIONS]; and

(2) For any other [BANK], standardized total risk-weighted assets as defined in [AGENCY CAPITAL RULE DEFINITIONS].

U.S. intermediate holding company means a company that is required to be established or designated pursuant to § 252.153 of this title.

§__3 Long-term debt requirement.

(a) *Long-term debt requirement.* A [BANK] subject to this part must have an outstanding eligible long-term debt amount that is no less than the amount equal to the greater of:

(1) 6 percent of the [BANK's] total risk-weighted assets;

(2) If the [BANK] is required to maintain a minimum supplementary leverage ratio, 2.5 percent of the [BANK's] total leverage exposure; and

(3) 3.5 percent of the [BANK's] average total consolidated assets.

(b) *Outstanding eligible long-term debt amount.*

(1) A [BANK's] outstanding eligible long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the [BANK] in greater than or equal to two years;

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the [BANK] in greater than or equal to one year and less than two years; and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the [BANK] in less than one year.

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the [BANK], or a failure of the [BANK] to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After applying notice and response procedures in the same manner as the notice and response procedures in [AGENCY NOTICE PROVISION], the [AGENCY] may order a [BANK] to exclude from its outstanding eligible long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banking, Banks, Federal Reserve System, Investments, National banks, Reporting and recordkeeping requirements, Savings association.

12 CFR Part 54

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk, Savings associations.

12 CFR Part 216

Administrative practice and procedure, Capital, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 238

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Reporting and recordkeeping requirements; Securities.

12 CFR Part 252

Administrative practice and procedure; Banks, banking; Credit; Federal Reserve System; Holding companies; Investments; Qualified financial contracts; Reporting and recordkeeping requirements; Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Confidential business information, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 374

Administrative practice and procedure, Banks, Banking, Capital, Federal Deposit Insurance Corporation, FDIC, state banking, Confidential business information, Investments, Reporting and recordkeeping requirements, Savings associations.

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend chapter I of title 12, Code of Federal Regulations, as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

[**]. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

[**]. In § 3.2, revise the definition of “Covered debt instrument” to read as follows:

§ 3.2 Definitions

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Both:

(i) Issued by a depository institution holding company that is subject to a long-term debt requirement set forth in §§ 238.182 or 252.62 of this title, as applicable, or a subsidiary of such depository institution holding company; and

(ii) An eligible debt security, as defined in §§ 238.181 or 252.61 of this title, as applicable, or that is pari passu or subordinated to any eligible debt security issued by the depository institution holding company; or

(2) Both:

(i) Issued by a U.S. intermediate holding company or insured depository institution that is subject to a long-term debt requirement set forth in § 54.3 of this chapter or §§ 216.3, 252.162, or 374.3 of this title, as applicable, or a subsidiary of such U.S. intermediate holding company or insured depository institution; and

(ii) An eligible external debt security, as defined in § 54.2 of this chapter or § 216.2, § 252.161, or § 374.2 of this title, as applicable, or that is pari passu or subordinated to any eligible external debt security issued by the U.S. intermediate holding company or insured depository institution.

(3) Issued by a global systemically important banking organization, as defined in § 252.2 of this title other than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a U.S. intermediate holding company subject to a long-term debt requirement set forth in § 252.162 of this title; and where,

(i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the

issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii) of this definition, if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to § 3.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

[**]. Revise §§ 3.22(c) and 3.22(h) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments or covered debt instruments*²³—(1) *Investment in the national bank’s or Federal savings*

²³ The national bank or Federal savings association must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under § 3.20(d)(3).

association's own capital or covered debt instruments. A national bank or Federal savings association must deduct an investment in its own capital instruments, and an advanced approaches national bank or Federal savings association also must deduct an investment in its own covered debt instruments, as follows:

(i) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 3.20(b)(1);

(ii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own additional tier 1 capital instruments from its additional tier 1 capital elements;

(iii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own tier 2 capital instruments from its tier 2 capital elements; and

(iv) An advanced approaches national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own covered debt instruments from its tier 2 capital elements, as applicable. If the advanced approaches national bank or Federal savings association does not have a sufficient amount of tier 2 capital to effect this deduction, the national bank or Federal savings association must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital.

* * * * *

(h) Net long position —

* * *

(3) Adjustments to reflect a short position. In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

* * *

(iii) For an investment in a national banks' or Federal savings association's own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4) through (6) and (d) of this section (as applicable), and an investment in a covered debt instrument under paragraphs (c)(1), (5), and (6) of this section:

(A) The national bank or Federal savings association may only net a short position against a long position in an investment in the national bank's or Federal savings association's own capital instrument or own covered debt instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk;

* * *

PART 54—LONG-TERM DEBT REQUIREMENTS

1. Add part 54 as set forth at the end of the common preamble.

2. Amend part 54 by:

a. Removing “[AGENCY]” and adding “Office of the Comptroller of the Currency” in its place wherever it appears.

b. Removing “[AGENCY AUTHORITY]” and adding “12 U.S.C. 1(a), 93a, 161, 1462, 1462a, 1463, 1818, 1828(n), 1828 note, 1831n note, 1831p-1, 1835, 3907, 3909, 5371, and 5412(b)(2)(B).”

- c. Removing “[AGENCY TOTAL LEVERAGE EXPOSURE]” and adding “12 CFR 3.10(c)(2)” in its place wherever it appears.
- d. Removing “[BANK]” and adding “national bank or Federal savings association” wherever it appears.
- e. Removing “[BANK’s]” and adding “national bank’s or Federal savings association’s” in its place wherever it appears.
- f. Removing “[BANKS]” and adding “national banks and Federal savings associations” in its place wherever it appears.
- h. Removing “[AGENCY NOTICE PROVISION]” and adding “§ 3.404 of this chapter” in its place wherever it appears.
- g. Removing “[AGENCY LEVERAGE RATIO]” and adding “12 CFR 3.10(b)(4)” in its place wherever it appears.
- h. Removing “[AGENCY SUPPLEMENTARY LEVERAGE RATIO]” and adding “12 CFR 3.10(c)(1)” in its place wherever it appears.
- i. Removing “[OTHER AGENCIES’ LONG-TERM DEBT REQUIREMENT]” and adding “part 216 of this title, or part 374 of this title” in its place wherever it appears.
- j. Removing “[OTHER AGENCIES’ SCOPING PARAGRAPHS]” and adding “§ 216.1(a)(1) through (2) of this title, or § 374.1(a)(1) through (2) of this title” in its place wherever it appears.
- k. Removing “[AGENCY AA NOTIFICATION PROVISION]” and adding “§ 3.121(d) of this chapter” in its place wherever it appears.
- l. Removing “[AGENCY CAPITAL RULE DEFINITIONS]” and adding “§ 3.2 of this chapter” in its place wherever it appears.

m. Amend § 54.2 by adding a definition in alphabetical order for “Federal savings association” to read as follows:

§ 54.2 Definitions.

* * * * *

Federal savings association means an insured Federal savings association or an insured Federal savings bank chartered under section 5 of the Home Owners’ Loan Act of 1933.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 216—LONG-TERM DEBT REQUIREMENTS (REGULATION P)

1. Add part 216 as set forth at the end of the common preamble.
2. In part 216:
 - a. Remove “[AGENCY]” and add “Board” in its place wherever it appears;
 - b. Remove “[AGENCY AUTHORITY]” and add “12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.”;
 - c. Remove “[AGENCY TOTAL LEVERAGE EXPOSURE]” and add “§ 217.10(c)(2) of this chapter” in its place wherever it appears;
 - d. Remove “[BANK]” and add “state member bank” in its place wherever it appears;

e. Remove “[BANK’s]” and add “state member bank’s” in its place wherever it appears;
f. Removing “[BANKS]” and adding “state member banks” in its place wherever it appears.

g. Remove “[AGENCY NOTICE PROVISION]” and add “§ 263.202 of this chapter” in its place wherever it appears;

h. Remove “[AGENCY LEVERAGE RATIO]” and add “§ 217.10(b)(4) of this chapter” in its place wherever it appears;

i. Remove “[AGENCY SUPPLEMENTARY LEVERAGE RATIO]” and add “§ 217.10(c)(1) of this chapter” in its place wherever it appears;

j. Remove “of this title” and add “of this chapter” in its place wherever it appears.

k. Removing “[OTHER AGENCIES’ LONG-TERM DEBT REQUIREMENT]” and adding “part 54 of this title, or part 374 of this title” in its place wherever it appears; and

l. Removing “[OTHER AGENCIES’ SCOPING PARAGRAPHS]” and adding “§ 54.1(a)(1) through (2) of this title, or § 374.1(a)(1) through (2) of this title” in its place wherever it appears.

m. Removing “[AGENCY AA NOTIFICATION PROVISION]” and adding “§ 217.121(d) of this chapter” in its place wherever it appears.

n. Removing “[AGENCY CAPITAL RULE DEFINITIONS]” and adding “§ 217.2 of this chapter” in its place wherever it appears.

