FEDERAL RESERVE SYSTEM

12 CFR Part 252

Regulation YY; Docket No. 1438

RIN 7100 AD 86

Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is requesting comment on proposed rules that would implement the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and the early remediation requirements required to be established under section 166 of the Act for foreign banking organizations and foreign nonbank financial companies supervised by the Board. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

DATES: Comments should be received on or before March 31, 2013.

ADDRESSES: You may submit comments, identified by Docket No. R-1438 and RIN 7100 AD 86 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.
- **Federal eRulemaking Portal:** http://www.regulations.gov. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include docket and RIN numbers in the subject line of the message.
- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your 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 MP-500 of the Board's Martin Building (20th and C Streets, NW; Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

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I. Introduction

The recent financial crisis demonstrated that certain U.S. financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to overall financial stability in the United States and globally. The financial crisis also demonstrated that large foreign banking organizations operating in the United States could pose similar financial stability risks. Further, the crisis revealed weaknesses in the existing framework for supervising, regulating, and resolving significant U.S. financial companies, including the U.S. operations of large foreign banking organizations.

The Board recognizes the important role that foreign banking organizations play in the U.S. financial sector. The presence of foreign banking organizations in the United States has brought competitive and countercyclical benefits to U.S. markets. This preamble describes a set of proposed adjustments to the Board's regulation of the U.S. operations of foreign banking organizations to address risks posed by those entities and to implement the enhanced prudential standards and early remediation requirements in sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act). The proposed adjustments are consistent with the Board's

long-standing policy of national treatment and equality of competitive opportunity between the U.S. operations of foreign banking organizations and U.S. banking firms.

Current approach to regulating U.S. operations of foreign banking organizations

The Board is responsible for the overall supervision and regulation of the U.S. operations of all foreign banking organizations.[1] Other federal and state regulators are responsible for supervising and regulating certain parts of the U.S. operations of foreign banking organizations, such as branches, agencies, or bank and nonbank subsidiaries.[2]

Under the current U.S. supervision framework for foreign banking organizations, supervisors monitor the individual legal entities of the U.S. operations of these companies, and the Federal Reserve aggregates information it receives through its own supervisory process and from other U.S. supervisors to form a view of the financial condition of the combined U.S. operations of the company. The Federal Reserve and other U.S. regulators also work with regulators in other national jurisdictions to help ensure that all internationally active banks operating in the United States are supervised

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[1] *International Banking Act of* 1978 (12 U.S.C. 3101 *et seq*.) and *Foreign Bank Supervision Enhancement Act* of 1991 (12 U.S.C. 3101 note). For purposes of this proposal, a foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending company subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary.

[2] For example, the Securities and Exchange Commission (SEC) is the primary financial regulatory agency with respect to any registered broker-dealer, registered investment company, or registered investment adviser of a foreign banking organization. State insurance authorities are the primary financial regulatory agencies with respect to the insurance subsidiaries of a foreign banking organization. The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the state banking authorities have supervisory authority over the national and state bank subsidiaries and federal and state branches and agencies of foreign banking organizations, respectively, in addition to the Board's supervisory and regulatory responsibilities over some of these entities.

in accordance with a consistent set of core capital and other prudential requirements. International standards are intended to address the risks posed by the consolidated organization and to help achieve global competitive equity. Under this approach, the Federal Reserve oversees operations in the United States, but also relies on the home country supervisor to supervise a foreign banking organization on a global basis consistent with international standards and relies on the foreign banking organization to support its U.S. operations under both normal and stressed conditions.

Under this regulatory and supervisory framework, foreign banking organizations have structured their U.S. operations in ways that promote maximum efficiency of capital and liquidity management at the consolidated level. Permissible U.S. structures for foreign banking organizations have included cross-border branching and holding direct and indirect bank and nonbank subsidiaries. U.S. banking law and regulation also allow well-managed and well-capitalized foreign banking organizations to conduct a wide range of bank and nonbank activities in the United States on conditions comparable to those applied to U.S. banking organizations.[3] Further, as a general matter, a top-tier U.S. bank holding company subsidiary of a foreign banking organization that qualifies as a financial holding company has not been required to comply with the Board's capital standards since 2001 pursuant to Supervision and Regulation (SR) Letter 01-01.[4]

As a result of this flexibility granted to foreign banking organizations in the United States, the current population of foreign banking organizations is structurally diverse. Some foreign banking organizations conduct U.S. banking activities directly

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[3] 12 U.S.C. 1843(l)(1); 12 CFR 225.90.

[4] *See* SR Letter 01-01 (January 5, 2001), *available at* http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.

through a branch or agency; others own U.S. depository institutions through a U.S.-based bank holding company; and still others own a U.S. depository institution directly. Most large foreign banking organizations also conduct a range of nonbank activities through separate nonbank subsidiaries. Similar to the largest, most complex U.S. banking organizations, some of the largest foreign banking organizations with operations in the United States maintain dozens of separate U.S. legal entities, many of which are engaged in nonbank activities.

The structural diversity and consolidated management of capital and liquidity permitted under the current approach has facilitated cross-border banking and increased global flows of capital and liquidity. However, the increase in concentration, complexity, and interconnectedness of the U.S. operations of foreign banking organizations and the financial stability lessons learned during the crisis have raised questions about the continued suitability of this approach. Additionally, the Congressional mandate included in the Dodd-Frank Act requires the Board to impose enhanced prudential standards on large foreign banking organizations. Congress also directed the Board to strengthen the capital standards applied to U.S. bank holding company subsidiaries of foreign banking organizations by adopting the so-called "Collins Amendment" to the Dodd-Frank Act. Specifically, section 171 of the Dodd-Frank Act requires a top-tier U.S. bank holding company subsidiary of a foreign banking organization that had relied on SR Letter 01-01 to meet the minimum capital requirements established for U.S. bank holding companies by July 21, 2015.

The following sections provide a description of changes in the U.S. activities of large foreign banking organizations during the period that preceded the financial crisis

and the financial stability risks posed by the U.S. operations of these companies that motivate certain elements of this proposal.

Shifts in the U.S. activities of foreign banking organizations

Many of the core elements of the Federal Reserve's current approach to the supervision of foreign banking organizations were designed more than a decade ago, when the U.S. presence of foreign banking organizations was significantly less complex. Although foreign banking organizations expanded steadily in the United States during the 1970s, 1980s, and 1990s, their activities here posed limited risks to overall U.S. financial stability. Throughout this period, the U.S. operations of foreign banking organizations were largely net recipients of funding from their parent institutions and their activities were generally limited to traditional lending to home-country and U.S. clients.[5]

The profile of foreign bank operations in the United States changed substantially in the period preceding the financial crisis. U.S. branches and agencies of foreign banking organizations as a group moved from a position of receiving funding from their parent organizations on a net basis in 1999 to providing significant funding to non-U.S.

[5] The U.S. branches and agencies of foreign banks that borrowed from their parent organizations and lent those funds in the United States (lending branches) held roughly 60 percent of all foreign bank branch and agency assets in the United States during the 1980s and 1990s. *See*, *Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks* (Form FFIEC 002). Commercial and industrial lending continued to account for a large part of foreign bank branch and agency balance sheets through the 1990s. *Id*. In addition, U.S. branches and agencies of foreign banks held large amounts of cash during the 1980s and 1990s, in part to meet asset-maintenance and asset-pledge requirements put in place by regulators. *Id*.

affiliates by the mid-2000s.[6] In 2008, U.S. branches and agencies provided more than $700 billion on a net basis to non-U.S. affiliates. As U.S. operations of foreign banking organizations received less funding, on net, from their parent companies over the past decade, they became more reliant on less stable, short-term U.S. dollar wholesale funding, contributing in some cases to a buildup in maturity mismatches. Trends in the global balance sheets of foreign banking organizations from this period reveal that short-term U.S. dollar funding raised in the United States was used to provide long-term U.S. dollar-denominated project and trade finance around the world as well as to finance non-U.S. affiliates' investments in U.S. dollar-denominated asset-backed securities.[7] Because U.S. supervisors, as host authorities, have more limited access to timely information on the global operations of foreign banking organizations than to similar information on U.S.-based banking organizations, the totality of the risk profile of the U.S. operations of a foreign banking organization can be obscured when these U.S. entities fund activities outside the United States, such as occurred in recent years.

In addition to funding vulnerabilities, the U.S. operations of foreign banking organizations have become increasingly concentrated, interconnected, and complex since

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[6] Many U.S. branches of foreign banks shifted from the "lending branch" model to a "funding branch" model, in which U.S. branches of foreign banks borrowed large volumes of U.S. dollars to upstream to their foreign bank parents. These "funding branches" went from holding 40 percent of foreign bank branch assets in the mid-1990s to holding 75 percent of foreign bank branch assets by 2009. *See* Form FFIEC 002.