3. In § 216.2, add definitions for “Board”, “insured state bank”, “state bank”, and “state member bank” in alphabetical order to read as follows:

§ 216.2 Definitions.

* * * * *

Board means the Board of Governors of the Federal Reserve System.

* * * * *

Insured state bank means a state bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

* * * * *

State bank means any bank incorporated by special law of any State, or organized under the general laws of any State, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

State member bank means an insured state bank that is a member of the Federal Reserve System.

* * * * *

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

[**]. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

[**]. In § 217.2, revise the definition of “Covered debt instrument” to read as follows:

§ 217.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

- (1) Both:

(i) Issued by a depository institution holding company that is subject to a long-term debt requirement set forth in § 238.182 or § 252.62 of this chapter, as applicable, or a subsidiary of such depository institution holding company; and

(ii) An eligible debt security, as defined in § 238.181 or § 252.61 of this chapter, as applicable, or that is pari passu or subordinated to any eligible debt security issued by the depository institution holding company; or

(2) Both:

(i) Issued by a U.S. intermediate holding company or insured depository institution that is subject to a long-term debt requirement set forth in § 216.3 or § 252.162 of this chapter or § 54.3 or § 374.3 of this title, as applicable, or a subsidiary of such U.S. intermediate holding company or insured depository institution; and

(ii) An eligible external debt security, as defined in § 216.2 or § 252.161 of this chapter or § 54.2, § 374.2 of this title, as applicable, or that is pari passu or subordinated to any eligible external debt security issued by the U.S. intermediate holding company or insured depository institution; or

(3) Issued by a global systemically important banking organization, as defined in § 252.2 of this chapter, other than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a U.S. intermediate holding company subject to a long-term debt requirement set forth in § 252.162 of this chapter; and where:

(i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the

issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii), if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company, and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to § 217.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III, subchapter b of title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

[**]. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note), Pub. L. 115–174; section 4014 § 201, Pub. L. 116–136, 134 Stat. 281 (15 U.S.C. 9052).

[**]. In § 324.2, revise the definition of “Covered debt instrument” to read as follows:

§ 324.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Both:

(i) Issued by a depository institution holding company that is subject to a long-term debt requirement set forth in § 238.182 or § 252.62 of this title, as applicable, or a subsidiary of such depository institution holding company; and

(ii) An eligible debt security, as defined in § 238.181 or § 252.61 of this title, as applicable, or that is *pari passu* or subordinated to any eligible debt security issued by the depository institution holding company; or

(2) Both:

(i) Issued by a U.S. intermediate holding company or insured depository institution that is subject to a long-term debt requirement set forth in § 374.3 of this chapter or §54.3, § 216.3, or § 252.162 of this title, as applicable, or a subsidiary of such U.S. intermediate holding company or insured depository institution; and

(ii) An eligible external debt security, as defined in § 374.2 of this chapter or § 54.2, § 216.2, or § 252.161 of this title, as applicable, or that is pari passu or subordinated to any eligible external debt security issued by the U.S. intermediate holding company or insured depository institution; or

(3) Issued by a global systemically important banking organization, as defined in § 252.2 of this title other than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a U.S. intermediate holding company subject to a long-term debt requirement set forth in § 252.162 of this title; and where,

(i) The instrument is eligible for use to comply with an applicable law or regulation requiring the issuance of a minimum amount of instruments to absorb losses or recapitalize the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency, or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition; for purposes of this paragraph (3)(ii) of this definition, if the issuer may be subject to a special resolution regime, in its jurisdiction of incorporation or organization, that addresses the failure or potential failure of a financial company and any instrument described in paragraph (3)(i) of this definition is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument, then an instrument is pari passu or subordinated to any instrument described in paragraph (3)(i) of this definition if that instrument is eligible under that special resolution regime to be written down or converted into equity or any other capital instrument ahead of or proportionally with any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, *covered debt instrument* does not include a debt instrument that qualifies as tier 2 capital pursuant to § 324.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

[**]. In § 324.22, revise paragraphs (c)(1) and (h)(3)(iii) introductory paragraph to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

* * * * *

(c) * * *

(1) *Investment in the FDIC-supervised institution's own capital or covered debt instruments.* An FDIC-supervised institution must deduct an investment in its own capital instruments, and an advanced approaches FDIC-supervised institution also must deduct an investment in its own covered debt instruments, as follows:

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements;

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements; and

(iv) An advanced approaches FDIC-supervised institution must deduct an investment in the institution's own covered debt instruments from its tier 2 capital elements, as applicable. If the advanced approaches FDIC-supervised institution does not have a sufficient amount of tier 2

capital to effect this deduction, the institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital.

* * * * *

(h) Net long position —

* * *

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

* * *

(iii) For an investment in an FDIC-supervised institution’s own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4) through (6) and (d) of this section (as applicable), and an investment in a covered debt instrument under paragraphs (c)(1), (5), and (6) of this section:

* * *

* * * * *

PART 374—LONG-TERM DEBT REQUIREMENTS

1. Add part 374 as set forth at the end of the common preamble.

2. Amend part 374 by:

a. Removing “[AGENCY]” and adding “FDIC” in its place wherever it appears.

b. Removing “[AGENCY AUTHORITY]” and adding “12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1831o, 1835, 3907, 3909; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat.

2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).”

c. Removing “[AGENCY TOTAL LEVERAGE EXPOSURE]” and adding “§ 324.10(c)(2) of this chapter” in its place wherever it appears.

d. Removing “[BANK]” and adding “FDIC-supervised institution” in its place wherever it appears.

e. Removing “A FDIC-supervised institution” and adding “An FDIC-supervised institution” in its place wherever it appears.

f. Removing “a FDIC-supervised institution” and adding “an FDIC-supervised institution” in its place wherever it appears.

g. Removing “[BANK ’s]” and adding “FDIC-supervised institution ’s” in its place wherever it appears.

h. Removing “[BANKS]” and adding “FDIC-supervised institutions” in its place wherever it appears.

i. Removing “[AGENCY NOTICE PROVISION]” and adding “§ 324.5 of this chapter” in its place wherever it appears.

j. Removing “[AGENCY LEVERAGE RATIO]” and adding “§ 324.10(b)(4) of this chapter” in its place wherever it appears.

k. Removing “[AGENCY SUPPLEMENTARY LEVERAGE RATIO]” and adding “§ 324.10(c)(1) of this chapter” in its place wherever it appears.

l. Removing “[OTHER AGENCIES’ LONG-TERM DEBT REQUIREMENT]” and adding “part 54 of this title, or part 216 of this title” in its place wherever it appears.

m. Removing “[OTHER AGENCIES’ SCOPING PARAGRAPHS]” and adding “§ 54.1(a)(1) through (2) of this title, or § 216.1(a)(1) through (2) of this title” in its place wherever it appears.

n. Removing “[AGENCY AA NOTIFICATION PROVISION]” and adding “§ 324.121(d) of this chapter” in its place wherever it appears.

o. Removing “[AGENCY CAPITAL RULE DEFINITIONS]” and adding “§ 324.2 of this chapter” in its place wherever it appears.

3. Amend § 374.2 by adding definitions for “state nonmember bank”, “FDIC-supervised institution”, and “state savings association” in alphabetical order to read as follows:

§ 374.2 Definitions.

* * * * *

FDIC-supervised institution means any state nonmember bank or state savings association.

* * * * *

State nonmember bank means a State bank that is not a member of the Federal Reserve System as defined in section 3(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)(2)), the deposits of which are insured by the FDIC.

* * * * *

State savings association means a State savings association as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)), the deposits of which are insured by the FDIC. It includes a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a state bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of

the State in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the FDIC determine to be operating substantially in the same manner as a state savings association.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

[X]. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78*l*.

[X]. Add subpart T to read as follows:

Subpart T—External Long-term Debt Requirement and Restrictions on Corporate

Practices for U.S. Savings and Loan Holding Companies with Total Consolidated Assets of

\$100 Billion or More

Sec.

238.180 Applicability and reservation of authority.

238.181 Definitions.

238.182 External long-term debt requirement.

238.183 Restrictions on corporate practices.

238.184 Requirement to purchase subsidiary long-term debt.

§ 238.180 Applicability and reservation of authority.

(a) *General applicability.* This subpart applies to any Category II savings and loan holding company, Category III savings and loan holding company, or Category IV savings and loan holding company.

(b) *Initial applicability.* A covered company must comply with the requirements of this subpart beginning three years after the date on which the company becomes subject to this part or part 252, subpart G of this chapter.

(c) *Timing.* Notwithstanding paragraph (b) of this section, a covered company must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § 238.182 by one year after the date on which the covered company first becomes subject to this subpart or part 252, subpart G of this chapter;

(2) 50 percent of the amount required under § 238.182 by two years after the date on which the covered company first becomes subject to this subpart or part 252, subpart G of this chapter.