[7] The amount of U.S. dollar-denominated asset-backed securities and other securities held by Europeans increased significantly from 2003 to 2007, much of it financed by U.S. short-term dollar-denominated liabilities of European banks. *See* Ben S. Bernanke, Carol Bertaut, Laurie Pounder DeMarco, and Steven Kamin, *International Capital Flows and the Returns to Safe Assets in the United States, 2003–2007*, Board of Governors of the Federal Reserve System International Finance Discussion Papers Number 1014 (February 2011), available at www.federalreserve.gov/pubs/ifdp/2011/1014/ifdp1014.htm.

the mid-1990s. Ten foreign banking organizations now account for roughly two-thirds of foreign banking organizations' third-party U.S. assets, up from 40 percent in 1995.[8] Moreover, U.S. broker-dealer assets of large foreign banking organizations as a share of their third-party U.S. assets have grown rapidly since the mid-1990s. Five of the top-ten U.S. broker-dealers are currently owned by foreign banking organizations.[9] In contrast, commercial and industrial lending originated by U.S. branches and agencies of foreign banking organizations as a share of their third-party U.S. liabilities dropped after 2003.[10]

Financial stability risks posed by U.S. operations of foreign banking organizations

The financial stability risks associated with the increased capital market activity and shift in funding practices of the U.S. operations of foreign banking organizations in the period preceding the financial crisis became apparent during and after the crisis. The large intra-firm cross-border flows that grew rapidly in the period leading up to the crisis created vulnerabilities for the U.S. operations of foreign banking organizations. While some foreign banking organizations were aided by their ability to move liquidity freely during the crisis, this model also created a degree of cross-currency funding risk and heavy reliance on swap markets that proved destabilizing.[11] In many cases, foreign

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[8] *See* Forms FR Y-9C, FFIEC 002, FR 2886B, FFIEC 031/041, FR-Y7N/S, X-17A-5 Part II (SEC Form 1695), and X-17A-5 Part IIA (SEC Form 1696).

[9] *See* Forms FR Y-9C, FFIEC 002, FR-Y7, FR 2886B, FFIEC 031/041, FR-Y7N/S, X-17A-5 Part II (SEC Form 1695), and X-17A-5 Part IIA (SEC Form 1696).

[10] *See* Form FFIEC 002.

[11] Committee on the Global Financial System, *Funding patterns and liquidity management of internationally active banks*, CGFS Papers No 39 (May 2010), available at http://www.bis.org/publ/cgfs39.pdf.

banking organizations that relied heavily on short-term U.S. dollar liabilities were forced to sell U.S. dollar assets and reduce lending rapidly when that funding source evaporated. This deleveraging imposed further stress on financial market participants, thereby compounding the risks to U.S. financial stability.

Although the United States did not experience a destabilizing failure of a foreign banking organization during the crisis, some foreign banking organizations required extraordinary support from home- and host-country central banks and governments. For example, the Federal Reserve provided considerable amounts of liquidity to both the U.S. branches and U.S. broker-dealer subsidiaries of foreign banking organizations during the financial crisis. While foreign banking organizations recently have reduced the scope and risk profile of their U.S. operations and have shown more stable funding patterns in response to these events, some have continued to face periodic funding and other stresses since the crisis. For example, as concerns about the euro zone rose in 2011, U.S. money market funds dramatically pulled back their lending to large euro-area banks, reducing lending to these firms by roughly $200 billion over a four-month period.[12]

Risks to host countries

Beyond the United States, events in the global financial community underscore the risks posed by the operations of large multinational banking organizations to host country financial sectors. The failure of several internationally active financial firms during the crisis revealed that the location of capital and liquidity is critical in a resolution. In some cases, capital and liquidity related to operations abroad were trapped

[12] *See* SEC Form N-MFP.

at the home entity. For example, the Icelandic banks held significant deposits belonging to citizens and residents of other countries, who could not access their funds once those banks came under pressure. Actions by government authorities during the crisis period highlighted the fact that, while a foreign bank regulatory regime designed to accommodate centralized management of capital and liquidity can promote efficiency during good times, it can also increase the chances of home and host jurisdictions placing restrictions on the cross-border movement of assets at the moment of a crisis, as local operations come under severe strain and repayment of local creditors is called into question. Resolution regimes and powers remain nationally based, complicating the resolution of firms with large cross-border operations.

In response to financial stability risks highlighted during the crisis and ongoing challenges associated with the resolution of large cross-border firms, several other national authorities have adopted modifications to or have considered proposals to modify their regulation of internationally active banks within their geographic boundaries. Modifications adopted or under consideration include increased requirements for liquidity to cover local operations of domestic and foreign banks and nonbanks, limits on intragroup exposures of domestic banks to foreign subsidiaries, and requirements to prioritize or segregate home country retail operations.[13]

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[13] *See, e.g.*, Financial Services Authority, *Strengthening Liquidity Standards* (October 2009), available at www.fsa.gov.uk/pubs/policy/ps09_16.pdf; Financial Services Authority, *The Turner Review: A regulatory response to the global banking crisis* (March 2009), available at www.fsa.gov.uk/pubs/other/turner_review.pdf; Financial Services Authority, *A regulatory response to the global banking crisis* (March 2009), available at http://www.fsa.gov.uk/pubs/discussion/dp09_02.pdf; Independent Commission on Banking, *Final Report Recommendations* (September 2011), available at http://bankingcommission.s3. amazonaws.com/wp-content/uploads/2010/07/ICB-Final-Report.pdf; and State Secretariat for International Financial

Actions by a home country to constrain a banking organization's ability to provide support to its foreign operations, as well as the diminished likelihood that home-country governments of large banking organizations would provide a backstop to their banks' foreign operations, have called into question one of the fundamental elements of the Board's current approach to supervising foreign banking organizations—the ability of the Board, as a host supervisor, to rely on a foreign banking organization to act as a source of strength to its U.S. operations when the foreign banking organization is under stress.

The issues described above–growth over time in U.S. financial stability risks posed by foreign banking organizations individually and as a group, the need to minimize destabilizing pro-cyclical ring-fencing in a crisis, persistent impediments to effective cross-border resolution, and limitations on parent support–together underscore the need for enhancements to foreign bank regulation in the United States.

Overview of Statutory Requirements

Sections 165 and 166 of the Dodd-Frank Act direct the Board to impose a package of enhanced prudential standards on bank holding companies, including foreign banking organizations, with total consolidated assets of $50 billion or more and nonbank financial companies the Financial Stability Oversight Council (Council) has designated

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Matters SIF, Final report of the 'too big to fail' commission of experts: *Final report of the Commission of Experts for limiting the economic risks posed by large companies* (September 30, 2010), available at www.sif.admin.ch/dokumentation/00514/00519/00592/index.html?lang=en .

for supervision by the Board (nonbank financial companies supervised by the Board).[14] These stricter prudential standards for large U.S. bank holding companies, foreign banking organizations, and nonbank financial companies supervised by the Board required under section 165 of the Dodd-Frank Act must include enhanced risk-based capital and leverage requirements, enhanced liquidity requirements, enhanced risk management and risk committee requirements, resolution planning requirements, single-counterparty credit limits, stress test requirements, and a debt-to-equity limit for companies that the Council has determined pose a grave threat to financial stability.

Section 166 of the Dodd-Frank Act requires the Board to establish a regulatory framework for the early remediation of financial weaknesses for the same set of companies in order to minimize the probability that such companies will become insolvent and the potential harm of such insolvencies to the financial stability of the United States.[15] Further, the Dodd-Frank Act authorizes, but does not require, the Board to establish additional enhanced prudential standards relating to contingent capital, public disclosures, short-term debt limits, and such other prudential standards as the Board determines appropriate.[16]

The Dodd-Frank Act requires the enhanced prudential standards established by the Board under section 165 to be more stringent than those standards applicable to other bank holding companies and nonbank financial companies that do not present similar

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[14] *See* 12 U.S.C. 5311(a)(1) (providing that foreign banking organizations are treated as bank holding companies for purposes of Title I of the Dodd-Frank Act). *See infra* note 24, for a description of a foreign banking organization.

[15] *See* 12 U.S.C. 5366(b).

[16] *See* 12 U.S.C. 5365(b)(1)(B).

risks to U.S. financial stability.[17] The standards must also increase in stringency based on the systemic footprint and risk characteristics of companies subject to section 165.[18] Generally, the Board has authority under section 165 to tailor the application of the standards, including differentiating among companies subject to section 165 on an individual basis or by category.[19] In applying section 165 to foreign banking organizations, the Act also directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity and to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States.[20]

The Board has already issued proposed and final rules implementing certain elements of sections 165 and 166 of the Dodd-Frank Act. The Board and the FDIC jointly issued a final rule to implement the resolution plan requirement in section 165(d) of the Dodd-Frank Act for foreign and U.S. companies that became effective on November 30, 2011, and expect to implement periodic reporting of credit exposures at a later date.[21] Section 165(d) establishes requirements that large foreign banking

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[17] *See* 12 U.S.C. 5365(a)(1)(A).

[18] *See* 12 U.S.C. 5365(a)(1)(B). Under section 165(a)(1)(B), the enhanced prudential standards must increase in stringency, based on the considerations listed in section 165(b)(3).

[19] *See* 12 U.S.C. 5365(b)(3). In addition, the Board must, as appropriate, adapt the required standards in light of any predominant line of business of a company for which particular standards may not be appropriate. 12 U.S.C. 5365(b)(3)(D).

[20] 12 U.S.C. 5365(a)(2).

[21] *See* 76 FR 67323 (November 1, 2011). In response to concerns expressed by commenters about the clarity of key definitions and the scope of the proposed credit exposure reporting requirement, the Board and FDIC postponed finalizing the credit exposure reporting requirement.

organizations, large U.S. bank holding companies, and nonbank companies supervised by the Board submit periodically to the Board and the FDIC a plan for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure.

In December 2011, the Board proposed a set of enhanced prudential standards and early remediation requirements for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board that included risk-based capital and leverage requirements, liquidity requirements, single-counterparty credit limits, overall risk management and risk committee requirements, stress test requirements, a debt-to-equity limit, and early remediation requirements (December 2011 proposal). On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress testing requirements included in the December 2011 proposal for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board.[22] Concurrently, the Board issued a final rule implementing the company-run stress testing requirements for U.S. bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion as well as state member banks and savings and loan holding companies with total consolidated assets of more than $10 billion.[23]

The proposed standards for foreign banking organizations are broadly consistent with the standards proposed for large U.S. bank holding companies and nonbank

[22] *See* 12 CFR Part 252, Subparts F and G.

[23] *See* 12 CFR Part 252, Subpart H.

financial companies supervised by the Board in the December 2011 proposal. In general, differences between this proposal and the December 2011 proposal reflect the different regulatory framework and structure under which foreign banking organizations operate, and do not reflect potential modifications that may be made to the December 2011 proposal for U.S. bank holding companies. The Board is currently in the process of reviewing comments on the remaining standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the enhanced prudential standards should be applied differently to foreign banking organizations.

II. Overview of the Proposal

The Board is requesting comment on proposed rules to implement the provisions of sections 165 and 166 of the Dodd-Frank Act for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board.[24] The proposal includes: risk-based capital and leverage requirements, liquidity requirements, single-counterparty credit limits, overall risk management and risk committee requirements, stress test requirements, a debt-to-equity limit for companies that the Council has determined pose a grave threat to financial stability, and early remediation requirements. As described below, the Board is also proposing a supplemental enhanced standard: a requirement for certain foreign banking

[24] For purposes of this proposal, foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending company subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary. A foreign nonbank financial company supervised by the Board is a nonbank financial company incorporated or organized in a country other than the United States that the Council has designated for Board supervision. No such designations have been made.

organizations to form a U.S. intermediate holding company, which would generally serve as a U.S. top-tier holding company for the U.S. subsidiaries of the company. The Board is not proposing any other enhanced prudential standards at this time, but continues to consider whether adopting any additional standards would be appropriate.

By setting forth comprehensive enhanced prudential standards and an early remediation framework for large foreign banking organizations, the proposal would create an integrated set of requirements that are intended to increase the resiliency of the U.S. operations of large foreign banking organizations and minimize damage to the U.S. financial system and the U.S. economy in the event such a company fails. The proposed rules, which increase in stringency with the level of systemic risk posed by and the risk characteristics of the U.S. operations of the company, would provide incentives for large foreign banking organizations to reduce the riskiness of their U.S. operations and to consider the costs that their failure or distress would impose on the U.S. financial system.

In applying section 165 to foreign banking organizations, the Act directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity.[25] As discussed above, the proposal broadly adopts the standards set forth in the December 2011 proposal to ensure equality of competitive opportunity, as modified appropriately for foreign banking organizations. Modifications address the fact that foreign banking organizations may operate in the United States through direct branches and agencies. The proposal also recognizes that not all foreign banking organizations that meet the statutory asset size thresholds, particularly those with a small U.S. presence, present the same level of risk to U.S. financial stability. As a

[25] 12 U.S.C. 5365(a)(2).

result, the proposal would apply a reduced set of requirements to foreign banking organizations with combined U.S. assets of less than $50 billion in light of the reduced risk that these companies pose to U.S. financial stability.

The Act also directs the Board in implementing section 165 to take into account the extent to which a foreign banking organization is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. In developing the proposal, the Board has taken into account home country standards in balance with financial stability considerations and concerns about extraterritorial application of U.S. enhanced prudential standards. The proposed capital and stress testing standards rely on home country standards to a significant extent with respect to a foreign banking organization's U.S. branches and agencies because branches and agencies are not separate legal entities and are not required to hold capital separately from their parent organizations. In addition, the proposed risk management standards would provide flexibility for foreign banking organizations to rely on home country governance structures to implement certain proposed risk management requirements.

The Dodd-Frank Act requires the Board to apply enhanced prudential standards to any foreign nonbank financial company supervised by the Board. Consistent with this statutory requirement, the proposal would also apply the enhanced prudential standards, other than the intermediate holding company requirement, to a foreign nonbank financial company supervised by the Board. In addition, the proposal would set forth the criteria that the Board would consider to determine whether a U.S. intermediate holding company should be established by a foreign nonbank financial company. The Board would expect

to tailor the enhanced prudential standards to individual foreign nonbank financial companies, as necessary, upon designation by the Council.

Consultation with the Council

The Board consulted with the Council by providing periodic updates to agencies represented on the Council and their staff on the development of the proposed enhanced prudential standards for foreign banking organizations. The proposal reflects comments provided to the Board as a part of this consultation process. The Board also intends to consult with each Council member agency that primarily supervises a functionally regulated subsidiary or depository institution subsidiary of a foreign banking organization subject to this proposal before imposing prudential standards or any other requirements pursuant to section 165 that are likely to have a significant impact on such subsidiary.[26]

A. Scope of Application

This proposal would implement enhanced prudential standards under section 165 of the Dodd-Frank Act and early remediation requirements under section 166 of the Act for foreign banking organizations with total consolidated assets of $50 billion or more. The proposal also would implement the risk committee and stress testing standards set forth in sections 165(h) and (i) of the Act that apply to a larger group of foreign banking organizations and, with respect to stress testing, foreign savings and loan holding companies.

In addition, foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of

[26] *See* 12 U.S.C. 5365(b)(4).

$10 billion or more would be required to form a U.S. intermediate holding company that directly would be subject to enhanced prudential standards.[27] Foreign banking organizations with total consolidated assets of $500 billion or more would also be subject to more stringent single-counterparty credit limits.

A foreign banking organization or its U.S. intermediate holding company that meets any relevant asset threshold in this proposal would be subject to the requirements applicable to that size of company until the company's total consolidated assets or combined U.S. assets fell and remained below the relevant asset threshold for four consecutive quarters.

Table 1 includes a general description of the standards that apply to each type of foreign banking organization subject to sections 165 and 166 of the Dodd-Frank Act.

[27] Combined U.S. assets (excluding U.S. branch and agency assets) would be equal to the average of the total assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company) on a consolidated basis for the four most recent consecutive quarters as reported by the foreign banking organization on its Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q). If a foreign banking organization had not filed the FR Y-7Q for each of the four most recent consecutive quarters, combined U.S. assets would be based on the most recent quarter or consecutive quarters as reported on FR Y-7Q (or as determined under applicable accounting standards, if no FR Y-7Q has been filed). A foreign banking organization would be permitted to reduce its combined U.S. assets (excluding the total assets of each U.S. branch and agency of the foreign banking organization) by the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

Table 1: Scope of Application for FBOs

Global assets	U.S. assets	Summary of requirements that apply
> $10 billion and < $50 billion	**n/a**	• Have a U.S. risk committee • Meet home country stress test requirements that are broadly consistent with U.S. requirements

> $50 billion	**< $50 billion**	All of the above, plus:
		• Meet home country capital standards that are broadly consistent with Basel standards
		• Single-counterparty credit limits[28]
		• Subject to an annual liquidity stress test requirement
		• Subject to DFA section 166 early remediation requirements
		• Subject to U.S. intermediate holding company (IHC) requirements:
		  o Required to form U.S. IHC if non-branch U.S. assets exceed $10 billion. All U.S. IHCs are subject to U.S BHC capital requirements
		  o U.S. IHC with assets between $10 and $50 billion subject to DFA Stress Testing Rule (company-run stress test)

> $50 billion	**> $50 billion**	All of the above, plus: • U.S. IHC with assets >$50 billion subject to capital plan rule and all DFA stress test requirements (CCAR) • U.S. IHC and branch/agency network subject to monthly liquidity stress tests and in-country liquidity requirements • Must have a U.S. risk committee and U.S. Chief Risk Officer • Subject to nondiscretionary DFA section 166 early remediation requirements

[28] Foreign banking organizations with assets of $500 billion or more and U.S. IHCs with assets of $500 billion or more would be subject to stricter limits.