(d) *Reservation of authority.* The Board may require a covered company to maintain an outstanding eligible external long-term debt amount that is greater than or less than what is otherwise required under this subpart if the Board determines that the requirements under this subpart are not commensurate with the risk the activities of the covered company pose to public and private stakeholders in the event of material distress and failure of the covered company. In making a determination under this paragraph (d), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 263.202 of this chapter.

§ 238.181 Definitions.

For purposes of this subpart:

Additional tier 1 capital has the same meaning as in § 217.20(c) of this chapter.

Average total consolidated assets means the denominator of the leverage ratio as described in § 217.10(b)(4) of this chapter.

Common equity tier 1 capital has the same meaning as in § 217.20(b) of this chapter.

Covered company means a Category II savings and loan holding company, Category III savings and loan holding company, or Category IV savings and loan holding company.

Default right

(1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate the agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or

any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Eligible debt security means, with respect to a covered company:

(1) *New issuances*. A debt instrument that:

(i) Is paid in, and issued by the covered company to, and remains held by, a person that is not an affiliate of the covered company;

(ii) Is not secured, not guaranteed by the covered company or a subsidiary of the covered company, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the covered company; or

(B) A failure of the covered company to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered company's credit quality, but may have an interest rate that is adjusted periodically independent of the covered company's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered company; and

(ix) Is not issued in denominations of less than \$400,000 and must not be exchanged for smaller denominations by the covered company; and

(2) *Legacy long-term debt.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], that:

(i) Is paid in, and issued by the covered company or an insured depository institution that is a consolidated subsidiary of the covered company to, and remains held by, a person that is not an affiliate of the covered company;

(ii) Is not secured, not guaranteed by the covered company or a subsidiary of the covered company, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered company's credit quality, but may have an

interest rate that is adjusted periodically independent of the covered company's credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note; and

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the covered company's.

Insured depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Outstanding eligible external long-term debt amount is defined in § 238.182(b).

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Structured note –

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) An instrument that is not denominated in U.S. dollars; or

(ii) An instrument where interest payments are based on an interest rate index.

Supplementary leverage ratio has the same meaning as in § 217.10(c)(1) of this chapter.

Total leverage exposure has the same meaning as in § 217.10(c)(2) of this chapter.

Total risk-weighted assets means—

(1) For a covered company that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) of this chapter, the greater of—

(i) Standardized total risk-weighted assets as defined in § 217.2 of this chapter; and

(ii) Advanced approaches total risk-weighted assets as defined in § 217.2 of this chapter;

and

(2) For any other covered company, standardized total risk-weighted assets as defined in § 217.2 of this chapter.

U.S. federal banking agency means the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

§ 238.182 External long-term debt requirement.

(a) *External long-term debt requirement for covered companies.* Except as provided under paragraph (c) of this section, a covered company must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) Six percent of the covered company's total risk-weighted assets;

(2) If the covered company is required to maintain a minimum supplementary leverage ratio under part 217 of this chapter, 2.5 percent of the covered company's total leverage exposure; and

(3) 3.5 percent of the covered company's average total consolidated assets.

(b) *Outstanding eligible external long-term debt amount.* (1) A covered company's outstanding eligible external long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered company in greater than or equal to two years;

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered company in greater than or equal to one year and less than two years; and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered company in less than one year.

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the covered company, or a failure of the covered company to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with part 263, subpart E of this chapter the Board may order a covered company to exclude from its outstanding eligible long-

term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(c) *Redemption and repurchase.* A covered company may not redeem or repurchase any outstanding eligible debt security without the prior approval of the Board if, immediately after the redemption or repurchase, the covered company would not meet its external long-term debt requirement under paragraph (a) of this section.

§ 238.183 Restrictions on corporate practices.

(a) *Prohibited corporate practices.* A covered company must not directly:

(1) Issue any debt instrument with an original maturity of less than one year, including short term deposits and demand deposits, to any person, unless the person is a subsidiary of the covered company;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to a subsidiary of the covered company against the amount, or a portion of the amount, owed by the covered company under the instrument;

(3) Enter into a qualified financial contract with a person that is not a subsidiary of the covered company, except for a qualified financial contract that is:

(i) A credit enhancement;

(ii) An agreement with one or more underwriters, dealers, brokers, or other purchasers for the purpose of issuing or distributing the securities of the covered company, whether by means of an underwriting syndicate or through an individual dealer or broker;

(iii) An agreement with an unaffiliated broker-dealer in connection with a stock repurchase plan of the covered company, where the covered company enters into a forward

contract with the broker-dealer that is fully prepaid and where the broker-dealer agrees to purchase the issuer's stock in the market over the term of the agreement in order to deliver the shares to the covered company;

(iv) An agreement with an employee or director of the covered company granting the employee or director the right to purchase a specific number of shares of the covered company at a fixed price within a certain period of time, or, if such right is to be cash-settled, to receive a cash payment reflecting the difference between the agreed-upon price and the market price at the time the right is exercised; and

(v) Any other agreement if the Board determines that exempting the agreement from the prohibition in this paragraph (a)(3) would not pose a material risk to the orderly resolution of the covered company or the stability of the U.S. banking or financial system.

(4) Enter into an agreement in which the covered company guarantees a liability of a subsidiary of the covered company if such liability permits the exercise of a default right that is related, directly or indirectly, to the covered company becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or

(5) Enter into, or otherwise begin to benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a covered company owed to persons that are not affiliates of the covered company may not exceed 5 percent of the sum of the covered company's:

- (i) Common equity tier 1 capital (excluding any common equity tier 1 minority interest);
- (ii) Additional tier 1 capital (excluding any tier 1 minority interest); and
- (iii) Outstanding eligible long-term debt amount as calculated pursuant to § 238.182(b).

(2) For purposes of this paragraph (b), an unrelated liability is any noncontingent liability of the covered company owed to a person that is not an affiliate of the covered company other than:

(i) The instruments included in the covered company's common equity tier 1 capital (excluding any common equity tier 1 minority interest), the covered company's additional tier 1 capital (excluding any common equity tier 1 minority interest), and the covered company's outstanding eligible external LTD amount as calculated under § 238.182(a);

(ii) Any dividend or other liability arising from the instruments set forth in paragraph (b)(2)(i) of this section;

(iii) An eligible debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 101 et seq.).

(c) A covered company is not subject to paragraph (b) of this section if all of the eligible debt securities issued by the covered company would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the covered company.

§ 238.184 Requirement to purchase subsidiary long-term debt.

Whenever necessary for an insured depository institution that is a consolidated subsidiary of a covered company to satisfy the minimum long-term debt requirement set forth in § 216.3(a) of this chapter, or § 54.3(a) and § 374.3(a) of this title, if applicable, the covered company or any subsidiary of the covered company of which the insured depository institution is a consolidated subsidiary must purchase eligible internal debt securities, as defined in § 216.2 of this chapter, or §§ 54.2 or 374.2 of this title, if applicable, from the insured depository institution in the amount necessary to satisfy such requirement.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

[X]. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1844(c), 3101 et seq., 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart A—General Provisions

[X]. In § 252.2, add definitions for “additional tier 1 capital”, “common equity tier1 capital”, “common equity tier 1 capital ratio”, “common equity tier 1 minority interest”, “discretionary bonus payment”, “distribution”, “GSIB surcharge”, “insured depository institution”, “supplementary leverage ratio”, “tier 1 minority interest”, “tier 2 capital”, “total leverage exposure”, “total risk-weighted assets”, and “U.S. federal banking agency” in alphabetical order.

The additions read as follows:

§ 252.2 Definitions.

* * * * *

Additional tier 1 capital has the same meaning as in § 217.20(c) of this chapter.

* * * * *

Common equity tier 1 capital has the same meaning as in § 217.20(b) of this chapter.

Common equity tier 1 capital ratio has the same meaning as in §§ 217.10(b)(1) and (d)(1) of this chapter, as applicable.

Common equity tier 1 minority interest has the same meaning as in § 217.2 of this chapter.

* * * * *

Discretionary bonus payment has the same meaning as in § 217.2 of this chapter.

Distribution has the same meaning as in § 217.2 of this chapter.

* * * * *

GSIB surcharge has the same meaning as in § 217.2 of this chapter.

* * * * *

Insured depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

* * * * *

Supplementary leverage ratio has the same meaning as in 217.10(c)(1) of this chapter.

Tier 1 capital has the same meaning as in § 217.2 of this chapter.

Tier 1 minority interest has the same meaning as in § 217.2 of this chapter.

Tier 2 capital has the same meaning as in § 217.20(d) of this chapter.

* * * * *

Total leverage exposure has the same meaning as in § 217.10(c)(2) of this chapter.

* * * * *

Total risk-weighted assets means—

(1) For a bank holding company, or a U.S. intermediate holding company, that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) of this chapter, the greater of—

(i) standardized total risk-weighted assets as defined in § 217.2 of this chapter; and

(ii) advanced approaches total risk-weighted assets as defined in § 217.2 of this chapter;

and

(2) For any other bank holding company or U.S. intermediate holding company, standardized total risk-weighted assets as defined in § 217.2 of this chapter.