Foreign banking organizations with total consolidated assets of $50 billion or more

The U.S. operations of foreign banking organizations with total consolidated assets of $50 billion or more would be subject to the enhanced prudential standards of this proposal. Total consolidated assets for a foreign banking organization would include its global consolidated assets, calculated as the four-quarter average of total assets reported on the foreign banking organization's quarterly regulatory report filed with the Board, the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q).[29]

Foreign banking organizations with combined U.S. assets of $50 billion or more

As explained above, the proposal would apply more stringent standards to the U.S. operations of foreign banking organizations that have a more significant presence in the United States. The U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more (including U.S. branch and agency assets) would be subject to more stringent liquidity standards, risk management standards, stress testing requirements, and early remediation requirements than would apply to the U.S. operations of other foreign banking organizations. The proposal would measure combined U.S. assets of a foreign banking organization as the sum of (i) the average of the total assets of each U.S. branch and agency of the foreign banking organization for the four most recent consecutive quarters as reported by the foreign bank on the Report of

[29] If the foreign banking organization had not filed the FR Y-7Q for each of the four most recent consecutive quarters, total consolidated assets would be based on the average of the foreign banking organization's total assets for the most recent quarter or consecutive quarters as reported on the FR Y-7Q (or as determined under applicable accounting standards, if no FR Y-7Q has been filed).

Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002)[30] and (ii) the average of the total consolidated assets of its U.S. intermediate holding company for the four most recent consecutive quarters as reported to the Board on the U.S. intermediate holding company's Consolidated Financial Statements for Bank Holding Companies (FR Y-9C).[31] If the foreign banking organization had not established a U.S. intermediate holding company, combined U.S. assets would include the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (other than a section 2(h)(2) company).[32]

In any case, for this purpose, the company would be permitted to exclude from the calculation of its combined U.S. assets the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed. The company may also exclude balances and transactions between any U.S. subsidiary and any U.S. branch or

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[30] If the foreign bank had not filed the FFIEC 002 for each of the four most recent consecutive quarters, the foreign bank should use the most recent quarter or consecutive quarters as reported on FFIEC 002 (or as determined under applicable accounting standards, if no FFIEC 002 has been filed).

[31] All U.S. intermediate holding companies would be required to file Form FR Y-9C, regardless of whether they control a bank. If the U.S. intermediate holding company had not filed an FR Y-9C for each of the four most recent consecutive quarters, the U.S. intermediate holding company should use the most recent quarter or consecutive quarters as reported on FR Y-9C (or as determined under applicable accounting standards, if no FR Y-9C had been filed).

[32] A "section 2(h)(2) company" would be defined to have the same meaning as in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 2(h)(2)) and section 211.23(f)(3) or (f)(5) of the Board's Regulation Y. If the foreign banking organization had not filed the relevant reporting form for each of the four most recent consecutive quarters, total consolidated assets would be based on the average of the foreign banking organization's total assets for the most recent quarter or consecutive quarters as reported on the relevant reporting form (or as determined under applicable accounting standards, if no reporting form has been filed).

agency. The company would be required to reflect balances and transactions between the U.S. subsidiary or U.S. branch or agency, on the one hand, and the foreign bank's head office and other non-U.S. affiliates, on the other.

Several Dodd-Frank Act rulemakings require the calculation of combined U.S. assets and combined U.S. risk-weighted assets. The Board expects to standardize this calculation, as appropriate, and implement reporting requirements on the FR Y-7Q through the regulatory report development process.

In addition, if a foreign banking organization's U.S. intermediate holding company itself had total consolidated assets of $50 billion or more, the U.S. intermediate holding company would be subject to more stringent requirements in addition to those that would apply to all U.S. intermediate holding companies, including higher capital standards, stress testing standards, and early remediation requirements. In addition, a U.S. intermediate holding company with total consolidated assets of $500 billion or more would be subject to stricter single-counterparty credit limits.

Foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion

The proposal also would implement the risk management and stress testing provisions of section 165 that apply to a broader set of entities than the other standards in section 165 of the Dodd-Frank Act. Section 165(h) of the Dodd-Frank Act requires any publicly traded bank holding company with $10 billion or more in total consolidated assets to establish a risk committee.[33] The Board proposes to apply this requirement to any foreign banking organization with publicly traded stock and total consolidated assets

[33] 12 U.S.C. 5365(h).

of $10 billion or more and any foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more.

Section 165(i)(2) requires any financial company with more than $10 billion in total consolidated assets that is regulated by a primary federal financial regulator to conduct annual company-run stress tests.[34] The Board, as the primary federal financial regulatory agency for foreign banking organizations and foreign savings and loan holding companies, proposes to apply certain stress test requirements to any foreign banking organization and foreign savings and loan holding company with more than $10 billion in total consolidated assets.[35] Finally, a U.S. intermediate holding company that has total consolidated assets of $10 billion or more would be subject to certain company-run stress test requirements.

The proposed stress test and risk management requirements applicable to each set of companies are explained in detail below.

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[34] 12 U.S.C. 5365(i)(2). The Dodd-Frank Act defines primary financial regulatory agency in section 2 of the Act. *See* 12 U.S.C. 5301(12).

[35] For a savings and loan holding company, "total consolidated assets" would be defined as the average of the total assets reported by the foreign savings and loan holding company on its applicable regulatory report for the four most recent consecutive quarters, or if not reported, as determined under applicable accounting standards. Consistent with the methodology used to calculate "total consolidated assets" of a foreign banking organization, if the foreign savings and loan holding company had not filed the applicable reporting form for each of the four most recent consecutive quarters, total consolidated assets would be based on the average of the foreign savings and loan holding company's total consolidated assets, as reported on the company's regulatory report, for the most recent quarter or consecutive quarters. There are currently no foreign savings and loan holding companies.

Foreign nonbank financial companies

Under the Dodd-Frank Act, the Council generally may determine that a U.S. or foreign nonbank financial company should be subject to supervision by the Board if it determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.[36] Upon such a determination, the Board is required to apply the enhanced prudential standards under section 165 of the Act and the early remediation requirements under section 166 of the Act to a nonbank financial company supervised by the Board. The Board may also determine whether to require the foreign nonbank financial company to establish a U.S. intermediate holding company under section 167 of the Act. At present, the Council has not designated any nonbank financial companies for supervision by the Board.

Consistent with the Dodd-Frank Act, this proposal would establish the general framework for application of the enhanced prudential standards and the early remediation requirements applicable to a foreign nonbank financial company supervised by the Board. In addition, the proposal would set forth the criteria that the Board would use to consider whether a U.S. intermediate holding company should be established by a foreign nonbank financial company.

In applying the proposed enhanced prudential standards to foreign nonbank financial companies supervised by the Board, the Board expects to tailor the application of the standards to different companies on an individual basis or by category, taking into

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[36] *See* 12 U.S.C. 5315; *see also* 77 FR 21637 (April 11, 2012) (final rule regarding the Council's authority under section 113 of the Dodd-Frank Act).

consideration their capital structure, riskiness, complexity, financial activities, size, and any other risk-related factors that the Board deems appropriate.[37] The Board also would review whether enhanced prudential standards as applied to particular foreign nonbank financial companies would give due regard to the principle of national treatment and equality of competitive opportunity and would take into account the extent to which the foreign nonbank financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. The Board expects to issue an order that provides clarity on how the enhanced prudential standards would apply to a particular foreign nonbank financial company once the company is designated by the Council.

Question 1: Should the Board require a foreign nonbank financial company supervised by the Board to establish a U.S. intermediate holding company? Why or why not? What activities, operations, or subsidiaries should the foreign nonbank financial company be required to conduct or hold under the U.S. intermediate holding company?

Question 2: If the Board required a foreign nonbank financial company supervised by the Board to form a U.S. intermediate holding company, how should the Board modify the manner in which the enhanced prudential standards and early remediation requirements would apply to the U.S. intermediate holding company, if at all? What specific characteristics of a foreign nonbank financial company should the Board consider when determining how to apply the enhanced prudential standards and the early remediation requirements to such a company?

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[37] 12 U.S.C. 5365(a)(2).

B. Summary of the Major Elements of the Proposal

The proposal would implement sections 165 and 166 through requirements that enhance the Board's current regulatory framework for foreign banking organizations in order to better mitigate the risks posed to U.S. financial stability by the U.S. activities of foreign banking organizations. These changes would provide a platform for consistent regulation and supervision of the U.S. operations of large foreign banking organizations. The changes would also bolster the capital and liquidity positions of the U.S. operations of foreign banking organizations to improve their resiliency to asset quality or funding shocks and may mitigate certain challenges associated with the resolution of the U.S. operations of a large foreign banking organization. Together, these changes should increase the resiliency of the U.S. operations of foreign banking organizations during normal and stressed periods. The Board seeks comment on all elements of this proposal.

Enhanced structural, capital, and liquidity requirements

The proposal would mandate a more standardized structure for the U.S. bank and nonbank subsidiaries of foreign banking organizations in order to enhance regulation and supervision of their combined U.S. operations. Foreign banking organizations with total consolidated assets of $50 billion or more and with combined U.S. assets (excluding the total assets of each U.S. branch and agency of the foreign banking organization) of $10 billion or more would be required to establish a top-tier U.S. intermediate holding company over all U.S. bank and nonbank subsidiaries of the company, except for any company held under section 2(h)(2) of the Bank Holding Company Act.[38] The U.S.

[38] 12 U.S.C. 1841(c)(2).

intermediate holding company would be subject to the enhanced prudential standards of this proposal and would not be separately subject to the enhanced prudential standards applicable to U.S. bank holding companies.

The U.S. intermediate holding company requirement would provide consistency in the application of enhanced prudential standards to the U.S. operations of foreign banking organizations with a large U.S. subsidiary presence. In addition, a U.S. intermediate holding company structure would provide the Board, as umbrella supervisor of the U.S. operations of foreign banking organizations, with a more uniform platform on which to implement its supervisory program across the U.S. operations of foreign banking organizations. In the case of a foreign banking organization with large subsidiaries in the United States, the U.S. intermediate holding company could also help facilitate the resolution of those U.S. subsidiaries. A foreign banking organization would be permitted to continue to operate in the United States through branches and agencies, albeit subject to the enhanced prudential standards included in the proposal for U.S. branch and agency networks.[39]

The proposed rule would apply the risk-based capital and leverage rules that are applicable to U.S. bank holding companies to U.S. intermediate holding companies of foreign banking organizations, including U.S. intermediate holding companies that do not have a depository institution subsidiary. U.S. intermediate holding companies with total consolidated assets of $50 billion or more would also be subject to the capital plan rule.[40] In addition, any foreign banking organization with total consolidated assets of $50 billion

[39] U.S. branch and agency network would be defined to include all U.S. branches and U.S. agencies of a foreign bank subject to this proposal.

[40] *See* 12 CFR 225.8.

or more generally would be required to meet its home country's risk-based capital and leverage standards at the consolidated level that are consistent with internationally agreed risk-based capital and leverage standards, including the risk-based capital and leverage requirements included in the Basel III agreement, on an ongoing basis as that framework is scheduled to take effect.[41]

The proposal would also generally apply the same set of liquidity risk management standards to the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more that would be required under the December 2011 proposal for large U.S. bank holding companies. These standards would include a requirement to conduct monthly liquidity stress tests over a series of time intervals out to one year, and to hold a buffer of high quality liquid assets to cover the first 30 days of stressed cash flow needs. These standards are designed to increase the resiliency of the U.S. operations of foreign banking organizations during times of stress and to reduce the risk of asset fire sales when U.S. dollar funding channels are strained and short-term debt cannot easily be rolled over.

Under the proposal, the liquidity buffer would separately apply to the U.S. branch and agency network and the U.S. intermediate holding company of a foreign banking organization with combined U.S. assets of $50 billion or more. The proposal would require the U.S. intermediate holding company to maintain the entire 30-day buffer in the United States to maintain consistency with requirements for large U.S. bank holding companies. In recognition that U.S. branches and agencies are not separate legal entities

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[41] *See* Basel Committee on Banking Supervision (BCBS), Basel III: *A global framework for more resilient banks and banking systems* (December 2010), available at http://www.bis.org/publ/bcbs189.pdf (Basel III Accord).

from their parent foreign bank and can engage only in traditional banking activities by the terms of their licenses, the proposal would require the U.S. branch and agency network to maintain the first 14 days of its 30-day liquidity buffer in the United States and would permit the U.S. branch and agency network to meet the remainder of its requirement at the consolidated level.

Single-counterparty credit limits

In addition to the structural, capital and liquidity requirements described above, the proposal would apply single-counterparty credit limits to foreign banking organizations in a manner generally consistent with the December 2011 proposal. Single-counterparty credit limits would be separately applied to a foreign banking organization with total consolidated assets of $50 billion or more with respect to its combined U.S. operations and its U.S. intermediate holding company. In general, the combined U.S. operations of a foreign banking organization would be subject to a limit of 25 percent of the foreign banking organization's total regulatory capital to a single-counterparty, and the U.S. intermediate holding company would be subject to a limit of 25 percent of its total regulatory capital to a single-counterparty. The proposal would also apply a more stringent limit to the combined U.S. operations of a foreign banking organization that has total consolidated assets of $500 billion or more and to a U.S. intermediate holding company that has total consolidated assets of $500 billion or more, with respect to exposures to certain large financial counterparties. The size of the stricter limit would be aligned with the limit imposed on U.S. bank holding companies with total consolidated assets of $500 billion or more.

The Board received a large volume of comments on the single-counterparty credit limits set forth in the December 2011 proposal. The Board is currently in the process of reviewing comments on the standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the enhanced prudential standards should be applied differently to foreign banking organizations.

Risk management requirements

The proposal would require any foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more and any foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more to certify that it maintains a U.S. risk committee. In addition, a foreign banking organization with combined U.S. assets of $50 billion or more would be required to employ a U.S. chief risk officer and implement enhanced risk management requirements in a manner that is generally consistent with the requirements in the December 2011 proposal. However, the proposal would also implement these requirements in a manner that provides some flexibility for foreign banking organizations and recognizes the complexity in applying standards to foreign banking organizations that maintain a U.S. branch and agency network and bank and nonbank subsidiaries.

Stress testing

The proposal would implement stress test requirements for a U.S. intermediate holding company in a manner parallel to those required of a U.S. bank holding

company.[42] The parallel implementation would help to ensure that U.S. intermediate holding companies have sufficient capital in the United States to withstand a severely adverse stress scenario. As provided in more detail in section VIII of this preamble, a foreign banking organization with total consolidated assets of $50 billion or more that maintains a U.S. branch and agency network could satisfy the proposal's stress test requirements applicable to the U.S. branch and agency network if it is subject to a consolidated capital stress testing regime that is broadly consistent with the stress test requirements in the United States and, if it has combined U.S. assets of $50 billion or more, provides information to the Board regarding the results of the consolidated stress tests.

Early remediation

The recent financial crisis revealed that the condition of large U.S. and foreign banking organizations can deteriorate rapidly even during periods when their reported capital ratios and other financial positions are well above minimum requirements. The proposal would implement early remediation requirements for foreign banking organizations with total consolidated assets of $50 billion or more in a manner generally consistent with the December 2011 proposal. All foreign banking organizations subject to the regime would be subject to the same set of triggers; however, only foreign banking organizations with combined U.S. assets of $50 billion or more would be subject to mandatory remedial actions.

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[42] *See* 77 FR 62378 (October 12, 2012); 77 FR 62396 (October 12, 2012).

C. Considerations in Developing the Proposal

While this proposal would implement some standards that require a more direct allocation of capital and liquidity resources to U.S. operations than the Board's current approach to foreign bank regulation, the proposal should be viewed as supplementing rather than departing from existing supervisory practice. The proposal would continue to allow foreign banking organizations to operate branches and agencies in the United States and would generally allow U.S. branches and agencies to continue to meet capital requirements at the consolidated level. Similarly, the proposal would not impose a cap on cross-border intra-group flows, thereby allowing foreign banking organizations in sound financial condition to continue to obtain U.S. dollar funding for their global operations through their U.S. operations. The proposal would, however, regulate liquidity risk in the U.S. operations of foreign banking organizations in a way that increases their resiliency to changes in the availability of funding.

Requiring capital and liquidity buffers in a specific jurisdiction of operation below the consolidated level may incrementally increase costs and reduce flexibility of internationally active banks that manage their capital and liquidity on a centralized basis. However, managing liquidity and capital within jurisdictions can have benefits not just for financial stability generally, but also for firms themselves. During the crisis, more decentralized global banks relied less on cross-currency funding and were less exposed to disruptions in international wholesale funding and foreign exchange swap markets than more centralized banks.[43]

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[43] Committee on the Global Financial System, Funding patterns and liquidity management of internationally active banks, *supra* note 11.

The Board considered implementing the enhanced prudential standards required under the Dodd-Frank Act for foreign banking organizations by extending the Federal Reserve's current approach to foreign bank regulation to include ongoing and more detailed assessments of each firm's home country regulatory and resolution regimes and each firm's consolidated financial condition. While this type of analysis is an important part of ongoing supervisory efforts, such an approach to financial stability regulation, on its own, could significantly increase regulatory uncertainty and lead to meaningful inconsistencies in the U.S. regulatory regime for foreign and U.S. companies. In addition, as host supervisor, the Board is limited in its ability to assess the financial condition of a foreign banking organization on a timely basis, inhibiting complete analysis of the parent organization's ability to act as a source of support to its U.S. operations during times of stress.

Additional information requests

The Board recognizes that the U.S. operations of foreign banking organizations represent only one part of the global consolidated company and as such will be affected by developments at the consolidated and U.S. operations levels. In addition, U.S. branches and agencies are direct offices of the foreign banking organization and are not subject to U.S. capital requirements or restrictions in the United States on providing funding to their parent. As a result, the Board anticipates that U.S. supervisors of foreign banking organizations would continue to require information about the overall financial condition of the consolidated entity. Requests for information on the consolidated operations of foreign banking organizations that are part of this proposal or the Federal Reserve's broader supervisory process would be more frequent for those companies that

pose more material risk to U.S. financial stability. Information requests may also increase in frequency in cases when the condition of the consolidated foreign banking organization has shown signs of deterioration, when the Federal Reserve has significant concerns about the willingness or ability of the foreign banking organization to provide support to its U.S. operations, when the U.S. operations of a foreign banking organization represent a large share of the global firm, or when risk management decisions for the U.S. operations are largely made at the consolidated level.

Question 3: Does the proposal effectively promote the policy goals stated in this preamble and help mitigate the challenges with cross-border supervision discussed above? Do any aspects of the policy create undue burden for supervised institutions?