* * * * *

U.S. federal banking agency means the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

* * * * *

[X]. Revise subpart G to read as follows:

Subpart G—External Long-term Debt Requirement, External Total Loss-absorbing

Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S.

Banking Organizations with Total Consolidated Assets of \$100 Billion or More

Sec.

252.60 Applicability and reservation of authority.

252.61 Definitions.

252.62 External long-term debt requirement.

252.63 External total loss-absorbing capacity requirement and buffer for global systemically important BHCs.

252.64 Restrictions on corporate practices.

252.65 Requirement to purchase subsidiary long-term debt.

252.66 Disclosure requirements.

§ 252.60 Applicability and reservation of authority.

(a) *General applicability.* This subpart applies to any global systemically important BHC, Category II bank holding company, Category III bank holding company, or Category IV bank holding company, in each case that is not a covered IHC as defined in § 252.161.

(b) *Initial applicability.* A covered BHC must comply with the requirements of this subpart beginning on:

(1) In the case of a global systemically important BHC, three years after the date on which the company becomes a global systemically important BHC.

(2) In the case of a covered BHC that is not a global systemically important BHC, the later of:

(i) [Three years after the date of finalization of the rule]; or

(ii) Three years after the date on which the company becomes subject to this part or to part 238, subpart T of this chapter.

(c) *Timing.* Notwithstanding paragraph (b) of this section, a covered BHC that is not a global systemically important BHC must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § 252.62 by one year after the date on which the covered BHC first becomes subject to this subpart or part 238, subpart T of this chapter; and

(2) 50 percent of the amount required under § 252.62 by two years after the date on which the covered BHC first becomes subject to this subpart or part 238, subpart T of this chapter.

(d) *Transition to global systemically important BHC.* During the three-year period set forth in paragraph (b)(1) of this section, a global systemically important BHC must continue to

comply with the requirements of this subpart that applied to the covered BHC the day before the date on which the covered BHC became a global systemically important BHC.

(e) *Reservation of authority.* The Board may require a covered BHC to maintain an outstanding eligible external long-term debt amount or outstanding external total loss-absorbing capacity amount, if applicable, that is greater than or less than what is otherwise required under this subpart if the Board determines that the requirements under this subpart are not commensurate with the risk the activities of the covered BHC pose to public and private stakeholders in the event of material distress and failure of the covered company. In making a determination under this paragraph (e), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 263.202 of this chapter.

§ 252.61 Definitions.

For purposes of this subpart:

Covered BHC means a global systemically important BHC, Category II bank holding company, Category III bank holding company, or Category IV bank holding company, in each case that is not a covered IHC as defined in § 252.161.

Default right

(1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate the agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other

credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Eligible debt security means, with respect to a covered BHC:

(1) *New issuances*. A debt instrument that:

(i) Is paid in, and issued by the covered BHC to, and remains held by, a person that is not an affiliate of the covered BHC;

(ii) Is not secured, not guaranteed by the covered BHC or a subsidiary of the covered BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

- (iii) Has a maturity of greater than or equal to one year from the date of issuance;
 - (iv) Is governed by the laws of the United States or any State thereof;
 - (v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:
 - (A) A receivership, insolvency, liquidation, or similar proceeding of the covered BHC; or
 - (B) A failure of the covered BHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;
 - (vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the covered BHC's credit quality, in relation to general market interest rates or similar adjustments;
 - (vii) Is not a structured note;
 - (viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered BHC; and
 - (ix) In the case of a debt instrument issued on or after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], is not issued in denominations of less than \$400,000 and must not be exchanged for smaller denominations by the covered BHC; and
- (2) *Legacy long-term debt issued by a global systemically important BHC.* A debt instrument issued prior to December 31, 2016 that:
- (i) Is paid in, and issued by the global systemically important BHC;

(ii) Is not secured, not guaranteed by the global systemically important BHC or a subsidiary of the global systemically important BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the global systemically important BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the global systemically important BHC's credit quality, in relation to general market interest rates or similar adjustments;

(v) Is not a structured note; and

(vi) Does not provide that the instrument may be converted into or exchanged for equity of the global systemically important BHC.

(3) *Legacy long-term debt issued by a covered BHC that is not a global systemically important BHC, or by its consolidated subsidiary insured depository institution.* With respect to a covered BHC that is not a global systemically important BHC, a debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], that:

(i) Is paid in, and issued by the covered BHC or an insured depository institution that is a consolidated subsidiary of the covered BHC to, and remains held by, a person that is not an affiliate of the covered BHC;

(ii) Is not secured, not guaranteed by the covered BHC or a subsidiary of the covered BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered BHC's or insured depository institution's credit quality, but may have an interest rate that is adjusted periodically independent of the covered BHC's or insured depository institution's credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note; and

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the covered BHC or an insured depository institution that is a consolidated subsidiary of the covered BHC.

External TLAC risk-weighted buffer means, with respect to a global systemically important BHC, the sum of 2.5 percent, any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage), and the global systemically important BHC's method 1 capital surcharge.

Method 1 capital surcharge means, with respect to a global systemically important BHC, the most recent method 1 capital surcharge (expressed as a percentage) the global systemically important BHC was required to calculate pursuant to subpart H of Regulation Q (12 CFR 217.400 through 217.406).

Outstanding eligible external long-term debt amount is defined in § 252.62(c).

Person has the same meaning as in § 225.2(l) of this chapter.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Structured note –

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

(i) An instrument that is not denominated in U.S. dollars; or

(ii) An instrument where interest payments are based on an interest rate index.

§ 252.62 External long-term debt requirement.

(a) *External long-term debt requirement for global systemically important BHCs.* Except as provided under paragraph (d) of this section, a global systemically important BHC must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) The global systemically important BHC's total risk-weighted assets multiplied by the sum of 6 percent plus the global systemically important BHC's GSIB surcharge (expressed as a percentage); and

(2) 4.5 percent of the global systemically important BHC's total leverage exposure.

(b) *External long-term debt requirement for covered BHCs that are not global systemically important BHCs.* Except as provided under paragraph (d) of this section, a covered BHC that is not a global systemically important BHC must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) 6 percent of the total risk-weighted assets of the covered BHC that is not a global systemically important BHC;

(2) 2.5 percent of the leverage exposure of the covered BHC that is not a global systemically important BHC, if the covered BHC is required to maintain a minimum supplementary leverage ratio under part 217 of this chapter; and

(3) 3.5 percent of the average total consolidated assets of the covered BHC that is not a global systemically important BHC.

(c) *Outstanding eligible external long-term debt amount.*

(1) A covered BHC's outstanding eligible external long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered BHC in greater than or equal to two years;

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered BHC in greater than or equal to one year and less than two years; and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered BHC in less than one year.

(2) For purposes of paragraph (c)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the covered BHC, or a failure of the covered BHC to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (c)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with 12 CFR part 263, subpart E, the Board may order a covered BHC to exclude from its outstanding eligible long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(d) *Redemption and repurchase.* A covered BHC may not redeem or repurchase any outstanding eligible debt security without the prior approval of the Board if, immediately after the redemption or repurchase, the covered BHC would not meet its external long-term debt requirement under paragraphs (a) or (b) of this section, or, if applicable, its external total loss-absorbing capacity requirement under § 252.63(a).

§ 252.63 External total loss-absorbing capacity requirement and buffer for global systemically important BHCs.

(a) *External total loss-absorbing capacity requirement.* A global systemically important BHC must maintain an outstanding external total loss-absorbing capacity amount that is no less than the amount equal to the greater of:

- (1) 18 percent of the global systemically important BHC's total risk-weighted assets; and
- (2) 7.5 percent of the global systemically important BHC's total leverage exposure.

(b) *Outstanding external total loss-absorbing capacity amount.* A global systemically important BHC's outstanding external total loss-absorbing capacity amount is the sum of:

- (1) The global systemically important BHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);
- (2) The global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest); and
- (3) The global systemically important BHC's outstanding eligible external long-term debt amount as calculated pursuant § 252.62(c).

(c) *External TLAC buffer* —

(1) *Composition of the external TLAC risk-weighted buffer.* The external TLAC risk-weighted buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a global systemically important BHC is the greater of:

(A) The global systemically important BHC's net income, calculated in accordance with the instructions to the FR Y-9C, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) The average of the global systemically important BHC's net income, calculated in accordance with the instructions to the FR Y-9C, for the four calendar quarters preceding the current calendar quarter.

(ii) *Maximum external TLAC risk-weighted payout ratio.* The maximum external TLAC risk-weighted payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC risk-weighted payout ratio is based on the global systemically important BHC's external TLAC risk-weighted buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 252.63.

(iii) *Maximum external TLAC risk-weighted payout amount.* A global systemically important BHC's maximum external TLAC risk-weighted payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum external TLAC risk-weighted payout ratio, as set forth in Table 1 to § 252.63.