D. Timing of Application

The proposal would provide an extended phase-in period to allow foreign banking organizations time to implement the proposed requirements. For foreign banking organizations that meet the total consolidated asset threshold of $50 billion and, as applicable, the combined U.S. asset threshold of $50 billion as of July 1, 2014, the enhanced prudential standards required under this proposal would apply beginning on July 1, 2015.[44]

Foreign banking organizations that become subject to the requirements of the proposal after July 1, 2014, would be required to form a U.S. intermediate holding company beginning 12 months after they reach the total consolidated asset threshold of

[44] The proposed debt-to-equity ratio limitation, which applies upon a determination by the Council that a foreign banking organization with total consolidated assets of $50 billion or more poses a grave threat to the financial stability of the United States and that the imposition of a debt to equity requirement is necessary to mitigate such risk, would apply beginning on the effective date of the final rule.

$50 billion, unless accelerated or extended by the Board in writing. These foreign banking organizations would be required to comply with the enhanced prudential standards (other than stress test requirements and the capital plan rule) beginning on the same date they are required to establish a U.S. intermediate holding company, unless accelerated or extended by the Board. Stress test requirements and the capital plan rule would be applied in October of the year after that in which the foreign banking organization is required to establish a U.S. intermediate holding company.

Question 4: What challenges are associated with the proposed phase-in schedule?

Question 5: What other considerations should the Board address in developing any phase-in of the proposed requirements?

III. Requirement to Form a U.S. Intermediate Holding Company

A. Background

As noted previously, foreign banking organizations operate in the United States under a variety of structures. Some foreign banking organizations conduct banking activities directly through a U.S. branch or agency; others own U.S. depository institutions through a U.S.-based bank holding company; and still others own a U.S. depository institution directly. Most large foreign banking organizations also conduct a range of nonbank activities through separate nonbank subsidiaries, which may or may not be under a U.S.-based bank holding company. Many foreign banking organizations do not have a single top-tier U.S. entity through which to apply prudential requirements to their combined U.S. operations.

Section 165 requires the Board to impose enhanced prudential standards on foreign banking organizations with total consolidated assets of $50 billion or more in a

manner that preserves national treatment and reduces risk to U.S. financial stability. Given the current variety in structures, applying these standards consistently across the U.S. operations of foreign banking organizations and in comparable ways to both large U.S. bank holding companies and foreign banking organizations would pose be challenging and may not reduce the risk posed by these companies.

Furthermore, relying solely on home country implementation of the enhanced prudential standards would also present challenges. Several of the Act's required enhanced prudential standards are not subject to international agreement. In addition, U.S. supervisors, as host authorities, have limited access to timely information on the global operations of foreign banking organizations. As a result, monitoring compliance with any enhanced prudential standards at the consolidated foreign banking organization would be difficult and may raise concerns of extraterritorial application of the standards.

Accordingly, the proposal would apply a structural enhanced standard under which foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $10 billion or more (excluding U.S. branch and agency assets and section 2(h)(2) companies) would be required to form a U.S. intermediate holding company. The foreign banking organization would hold and operate its U.S. operations (other than those operations conducted through U.S. branches and agencies and section 2(h)(2) companies, as defined below) through the U.S. intermediate holding company, which would serve as a focal point for the Board's supervision and regulation of the foreign banking organization's U.S. subsidiaries.

The U.S. intermediate holding company requirement would be an integral component of the proposal's risk-based capital requirements, leverage limits, and

liquidity requirements. It would enable the Board to impose these standards on the foreign banking organization's U.S. bank and nonbank subsidiaries on a consistent, comprehensive, and consolidated basis. The U.S. intermediate holding company requirement would also assist in implementing the proposal's other enhanced risk management standards, as it would facilitate the foreign company's ability to oversee and the Board's ability to supervise the combined risks taken by the foreign company's U.S. operations. A U.S. intermediate holding company could also help facilitate the resolution or restructuring of the U.S. subsidiary operations of a foreign banking organization by providing one top-tier U.S. legal entity to be resolved or restructured.

B. Intermediate Holding Company Requirements for Foreign Banking Organizations with Combined U.S. Assets (Excluding U.S. Branch and Agency Assets) of $10 Billion or More

As noted, the proposal would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of $10 billion or more to establish a U.S. intermediate holding company.[45] The Board has chosen the $10 billion threshold because it is aligned with the $10 billion threshold established by the Dodd-Frank Act for stress test and risk management requirements.

A foreign banking organization that meets the asset thresholds would be required to establish a U.S. intermediate holding company on July 1, 2015, unless that time is

[45] Combined U.S. assets (excluding U.S. branch and agency assets) would be based on the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company). A company would be permitted to reduce its combined U.S. assets for this purpose by the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

extended by the Board in writing. A foreign banking organization that crosses the asset thresholds after July 1, 2014 would be required to establish a U.S. intermediate holding company 12 months after it crossed the asset threshold, unless that time is accelerated or extended by the Board in writing.

A foreign banking organization that establishes a U.S. intermediate holding company would be required to hold its interest in any U.S. subsidiary, other than a section 2(h)(2) company, through the U.S. intermediate holding company. The term subsidiary would be defined using the Bank Holding Company Act definition of control, such that a foreign banking organization would be required to transfer its interest in any U.S. company, including interests in joint ventures, for which it: (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company; (ii) controls in any manner the election of a majority of the directors or trustees of the company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the company.

U.S. subsidiaries held under section 2(h)(2) of the Bank Holding Company Act are not required to be held under the U.S. intermediate holding company. Section 2(h)(2) of the Bank Holding Company Act allows qualifying foreign banking organizations to retain their interest in foreign commercial firms that conduct business in the United States. This long-standing statutory exception was enacted in recognition of the fact that some foreign jurisdictions do not impose a clear separation between banking and commerce. The current proposal would not require foreign banking organizations to hold section 2(h)(2) investments under the U.S. intermediate holding company because these

commercial firms have not been subject to Board supervision, are not integrated into the U.S. financial operations of foreign banking organizations, and foreign banking organizations often cannot restructure their foreign commercial investments. The proposal would also require the foreign banking organization to transfer to the U.S. intermediate holding company any controlling interests in U.S. companies acquired pursuant to merchant banking authority.

In exceptional circumstances, the proposal would provide the Board with authority to permit a foreign banking organization to establish multiple U.S. intermediate holding companies or use an alternative organizational structure to hold its U.S. operations. For example, the Board may exercise this authority when a foreign banking organization controls multiple lower-tier foreign banking organizations that have separate U.S. operations. In addition, the Board may exercise this authority when, under applicable home country law, the foreign banking organization may not control its U.S. subsidiaries through a single U.S. intermediate holding company. Finally, the proposal would provide the Board with authority on an exceptional basis to approve a modified U.S. organizational structure based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

The proposal would not require a foreign banking organization to transfer any assets associated with a U.S. branch or agency to the U.S. intermediate holding company. Congress has permitted foreign banking organizations to establish branches and agencies in the United States if they meet specific standards, and has chosen not to require foreign banks to conduct their banking business in the United States only through subsidiary U.S. depository institutions. Excluding U.S. branches and agencies from the intermediate

holding company requirement would also preserve flexibility for foreign banking organizations to operate directly in the United States based on the capital adequacy of their consolidated organization, subject to proposed enhanced prudential standards applicable to the U.S. branch and agency networks.

After issuing a final rule, the Board intends to monitor how foreign banking organizations adapt their operations in response to the structural requirement, including whether foreign banking organizations relocate activities from U.S. subsidiaries into their U.S. branch and agency networks.

Question 6: What opportunities for regulatory arbitrage exist within the proposed framework, if any? What additional requirements should the Board consider applying to a U.S. branch and agency network to ensure that U.S. branch and agency networks do not receive favorable treatment under the enhanced prudential standards regime?

Question 7: Should the Board consider an alternative asset threshold for purposes of identifying the companies required to form a U.S. intermediate holding company, and if so, what alternative threshold should be considered and why? What other methodologies for calculating a company's total U.S. assets would better serve the purposes of the proposal?

Question 8: Should the Board provide an exclusive list of exemptions to the intermediate holding company requirement or provide exceptions on a case-by-case basis?

Question 9: Is the definition of U.S. subsidiary appropriate for purposes of determining which entities should be held under the U.S. intermediate holding company?

Question 10: Should the Board consider exempting any other categories of companies from the requirement to be held under the U.S. intermediate holding company, such as controlling investments in U.S. subsidiaries made by foreign investment vehicles that make a majority of their investments outside of the United States, and if so, which categories of companies?

Question 11: What, if any, tax consequences, international or otherwise, could present challenges to a foreign banking organization seeking to (1) reorganize its U.S. subsidiaries under a U.S. intermediate holding company and (2) operate on an ongoing basis in the United States through a U.S. intermediate holding company that meets the corporate form requirements described in the proposal?

Question 12: What other costs would be associated with forming a U.S. intermediate holding company? Please be specific and describe accounting or other operating costs.

Question 13: What impediments in home country law exist that could prohibit or limit the formation of a single U.S. intermediate holding company?

Notice requirements

To reduce burden on foreign banking organizations, the Board proposes to adopt an after-the-fact notice procedure for the formation of a U.S. intermediate holding company and the changes in corporate structure required by this proposal. Under the proposal, within 30 days of establishing a U.S. intermediate holding company, a foreign banking organization would be required to provide to the Board: (1) a description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure, (2) a certification that the U.S. intermediate holding company

meets the requirements of this section, and (3) any other information that the Board determines is appropriate.

Question 14: Should the Board adopt an alternative process in addition to, or in lieu of, the post-notice procedure described above? For example, should the Board require a before-the-fact application? Why or why not?

Corporate form

The proposal would require that a U.S. intermediate holding company be organized under the laws of the United States, any state, or the District of Columbia. While the proposal generally provides flexibility in the corporate form of the U.S. intermediate holding company, the U.S. intermediate holding company could not be structured in a manner that would prevent it from meeting the requirements in subparts K through R of this proposal.[46]

Under the risk management requirements of subpart O, the U.S. intermediate holding company would be required to have a board of directors or equivalent thereto to help ensure a strong, centralized corporate governance system.

Applicable standards and supervision

Under the proposal, a U.S. intermediate holding company would be subject to the enhanced prudential standards set forth in this proposal. In addition, a U.S. intermediate holding company would be subject to comparable regulatory reporting requirements and

[46] The proposal would not require the U.S. intermediate holding company to be wholly owned. Thus, a U.S. intermediate holding company could have minority investors.

inspection requirements to those described in section 225.5 of the Board's Regulation Y (12 CFR 225.5) that apply to a bank holding company.

The proposal would also provide that a U.S. intermediate holding company would be subject to the enhanced prudential standards of this proposal, and would not be separately subject to the enhanced prudential standards applicable to U.S. bank holding companies, regardless of whether the company would also meet the scope of application of those provisions. In doing so, the proposal intends to minimize uncertainty about the timing or applicability of certain requirements and to ensure that all U.S. intermediate holding companies of foreign banking organizations are subject to consistent rules.

In connection with this and other rulemakings, the Board is conducting a review of existing supervisory guidance to identify guidance that may be relevant to the operations and activities of a U.S. intermediate holding company that does not have a bank subsidiary. The Board proposes to apply such guidance to U.S. intermediate holding companies on a rolling basis, either by revising and reissuing the guidance or by publishing a notification that references the applicable guidance.

IV. Risk-Based Capital Requirements and Leverage Limits

A. Background

The financial crisis revealed that internationally agreed bank capital requirements were too low, the definition of capital was too weak, and the risk weights assigned to certain asset classes were not proportional to their actual risk. The financial crisis also demonstrated that in the resolution of a failing financial firm, the location of capital is critical and that companies that managed resources on a decentralized basis were

generally less exposed to disruptions in international markets than those that solely managed resources on a centralized basis.

The international regulatory community has made substantial progress on strengthening consolidated bank capital standards in response to the crisis. The Basel Committee on Banking Supervision's (BCBS) comprehensive reform package, "Basel III: A global regulatory framework for more resilient banks and banking systems" (Basel III Accord), has significantly enhanced the strength of international consolidated capital standards by raising minimum standards, more conservatively defining qualification standards for regulatory capital, and establishing a framework for capital conservation when capital levels do not remain well above the minimum standards.[47]

While Basel III improves the standards for quantity and quality of consolidated capital of internationally active banking organizations, it does not address the capitalization of host country operations of an internationally active banking organization. Moreover, lack of access to timely information on the consolidated capital position of the parent organization can limit the ability of host supervisors to respond to changes in consolidated capital adequacy, creating a risk of large losses in the host country operations of the foreign bank if the parent becomes distressed or fails.

The Board's current approach to capital regulation of the U.S. operations of foreign banking organizations was designed to provide them with the flexibility to manage capital on a global consolidated basis, while helping to promote global competitive equity with U.S. banking organizations. Under the current approach, in order to establish a branch, agency, commercial lending company, or bank subsidiary in the

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[47] *See* Basel III Accord, *supra* note 40.

United States, a foreign bank is required to maintain capital levels at the consolidated parent organization that are equivalent to those required of a U.S. banking organization. In making equivalency determinations, the Board has allowed foreign banking organizations to use home country capital standards if those standards are consistent with the standards established by the BCBS. To the extent that a foreign banking organization controls a U.S. depository institution subsidiary, the U.S. depository institution subsidiary is subject to the same set of risk-based capital and leverage requirements that apply to other U.S. depository institutions. Any functionally regulated nonbank subsidiaries of foreign banking organizations are subject to capital requirements at the individual nonbank subsidiary level as may be established by primary federal or state regulators. Pursuant to the Board's SR Letter 01–01, as a general matter, a U.S. bank holding company subsidiary of a foreign banking organization that qualifies as a financial holding company has not been required to comply with the Board's capital standards since 2001.[48] This approach has been predicated on the basis of the foreign bank parent maintaining sufficient consolidated capital levels to act as a source of support to its U.S. operations under stressed conditions.

Several factors have prompted a targeted reassessment of the Board's traditional primary reliance on consolidated capital requirements in implementing capital regulation for U.S. subsidiaries of foreign banking organizations. These factors include the financial stability risk posed by the U.S. operations of the largest foreign banking

[48] In cases in which the Board determined that a foreign bank operating a U.S. branch, agency, or commercial lending company was well-capitalized and well-managed under standards comparable to those of U.S. banks controlled by financial holding companies, the Board has applied a presumption that the foreign banking organization had sufficient financial strength and resources to support its banking activities in the United States.

organizations, questions about the ability and willingness of parent foreign banking organizations to act as a source of support to their U.S. operations during stressed periods, and challenges associated with cross-border resolution that create incentives for home and host jurisdictions to restrict cross-border intra-group capital flows when banking organizations face difficulties.

The Board has considered these factors in determining how best to implement section 165 of the Dodd-Frank Act, which directs the Board to impose enhanced risk-based capital and leverage requirements on foreign banking organizations with total consolidated assets of $50 billion or more.[49] In addition, the Board has considered section 171 of the Dodd-Frank Act, which requires top-tier U.S. bank holding company subsidiaries of foreign banking organizations that relied on SR Letter 01-01 to meet U.S. capital standards that are not less than the standards generally applicable to U.S. depository institutions beginning in July, 2015.[50]

As described below, the proposal would subject U.S. intermediate holding companies to the capital standards applicable to U.S. bank holding companies. This would both strengthen the capital position of U.S. subsidiaries of foreign banking organizations and provide parity in the capital treatment for U.S. bank holding companies and the U.S. subsidiaries of foreign banking organizations on a consolidated basis. The proposal would also subject U.S. intermediate holding companies with total consolidated assets of $50 billion or more to the Board's capital plan rule (12 CFR 225.8) in light of the more significant risks posed by these firms. Aligning the capital requirements

[49] 12 U.S.C. § 5365(b).

[50] 12 U.S.C. § 5371(b)(4)(E).

between U.S. subsidiaries of foreign banking organizations on a consolidated basis and U.S. bank holding companies is also consistent with long-standing international capital agreements, which provide flexibility to host jurisdictions to set capital requirements for local subsidiaries of foreign banking organizations, so long as national treatment is preserved.

The proposal would allow U.S. branch and agency networks of foreign banking organizations with total consolidated assets of $50 billion or more to continue to meet U.S. capital equivalency requirements at the consolidated level. Specifically, the proposal would require a foreign banking organization to certify that it meets on an ongoing basis home country capital adequacy standards that are consistent with the Basel Capital Framework, as defined below. This requirement is intended to help ensure that the consolidated capital base supporting the activities of U.S. branches and agencies remains strong, and that weaknesses at the consolidated foreign parent do not undermine the financial strength of its direct U.S. operations.

B. Risk-Based Capital Requirements Applicable to U.S. Intermediate Holding Companies

This proposal would require all U.S. intermediate holding companies of foreign banking organizations with total consolidated assets of $50 billion or more, regardless of whether the U.S. intermediate holding company controls a depository institution, to calculate and meet any applicable capital adequacy standards, including minimum risk-based capital and leverage requirements and any restrictions based on capital adequacy, in the same manner and to the same extent as a U.S. bank holding company in accordance with any capital standards established by the Board for bank holding companies. Currently, the Board's rules for calculating minimum capital requirements for bank

holding companies are found at 12 CFR part 225, Appendix A (general risk-based capital rule), 12 CFR part 225, Appendix D (leverage rule), 12 CFR part 225, Appendix E (market risk rule), and 12 CFR part 225, Appendix G (advanced approaches risk-based capital rule). A U.S. intermediate holding company that met the applicability thresholds under the market risk rule or the advanced approaches risk-based capital rule would be required to use those rules to calculate its minimum risk-based capital requirements, in addition to the general risk-based capital requirements and the leverage rule.

The Board, along with the other banking agencies, has proposed revisions to its capital requirements that would include implementation in the United States of the Basel III Accord.[51] The Board anticipates that the capital adequacy standards for U.S. bank holding companies on July 1, 2015, will incorporate the standards in the Basel III Accord.