(iv) *Maximum external TLAC leverage payout ratio.* The maximum external TLAC leverage payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC leverage payout ratio is based on the global systemically important BHC's external TLAC leverage buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 2 to § 252.63.

(v) *Maximum external TLAC leverage payout amount.* A global systemically important BHC's maximum external TLAC leverage payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum TLAC leverage payout ratio, as set forth in Table 2 to § 252.63.

(3) *Calculation of the external TLAC risk-weighted buffer level.*

(i) A global systemically important BHC's external TLAC risk-weighted buffer level is equal to the global systemically important BHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) 18 percent; minus

(B) The ratio (expressed as a percentage) of the global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest) to its total risk-weighted assets; and minus

(C) The ratio (expressed as a percentage) of the global systemically important BHC's outstanding eligible external long-term debt amount as calculated in § 252.62(c) to total risk-weighted assets.

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its risk-weighted assets is less than or equal to 18 percent, the global systemically important BHC's external TLAC risk-weighted buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.*

(i) A global systemically important BHC shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum external TLAC risk-weighted payout amount or the maximum external TLAC leverage payout amount.

(ii) A global systemically important BHC with an external TLAC risk-weighted buffer level that is greater than the external TLAC risk-weighted buffer and an external TLAC leverage buffer level that is greater than 2.0 percent, in accordance with paragraph (c)(5) of this section, is

not subject to a maximum external TLAC risk-weighted payout amount or a maximum external TLAC leverage payout amount.

(iii) Except as provided in paragraph (c)(4)(iv) of this section, a global systemically important BHC may not make distributions or discretionary bonus payments during the current calendar quarter if the global systemically important BHC's:

(A) Eligible retained income is negative; and

(B) External TLAC risk-weighted buffer level was less than the external TLAC risk-weighted buffer as of the end of the previous calendar quarter or external TLAC leverage buffer level was less than 2.0 percent as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (c)(4)(i) through (iii) of this section, the Board may permit a global systemically important BHC to make a distribution or discretionary bonus payment upon a request of the global systemically important BHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the global systemically important BHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(v)

(A) A global systemically important BHC is subject to the lowest of the maximum payout amounts as determined under § 217.11(a)(2) of this chapter, the maximum external TLAC risk-weighted payout amount as determined under this paragraph (c), and the maximum external TLAC leverage payout amount as determined under this paragraph (c).

(B) Additional limitations on distributions may apply to a global systemically important BHC under §§ 225.4, 225.8, and 263.202 of this chapter.

(5) External TLAC leverage buffer—

(i) *General.* A global systemically important BHC is subject to the lower of the maximum external TLAC risk-weighted payout amount as determined under paragraph (c)(2)(iii) of this section and the maximum external TLAC leverage payout amount as determined under paragraph (c)(2)(v) of this section.

(ii) *Composition of the external TLAC leverage buffer.* The external TLAC leverage buffer is composed solely of tier 1 capital.

(iii) Calculation of the external TLAC leverage buffer level.

(A) A global systemically important BHC's external TLAC leverage buffer level is equal to the global systemically important BHC's supplementary leverage ratio (expressed as a percentage) minus the greater of zero and the following amount:

(1) 7.5 percent; minus

(2) The ratio (expressed as a percentage) of the global systemically important BHC's outstanding eligible external long-term debt amount as calculated in § 252.62(c) to total leverage exposure.

(B) Notwithstanding paragraph (c)(5)(iii) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its total leverage exposure is less than or equal to 7.5 percent, the global systemically important BHC's external TLAC leverage buffer level is zero.

Table 1 to § 252.63—Calculation of Maximum External TLAC Risk-Weighted Payout Amount

External TLAC risk-weighted buffer level	Maximum External TLAC risk-weighted payout ratio (as a percentage of eligible retained income)
Greater than the external TLAC risk-weighted buffer	No payout ratio limitation applies.
Less than or equal to the external TLAC risk-weighted buffer, <i>and</i> greater than 75 percent of the external TLAC risk-weighted buffer	60 percent.
Less than or equal to 75 percent of the external TLAC risk-weighted buffer, <i>and</i> greater than 50 percent of the external TLAC risk-weighted buffer	40 percent.
Less than or equal to 50 percent of the external TLAC risk-weighted buffer, <i>and</i> greater 25 percent of the external TLAC risk-weighted buffer	20 percent.
Less than or equal to 25 percent of the external TLAC risk-weighted buffer	0 percent.

Table 2 to § 252.63—Calculation of Maximum External TLAC Leverage Payout

Amount

External TLAC leverage buffer level	Maximum External TLAC leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

§ 252.64 Restrictions on corporate practices.

(a) *Prohibited corporate practices.* A covered BHC must not directly:

(1) Issue any debt instrument with an original maturity of less than one year, including short term deposits and demand deposits, to any person, unless the person is a subsidiary of the covered BHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to a subsidiary of the covered BHC against the amount, or a portion of the amount, owed by the covered BHC under the instrument;

(3) Enter into a qualified financial contract with a person that is not a subsidiary of the covered BHC, except for a qualified financial contract that is:

(i) A credit enhancement;

(ii) An agreement with one or more underwriters, dealers, brokers, or other purchasers for the purpose of issuing or distributing the securities of the covered BHC, whether by means of an underwriting syndicate or through an individual dealer or broker;

(iii) An agreement with an unaffiliated broker-dealer in connection with a stock repurchase plan of the covered BHC, where the covered BHC enters into a forward contract with the broker-dealer that is fully prepaid and where the broker-dealer agrees to purchase the covered BHC's stock in the market over the term of the agreement in order to deliver the shares to the covered BHC;

(iv) An agreement with an employee or director of the covered BHC granting the employee or director the right to purchase a specific number of shares of the covered BHC at a fixed price within a certain period of time, or, if such right is to be cash-settled, to receive a cash payment reflecting the difference between the agreed-upon price and the market price at the time the right is exercised; and

(v) Any other agreement for which the Board determines that exempting the agreement from the prohibition in this paragraph (a)(3) would not pose a material risk to the orderly resolution of the covered BHC or the stability of the U.S. banking or financial system.

(4) Enter into an agreement in which the covered BHC guarantees a liability of a subsidiary of the covered BHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the covered BHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or

(5) Enter into, or otherwise begin to benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.*

(1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a covered BHC owed to persons that are not affiliates of the covered BHC must not exceed:

(i) In the case of a global systemically important BHC, 5 percent of the covered BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b); and

(ii) In the case of a covered BHC that is not a global systemically important BHC, 5 percent of the sum of the covered BHC's:

(A) Common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(B) Additional tier 1 capital (excluding any tier 1 minority interest); and

(C) Outstanding eligible external long-term debt amount as calculated pursuant to § 252.62(c).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability is any non-contingent liability of the covered BHC owed to a person that is not an affiliate of the covered BHC other than:

(i) The instruments included in the covered BHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest), the covered BHC's additional tier 1 capital (excluding any common equity tier 1 minority interest), and the covered BHC's outstanding eligible external LTD amount as calculated under § 252.62(a) or § 252.62(b), as applicable;

(ii) Any dividend or other liability arising from the instruments described in paragraph (b)(2)(i) of this section;

(iii) An eligible debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 101 et seq.).

(c) A covered BHC is not subject to paragraph (b) of this section if all of the eligible debt securities issued by the covered BHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the covered BHC.

§ 252.65 Requirement to purchase subsidiary long-term debt.

Whenever necessary for an insured depository institution that is a consolidated subsidiary of a covered BHC to satisfy the minimum long-term debt requirement set forth in § 216.3(a) of this chapter, or § 54.3(a) and § 374.3(a) of this title, if applicable, the covered BHC or any subsidiary of the covered BHC of which the insured depository institution is a consolidated subsidiary must purchase eligible internal debt securities, as defined in § 216.2 of this chapter, or §§ 54.2 or 374.2 of this title, from the insured depository institution in the amount necessary to satisfy such requirement.

§ 252.66 Disclosure requirements for global systemically important BHCs.

(a) *Financial consequences disclosure.*

(1) A global systemically important BHC must publicly disclose a description of the financial consequences to unsecured debtholders of the global systemically important BHC entering into a resolution proceeding in which the global systemically important BHC is the only entity that would be subject to the resolution proceeding.

(2) A global systemically important BHC must provide the disclosure required by paragraph (a)(1) of this section:

(i) In the offering documents for all of its eligible debt securities issued after the global systemically important BHC becomes subject to this subpart; and

(ii) Either:

(A) On the global systemically important BHC's website; or

(B) In more than one public financial report or other public regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

(b) Creditor ranking disclosures for global systemically important BHCs.

(1) *In general.* Subject to the requirements of this paragraph (b), a global systemically important BHC must publicly disclose the information set forth in Table 1 to § 252.66 in a format that is substantially similar to that of Table 1 to § 252.66.

(2) *Timing and method of disclosure.* (i) A global systemically important BHC must provide the public disclosure required by paragraph (b)(1) of this section on a timely basis at least every six months in a direct and prominent manner either:

(A) On the global systemically important BHC's website; or

(B) In more than one public financial report or other public regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

(ii) A global systemically important BHC must make a public disclosure required by paragraph (b)(1) of this section publicly available for at least three years after the public disclosure is initially made.

(3) *Requirements for the board of directors and senior officers.* A global systemically important BHC must comply with the requirements in § 217.62(b) of this chapter with respect to the disclosure required by paragraph (b)(1) of this section.

(4) *Columns.*

(i) The table required by paragraph (b)(1) of this section must include the same first and last columns as Table 1 to § 252.66.

(ii) The table required by paragraph (b)(1) of this section must include a separate column for each category of liability or equity instrument issued by the global systemically important BHC that:

(A) Is reported on the global systemically important BHC's balance sheet as a liability of, or equity instrument issued by, the global systemically important BHC; and

(B) Would represent a claim with a priority equal to or less than the claim represented by the global systemically important BHC's most senior class of eligible debt security under the Bankruptcy Code (11 U.S.C. 101 et seq.).

(C) Notwithstanding paragraphs (b)(4)(ii)(A) and (B), liabilities or equity instruments issued by the global systemically important BHC that would have the same ranking under the Bankruptcy Code (11 U.S.C. 101 et seq.) may be aggregated and reported in the same column.

(iii) The columns for each ranking position must be reported in the table in order from most junior claim level to most senior claim level.

(5) *Rows*. For purposes of the disclosure required under this paragraph (b):

(i) The amount required by row 2 equals the total balance sheet amount associated with the global systemically important BHC's liabilities and outstanding equity instruments in the applicable column.

(ii) For purposes of row 3, "excluded liabilities" refers to liabilities reported in row 2 that are:

(A) Derivative liabilities;

(B) Structured notes;

(C) Liabilities not arising through a contract, including tax liabilities;

(D) Liabilities which that have a greater priority than senior unsecured creditors under the Bankruptcy Code (11 U.S.C. 101 et seq.); or

(E) Any liabilities that, under the laws of the United States or any State applicable to the global systemically important BHC, may not be written down or converted into equity by a

resolution authority or bankruptcy court without giving rise to material risk of successful legal challenge or valid compensation claims.

(iii) For purposes of rows 3 through 5, “TLAC” refers to outstanding external total loss-absorbing capacity amount as defined in § 252.63(b).

Table 1 to § 252.66—Creditor ranking for resolution entity.

Creditor Ranking	1 (most junior)	2	3 (most senior)	Total
1. Description of the category of liability or equity instrument with the column's ranking to include, if possible, examples of such liability or equity instrument				
2. Total liabilities and equity				
3. Amount of row 2 less excluded liabilities				
4. Total liabilities and equities less non-TLAC amounts (row 2 minus row 3)				
5. Subset of the amount in row 4 that are potentially eligible as TLAC				
6. Subset of the amount in row 5 with residual maturity greater than or equal to one year and less than two years.				
7. Subset of the amount in row 5 with residual maturity greater than or equal to two years and less than five years.				
8. Subset of the amount in row 5 with residual maturity greater than or equal to five years and less than ten years.				
9. Subset of the amount in row 5 with residual maturity greater than or equal to 10 years that do not have perpetual maturities.				
10. Subset of the amount in row 5 with perpetual maturities.				

[X]. Revise subpart P to read as follows:

Subpart P—Long-term Debt Requirement, External Total Loss-absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Intermediate Holding Companies

Sec.

252.160 Applicability and reservation of authority.

252.161 Definitions.

252.162 Covered IHC long-term debt requirement.

252.163 Internal debt conversion order.

252.164 Identification as a resolution covered IHC or a non-resolution covered IHC of a foreign banking organization.

252.165 Total loss-absorbing capacity requirement and buffer for IHCs of global systemically important foreign banking organizations.

252.166 Restrictions on corporate practices of a covered IHC.

252.167 Requirement to purchase subsidiary long-term debt.

252.168 Disclosure requirements for resolution covered IHCs controlled by global systemically important foreign banking organizations.

§ 252.160 Applicability and reservation of authority.

(a) *Applicability.* This subpart applies to a U.S. intermediate holding company that either:

(1) Is controlled by a global systemically important foreign banking organization; or

(2) Is not controlled by a global systemically important foreign banking organization and

is a Category II U.S. intermediate holding company, Category III U.S. intermediate holding company, or a Category IV U.S. intermediate holding company.

(b) *Timing of requirements.*

(1) Except with respect to § 252.164, a covered IHC must comply with the requirements of this subpart before:

(i) In the case of a covered IHC controlled by a global systemically important foreign banking organization, three years after the date on which the company becomes a covered IHC controlled by a global systemically important foreign banking organization; and

(ii) In the case of a covered IHC that is not controlled by a global systemically important foreign banking organization, the later of:

(A) Three years after the [DATE OF FINALIZATION OF PROPOSED RULE]; or

(B) Three years after the date on which the company becomes a covered IHC.

(2) A covered IHC must comply with the requirements of § 252.164 before:

(i) In the case of a covered IHC controlled by a global systemically important foreign banking organization, two years after the date on which the company becomes a covered IHC; and

(ii) In the case of a covered IHC that is not controlled by a global systemically important foreign banking organization, six months after the date on which the company becomes a covered IHC.

(c) Notwithstanding paragraph (b) of this section, a covered IHC that is not controlled by a global systemically important foreign banking organization must have an outstanding eligible long-term debt amount that is no less than:

(1) 25 percent of the amount required under § 252.162 by one year after the date on which the covered IHC first becomes subject to this subpart; and

(2) 50 percent of the amount required under § 252.162 by two years after the date on which the covered IHC first becomes subject to this subpart.

(d) *Transition to being controlled by a global systemically important foreign banking organization.* Notwithstanding paragraphs (a) and (b) of this section, if a covered IHC was

subject to this subpart the day before the date on which the covered IHC becomes controlled by a global systemically important foreign banking organization:

(1) During the three-year period set forth in paragraph (b)(1)(i) of this section, a covered IHC must continue to comply with the requirements of this subpart that applied to the covered IHC the day before the date on which the covered IHC became controlled by a foreign global systemically important banking organization; and

(2) The last certification provided by a covered IHC pursuant to § 252.164 will be treated as the initial certification required by the covered IHC pursuant to § 252.164 the day it becomes controlled by a global systemically important foreign banking organization.

(e) *Reservation of authority.* The Board may require a covered IHC to maintain an outstanding eligible long-term debt amount or outstanding total loss-absorbing capacity amount, if applicable, that is greater than or less than what is otherwise required under this subpart if the Board determines that the requirements under this subpart are not commensurate with the risk the activities of the covered IHC pose to public and private stakeholders in the event of material distress and failure of the covered company. In making a determination under this paragraph (e), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in § 263.202 of this chapter.

§ 252.161 Definitions.

For purposes of this subpart:

Average total consolidated assets means the denominator of the leverage ratio as described in § 217.10(b)(4) of this chapter.

Covered IHC means a U.S. intermediate holding company described in § 252.160(a).

Covered IHC TLAC buffer means, with respect to a covered IHC that is controlled by a global systemically important foreign banking organization, the sum of 2.5 percent and any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage).

Covered IHC total loss-absorbing capacity amount is defined in § 252.165(c).

Default right (1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Eligible covered IHC debt security with respect to a non-resolution covered IHC means an eligible internal debt security issued by the non-resolution covered IHC, and with respect to a resolution covered IHC means an eligible internal debt security or an eligible external debt security issued by the resolution covered IHC.

Eligible external debt security means:

(1) *New issuances.* A debt instrument that:

(i) Is paid in, and issued by the covered IHC to, and remains held by, a person that does not directly or indirectly control the covered IHC and is not a wholly owned subsidiary;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the covered IHC; or

(B) A failure of the covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered IHC's credit quality, but may have an interest rate that is adjusted periodically independent of the covered IHC's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note;

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC; and

(ix) In the case of a debt instrument issued on or after [DATE OF PUBLICAITON OF FINAL RULE IN THE FEDERAL REGISTER], is not issued in denominations of less than \$400,000 and must not be exchanged for smaller denominations by the covered IHC; and

(2) *Legacy long-term debt issued by a covered IHC that is controlled by a global systemically important foreign banking organization.* A debt instrument issued prior to December 31, 2016, that:

(i) Is paid in, and issued by the covered IHC to, and remains held by, a person that does not directly or indirectly control the covered IHC and is not a wholly owned subsidiary;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered IHC's credit quality, but may have an interest rate that is adjusted periodically independent of the covered IHC's credit quality, in relation to general market interest rates or similar adjustments;

(v) Is not a structured note; and

(vi) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC; and

(3) *Legacy long-term debt issued by a covered IHC that is not controlled by a global systemically important foreign banking organization or a consolidated subsidiary insured depository institution of the covered IHC.* A debt instrument issued prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], that:

(i) Is paid in, and issued by the covered IHC or an insured depository institution that is a consolidated subsidiary of the covered IHC to, and remains held by, a person that is not an affiliate of the covered IHC;

(ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to one year from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the covered IHC's or insured depository institution's credit quality, but may have an interest rate that is adjusted periodically independent of the covered IHC's or insured depository institution's credit quality, in relation to general market interest rates or similar adjustments;

(vi) Is not a structured note; and

(vii) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC or an insured depository institution that is a consolidated subsidiary of the covered IHC.

Eligible internal debt security means a debt instrument that:

- (i) Is paid in, and issued by the covered IHC;
- (ii) Is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;
- (iii) Has a maturity of greater than or equal to one year from the date of issuance;
- (iv) Is governed by the laws of the United States or any State thereof;
- (v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:
 - (A) A receivership, insolvency, liquidation, or similar proceeding of the covered IHC; or
 - (B) A failure of the covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;
- (vi) Is not a structured note;
- (vii) Is issued to and remains held by a company that is incorporated or organized outside of the United States, and directly or indirectly controls the covered IHC or is a wholly owned subsidiary; and
- (viii) Has a contractual provision that is approved by the Board that provides for the immediate conversion or exchange of the instrument into common equity tier 1 of the covered IHC upon issuance by the Board of an internal debt conversion order.

Internal debt conversion order means an order by the Board to immediately convert to, or exchange for, common equity tier 1 capital an amount of eligible internal debt securities of the covered IHC specified by the Board in its discretion, as described in § 252.163.

Non-resolution covered IHC means a covered IHC identified as or determined to be a non-resolution covered IHC pursuant to § 252.164.

Outstanding eligible covered IHC long-term debt amount is defined in § 252.162(b).

Person has the same meaning as in § 225.2(l) of this chapter.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Resolution covered IHC means a covered IHC identified as or determined to be a resolution covered IHC pursuant to § 252.164.

Structured note –

(1) Means a debt instrument that:

(i) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(ii) Has an embedded derivative or other similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(iii) Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or

(iv) Is not classified as debt under GAAP.

(2) Notwithstanding paragraph (1) of this definition, an instrument is not a structured note solely because it is one or both of the following:

- (i) A non-dollar-denominated instrument, or
- (ii) An instrument whose interest payments are based on an interest rate index.

Wholly owned subsidiary means an entity, all of the outstanding ownership interests of which are owned directly or indirectly by a global systemically important foreign banking organization that directly or indirectly controls a covered IHC, except that up to 0.5 percent of the entity's outstanding ownership interests may be held by a third party if the ownership interest is acquired or retained by the third party for the purpose of establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns.

§ 252.162 Covered IHC long-term debt requirement.

(a) *Covered IHC long-term debt requirement.* Except as provided under paragraph (c) of this section, a covered IHC must have an outstanding eligible covered IHC long-term debt amount that is no less than the amount equal to the greatest of:

- (1) Six percent of the covered IHC's total risk-weighted assets;
- (2) If the covered IHC is required to maintain a minimum supplementary leverage ratio, 2.5 percent of the covered IHC's total leverage exposure; and
- (3) 3.5 percent of the covered IHC's average total consolidated assets.

(b) *Outstanding eligible covered IHC long-term debt amount.*

(1) A covered IHC's outstanding eligible covered IHC long-term debt amount is the sum of:

- (i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible covered IHC debt securities issued by the covered IHC in greater than or equal to two years; and

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible covered IHC debt securities issued by the covered IHC in greater than or equal to one year and less than two years;

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible covered IHC debt securities issued by the covered IHC in less than one year.

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible covered IHC debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the covered IHC, or a failure of the covered IHC to pay principal or interest on the instrument when due), the date for the outstanding eligible covered IHC debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with 12 CFR part 263, subpart E, the Board may order a covered IHC to exclude from its outstanding eligible covered IHC long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(c) *Redemption and repurchase.* Without the prior approval of the Board, a covered IHC may not redeem or repurchase any outstanding eligible covered IHC debt security if, immediately after the redemption or repurchase, the covered IHC would not have an outstanding

eligible covered IHC long-term debt amount that is sufficient to meet its covered IHC long-term debt requirement under paragraph (a) of this section or, if applicable, its total loss-absorbing capacity requirement under § 252.165(a) or (b).

§ 252.163 Internal debt conversion order.

(a) The Board may issue an internal debt conversion order if:

(1) The Board has determined that the covered IHC is in default or danger of default; and

(2) Any of the following circumstances apply:

(i) A foreign banking organization that directly or indirectly controls the covered IHC or any subsidiary of the top-tier foreign banking organization has been placed into resolution proceedings (including the application of statutory resolution powers) in its home country;

(ii) The home country supervisor of the top-tier foreign banking organization has consented or not promptly objected after notification by the Board to the conversion or exchange of the eligible internal debt securities of the covered IHC; or

(iii) The Board has made a written recommendation to the Secretary of the Treasury pursuant to 12 U.S.C. 5383(a) regarding the covered IHC.

(b) For purposes of paragraph (a) of this section, the Board will consider:

(1) A covered IHC in default or danger of default if

(i) A case has been, or likely will promptly be, commenced with respect to the covered IHC under the Bankruptcy Code (11 U.S.C. 101 et seq.);

(ii) The covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the covered IHC to avoid such depletion;

(iii) The assets of the covered IHC are, or are likely to be, less than its obligations to creditors and others; or

(iv) The covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business; and

(2) An objection by the home country supervisor to the conversion or exchange of the eligible internal debt securities to be prompt if the Board receives the objection no later than 24 hours after the Board requests such consent or non-objection from the home country supervisor.

§ 252.164 Identification as a resolution covered IHC or a non-resolution covered IHC.

(a) *Initial certification.* On the first business day a covered IHC is required to comply with this section pursuant to § 252.160, the top-tier foreign banking organization of a covered IHC must certify to the Board whether the planned resolution strategy of the top-tier foreign banking organization involves the covered IHC or the subsidiaries of the covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(b) *Certification update.* The top-tier foreign banking organization of a covered IHC must provide an updated certification to the Board upon a change in the resolution strategy described in the certification provided pursuant to paragraph (a) of this section.

(c) *Identification of a resolution covered IHC.* A covered IHC is a resolution covered IHC if the most recent certification provided pursuant to paragraphs (a) and (b) of this section indicates that the top-tier foreign banking organization's planned resolution strategy involves the covered IHC or the subsidiaries of the covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(d) *Identification of a non-resolution covered IHC.* A covered IHC is a non-resolution covered IHC if the most recent certification provided pursuant to paragraphs (a) and (b) of this

section indicates that the top-tier foreign banking organization's planned resolution strategy involves neither the covered IHC nor the subsidiaries of the covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(e) *Board determination.* The Board may determine in its discretion that a non-resolution covered IHC identified pursuant to paragraph (d) of this section is a resolution covered IHC, or that a resolution covered IHC identified pursuant to paragraph (c) of this section is a non-resolution covered IHC.

(f) *Transition.* (1) A covered IHC identified as a resolution covered IHC pursuant to paragraph (b) of this section or determined by the Board to be a resolution covered IHC pursuant to paragraph (e) of this section must comply with the requirements in this subpart applicable to a resolution covered IHC within one year after such identification or determination, unless such time period is extended by the Board in its discretion.

(2) A covered IHC identified as a non-resolution covered IHC pursuant to paragraph (b) of this section or determined by the Board to be a non-resolution covered IHC pursuant to paragraph (e) of this section must comply with the requirements in this subpart applicable to a non-resolution covered IHC one year after such identification or determination, unless such time period is extended by the Board in its discretion.

§ 252.165 Total loss-absorbing capacity requirement and buffer for covered IHCs of global systemically important foreign banking organizations.

(a) *Total loss-absorbing capacity requirement for a resolution covered IHC of a global systemically important foreign banking organization.* A resolution covered IHC of a global systemically important foreign banking organization must have an outstanding covered IHC total loss-absorbing capacity amount that is no less than the amount equal to the greatest of:

(1) 18 percent of the resolution covered IHC's total risk-weighted assets;

(2) If the Board requires the resolution covered IHC to maintain a minimum supplementary leverage ratio, 6.75 percent of the resolution covered IHC's total leverage exposure; and

(3) Nine (9) percent of the resolution covered IHC's average total consolidated assets.

(b) Total loss-absorbing capacity requirement for a non-resolution covered IHC of a global systemically important foreign banking organization. A non-resolution covered IHC of a global systemically important foreign banking organization must have an outstanding covered IHC total loss-absorbing capacity amount that is no less than the amount equal to the greatest of:

(1) 16 percent of the non-resolution covered IHC's total risk-weighted assets;

(2) If the Board requires the non-resolution covered IHC to maintain a minimum supplementary leverage ratio, 6 percent of the non-resolution covered IHC's total leverage exposure; and

(3) Eight (8) percent of the non-resolution covered IHC's average total consolidated assets.

(c) Covered IHC Total loss-absorbing capacity amount.

(1) A non-resolution covered IHC's covered IHC total loss-absorbing capacity amount is equal to the sum of:

(i) The covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the covered IHC;

(ii) The covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the covered IHC; and

(iii) The covered IHC's outstanding eligible covered IHC long-term debt amount as calculated in § 252.162(b).

(2) A resolution covered IHC's covered IHC total loss-absorbing capacity amount is equal to the sum of:

(i) The covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(ii) The covered IHC's additional tier 1 capital (excluding any tier 1 minority interest);
and

(iii) The covered IHC's outstanding eligible covered IHC long-term debt amount as calculated in to § 252.162(b).

(d) *Covered IHC of a global systemically important foreign banking organization TLAC buffer* —

(1) *Composition of the covered IHC TLAC buffer.* The covered IHC TLAC buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of paragraph (d) of this section, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a covered IHC is the greater of:

(A) The covered IHC's net income, calculated in accordance with the instructions to the FR Y-9C, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) The average of the covered IHC's net income, calculated in accordance with the instructions to the FR Y-9C, for the four calendar quarters preceding the current calendar quarter.

(ii) *Maximum covered IHC TLAC payout ratio.* The maximum covered IHC TLAC payout ratio is the percentage of eligible retained income that a covered IHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum covered IHC TLAC payout ratio is based on the covered IHC's covered IHC TLAC buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 252.165.

(iii) *Maximum covered IHC TLAC payout amount.* A covered IHC's maximum covered IHC TLAC payout amount for the current calendar quarter is equal to the covered IHC's eligible retained income, multiplied by the applicable maximum covered IHC TLAC payout ratio, as set forth in Table 1 to § 252.165.

(3) *Calculation of the covered IHC TLAC buffer level.*

(i) A covered IHC's covered IHC TLAC buffer level is equal to the covered IHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) 16 percent for a non-resolution covered IHC, and 18 percent for a resolution covered IHC; minus

(B)

(1) For a non-resolution covered IHC, the ratio (expressed as a percentage) of the covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the covered IHC to the covered IHC's total risk-weighted assets;

(2) For a resolution covered IHC, the ratio (expressed as a percentage of the covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) to the covered IHC's total-risk weighted assets; and minus

(C) The ratio (expressed as a percentage) of the covered IHC's outstanding eligible covered IHC long-term debt amount as calculated in § 252.162(b) to total risk-weighted assets.

(ii)

(A) Notwithstanding paragraph (d)(3)(i) of this section, with respect to a resolution covered IHC, if the ratio (expressed as a percentage) of the resolution covered IHC's covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(a), to the resolution covered IHC's risk-weighted assets is less than or equal to, 18 percent, the covered IHC's covered IHC TLAC buffer level is zero.

(B) Notwithstanding paragraph (d)(3)(i) of this section, with respect to a non-resolution covered IHC, if the ratio (expressed as a percentage) of the non-resolution covered IHC's covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(b), to the covered IHC's risk-weighted assets is less than or equal to 16 percent, the non-resolution covered IHC's covered IHC TLAC buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.*

(i) A covered IHC of a global systemically important foreign banking organization must not make distributions or discretionary bonus payments or create an obligation to make such

distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum covered IHC TLAC payout amount.

(ii) A covered IHC of a global systemically important foreign banking organization with a covered IHC TLAC buffer level that is greater than the covered IHC TLAC buffer is not subject to a maximum covered IHC TLAC payout amount.

(iii) Except as provided in paragraph (d)(4)(iv) of this section, a covered IHC of a global systemically important foreign banking organization must not make distributions or discretionary bonus payments during the current calendar quarter if the covered IHC's:

(A) Eligible retained income is negative; and

(B) Covered IHC TLAC buffer level was less than the covered IHC TLAC buffer as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (d)(4)(i) through (iii) of this section, the Board may permit a covered IHC of a global systemically important foreign banking organization to make a distribution or discretionary bonus payment upon a request of the covered IHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the covered IHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

Table 1 to § 252.165—Calculation of Maximum Covered IHC TLAC Payout Amount

Covered IHC TLAC buffer level	Maximum covered IHC TLAC payout ratio (as a percentage of eligible retained income)
Greater than the covered IHC TLAC buffer	No payout ratio limitation applies.
Less than or equal to the covered IHC TLAC buffer, <i>and</i> greater than 75 percent of the covered IHC TLAC buffer	60 percent.

Covered IHC TLAC buffer level	Maximum covered IHC TLAC payout ratio (as a percentage of eligible retained income)
Less than or equal to 75 percent of the covered IHC TLAC buffer, and greater than 50 percent of the covered IHC TLAC buffer	40 percent.
Less than or equal to 50 percent of the covered IHC TLAC buffer, and greater 25 percent of the covered IHC TLAC buffer	20 percent.
Less than or equal to 25 percent of the covered IHC TLAC buffer	0 percent.

(v)

(A) A covered IHC of a global systemically important foreign banking organization is subject to the lowest of the maximum payout amounts as determined under § 217.11(a)(2) of this chapter and the maximum covered IHC TLAC payout amount as determined under this paragraph (d).

(B) Additional limitations on distributions may apply to a covered IHC of a global systemically important foreign banking organization under §§ 225.8 and 263.202 of this chapter.

§ 252.166 Restrictions on corporate practices of a covered IHC.

(a) *Prohibited corporate practices.* A covered IHC must not directly:

(1) Issue any debt instrument with an original maturity of less than one year, including short term deposits and demand deposits, to any person, unless the person is an affiliate of the covered IHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to the covered IHC or a subsidiary of the covered IHC against the amount, or a portion of the amount, owed by the covered IHC under the instrument;

(3) Enter into a qualified financial contract that is not a credit enhancement with a person that is not an affiliate of the covered IHC;

(4) Enter into an agreement in which the covered IHC guarantees a liability of an affiliate of the covered IHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the covered IHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or

(5) Enter into, or otherwise benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a covered IHC must not exceed:

(i) In the case of a covered IHC controlled by a global systemically important foreign banking organization, 5 percent of the covered IHC's total loss-absorbing capacity amount, as calculated under § 252.165(c); and

(ii) In the case of a covered IHC that is not controlled by a global systemically important foreign banking organization, 5 percent of the covered IHC's:

(A) Common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(B) Additional tier 1 capital (excluding any tier 1 minority interest); and

(C) Outstanding eligible long-term debt amount as calculated pursuant to § 252.162(b).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability includes:

(i) With respect to a non-resolution covered IHC, any non-contingent liability of the non-resolution covered IHC owed to a person that is not an affiliate of the non-resolution covered IHC other than those liabilities specified in paragraph (b)(3) of this section, and

(ii) With respect to a resolution covered IHC, any non-contingent liability of the resolution covered IHC owed to a person that is not a subsidiary of the resolution covered IHC other than those liabilities specified in paragraph (b)(3) of this section.

(3) (i) The instruments included in the covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest), the covered IHC's additional tier 1 capital (excluding any common equity tier 1 minority interest), and the covered IHC's outstanding eligible external LTD amount as calculated under § 252.162(a);

(ii) Any dividend or other liability arising from the instruments described in paragraph (b)(3)(i) of this section;

(iii) An eligible covered IHC debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible covered IHC debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 101 et seq.).

(c) A covered IHC is not subject to paragraph (b) of this section if all of the eligible covered IHC debt securities issued by the covered IHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the covered IHC.

§ 252.167 Requirement to purchase subsidiary long-term debt.

Whenever necessary for an insured depository institution that is a consolidated subsidiary of a covered IHC to satisfy the minimum long-term debt requirement set forth in § 216.3(a) of this chapter, or § 54.3(a) and § 374.3(a) of this title, if applicable, the covered IHC or any subsidiary of the covered IHC of which the insured depository institution is a consolidated subsidiary must purchase eligible internal debt securities, as defined in § 216.2 of this chapter, or §§ 54.2 or 374.2 of this title, if applicable, from the insured depository institution in the amount necessary to satisfy such requirement.

§ 252.168 Disclosure requirements for resolution covered IHCs controlled by global systemically important foreign banking organizations.

(a) A resolution covered IHC that is controlled by a global systemically important foreign banking organization that has any outstanding eligible external debt securities must publicly disclose a description of the financial consequences to unsecured debtholders of the resolution covered IHC entering into a resolution proceeding in which the resolution covered IHC is the only entity in the United States that would be subject to the resolution proceeding.

(b) A resolution covered IHC must provide the disclosure required by paragraph (a) of this section:

(1) In the offering documents for all of its eligible external debt securities issued after the covered IHC becomes controlled by a global systemically important foreign banking organization; and

(2) Either:

(i) On the resolution covered IHC's website; or

(ii) In more than one public financial report or other public regulatory reports, provided that the resolution covered IHC publicly provides a summary table specifically indicating the location(s) of this disclosure.