A U.S. intermediate holding company established on July 1, 2015, would be required to comply with the capital adequacy standards on that date, unless that time is accelerated or extended by the Board in writing. A U.S. intermediate holding company that is required to be established after July 1, 2015, would be required to comply with the capital adequacy standards applicable to bank holding companies beginning on the date it is established, unless that time is accelerated or extended by the Board in writing.

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[51] In June 2012, the Board, together with the OCC and FDIC, published three notices of proposed rulemaking to implement the Basel III Accord in the United States. *See* 77 FR 52792 (August 30, 2012); 77 FR 52888 (August 30, 2012); 77 FR 52978 (August 30, 2012) (collectively, the Basel III proposals). These proposed requirements, if adopted in final form, are expected to form the basis for the capital regime applicable to U.S. bank holding companies.

The Board may also, through a separate, future rulemaking, apply a quantitative risk-based capital surcharge in the United States to a U.S. intermediate holding company that is determined to be a domestic systemically important banking organization (D-SIB), consistent with the proposed BCBS D-SIB regime or similar framework.[52]

Question 15: Are there provisions in the Board's Basel III proposals that would be inappropriate to apply to U.S. intermediate holding companies?

U.S. Intermediate Holding Companies With Total Consolidated Assets Of $50 Billion Or More

All U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be required to comply with section 225.8 of Regulation Y (capital plan rule) in the same manner and to the same extent as a bank holding company subject to that section.[53] The capital plan rule currently applies to all U.S. domiciled bank holding companies with total consolidated assets of $50 billion or more (except that U.S. domiciled bank holding companies with total consolidated assets of $50 billion or more that are relying on SR Letter 01-01 are not required to comply with the capital plan rule until July 21, 2015).

A U.S. intermediate holding company that meets the asset threshold on July 1, 2015, would be required to submit its first capital plan on January 5, 2016, unless that time is extended by the Board in writing. This requirement would replace the requirement that a U.S. domiciled bank holding company subsidiary of a foreign banking

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[52] BCBS, A framework for dealing with domestic systemically important banks (August 1, 2012), available at http://www.bis.org/publ/bcbs224.pdf.

[53] 12 CFR 225.8. *See* 76 FR 74631 (December 1, 2011).

organization submit a capital plan under section 225.8 of the Board's Regulation Y (12 CFR 225.8).

A U.S. intermediate holding company that meets the $50 billion asset threshold after July 1, 2015 would be required to comply with the capital plan rule beginning in October of the calendar year after the year in which the U.S. intermediate holding company is established or otherwise crosses the $50 billion total consolidated asset threshold.

Under the capital plan rule, a U.S. intermediate holding company with total consolidated assets of $50 billion or more would be required to submit annual capital plans to the Federal Reserve in which it demonstrates an ability to maintain capital above the Board's minimum risk-based capital ratios under both baseline and stressed conditions over a minimum nine-quarter, forward-looking planning horizon. A U.S. intermediate holding company that is unable to satisfy these requirements generally would not be able to make any capital distributions until it provided a satisfactory capital plan to the Board.

The capital plan requirement would help ensure that U.S. intermediate holding companies hold capital commensurate with the risks they would face under stressful financial conditions and should reduce the probability of their failure by limiting their capital distributions under certain circumstances.

Question 16: In what ways, if any, should the Board consider modifying the requirements of the capital plan rule as it would apply to U.S. intermediate holding companies? For example, would the capital policy of a U.S. intermediate holding

company of a foreign banking organization differ meaningfully from the capital policy of a U.S. bank holding company?

C. Risk-Based Capital Requirements Applicable to Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More

The proposal would require a foreign banking organization with total consolidated assets of $50 billion or more to certify or otherwise demonstrate to the Board's satisfaction that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework. The proposal defines the Basel Capital Framework as the regulatory capital framework published by the BCBS, as amended from time to time. This requirement would include the standards in the Basel III Accord for minimum risk-based capital ratios and restrictions and limitations if capital conservation buffers above the minimum ratios are not maintained, as these requirements would come into effect under the transitional provisions included in the Basel III Accord.[54]

A company may satisfy this requirement by certifying that it meets the capital adequacy standards established by its home country supervisor, including with respect to the types of capital instruments that would satisfy requirements for common equity tier 1, additional tier 1, and tier 2 capital and for calculating its risk-weighted assets, if those capital adequacy standards are consistent with the Basel Capital Framework. If a foreign

[54] The Basel III Accord establishes the following minimum risked-based capital standards: 4.5 percent tier 1 common equity to risk-weighted assets, 6.0 percent tier 1 capital to risk-weighted assets, and 8.0 percent total capital to risk-weighted assets. In addition, the Basel III Accord includes restrictions on capital distributions and certain discretionary bonus payments if a banking organization does not hold tier 1 common equity sufficient to exceed the minimum risk-weighted ratio requirements outlined above by at least 2.5 percent. *See* Basel III Accord, *supra* note 40.

banking organization's home country standards are not consistent with the Basel Capital Framework, the foreign banking organization may demonstrate to the Board's satisfaction that it meets standards consistent with the Basel Capital Framework.

In addition, a foreign banking organization would be required to provide to the Board certain information on a consolidated basis. This information would include its risk-based capital ratios (including its tier 1 risk-based capital ratio and total risk-based capital ratio and amount of tier 1 capital and tier 2 capital), risk-weighted assets, and total assets and, consistent with the transition period in the Basel III Accord, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets on a consolidated basis.[55]

Under the proposal, a foreign banking organization with total consolidated assets of $50 billion or more as of July 1, 2014, would be required to comply with the proposed certification beginning on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that exceeds the $50 billion asset threshold after July 1, 2014, would be required to comply with the proposed requirements beginning 12 months after it crossed the asset threshold, unless that time is accelerated or extended by the Board in writing.

The proposal would not apply the current minimum leverage ratio for U.S. bank holding companies to a foreign banking organization. However, the international leverage ratio set forth in the Basel III Accord is expected to be implemented internationally in 2018. At that time, the proposal would require foreign banking

[55] This information would have to be provided as of the close of the most recent quarter and as of the close of the most recent audited reporting period.

organizations subject to this requirement to certify or otherwise demonstrate that they comply with the international leverage ratio, consistent with the Basel Capital Framework.

If a foreign banking organization cannot provide the certification or otherwise demonstrate to the Board that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework, the proposal would provide that the Board may impose conditions or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. In implementing any conditions or restrictions, the Board would coordinate with any relevant U.S. licensing authority.

In addition, through a separate rulemaking, the Board may introduce a consolidated capital surcharge certification requirement for a foreign banking organization that maintains U.S. operations and that is designated by the BCBS as a global systemically important banking organization (G-SIBs). The surcharge amount would be aligned with the international requirement.[56]

Question 17: What challenges would foreign banking organizations face in complying with the proposed enhanced capital standards framework described above? What alternatives should the Board consider? Provide detailed descriptions for alternatives.

Question 18: What concerns, if any, are raised by the proposed requirement that a foreign banking organization calculate regulatory capital ratios in accordance with home

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[56] BCBS, *Global systemically important banks: assessment methodology and the additional loss absorbency requirement* (November 2011), available at http://www.bis.org/publ/bcbs207.pdf.

country rules that are consistent with the Basel Accord, as amended from time to time? How might the Federal Reserve refine the proposed requirement to address those concerns?

Question 19: Should the Board require a foreign banking organization to meet the current minimum U.S. leverage ratio of 4 percent on a consolidated basis in advance of the 2018 implementation of the international leverage ratio? Why or why not?

V. Liquidity Requirements

A. Background

During the financial crisis, many global financial companies experienced significant financial stress due, in part, to inadequate liquidity risk management. In some cases, companies that were otherwise solvent had difficulty in meeting their obligations as they became due because some sources of funding became severely restricted. These events followed several years of ample liquidity in the financial system, during which liquidity risk management did not receive the same level of priority and scrutiny as management of other sources of risk. The rapid reversal in market conditions and availability of liquidity during the crisis illustrated how quickly liquidity can evaporate, and that illiquidity can last for an extended period, leading to a company's insolvency before its assets experience significant deterioration in value. The Senior Supervisors Group (SSG), which comprises senior financial supervisors from seven countries, conducted reviews of financial companies in different countries and found that failure of

liquidity risk management practices contributed significantly to the financial crisis.[57] In particular, the SSG noted that firms' inappropriate reliance on short-term sources of funding and in some cases inaccurate measurements of funding needs and lack of effective contingency funding plans contributed to the liquidity crises many firms faced.[58]

The U.S. operations of foreign banking organizations also experienced liquidity stresses during the financial crisis and more recently in response to financial strains in Europe, due in part to their high levels of reliance on short-term, U.S. dollar wholesale funding. In the lead up to the crisis, many foreign banking organizations used their U.S. operations to raise short-term U.S. dollar debt in U.S. markets to fund longer-term assets held in other jurisdictions. The vulnerabilities associated with this activity are difficult for U.S. supervisors to monitor, due to their lack of access to timely information on the global U.S. dollar balance sheets of the consolidated banking organization. While additional information on the global consolidated company would partially alleviate this problem, U.S. supervisors are likely to remain at a significant information disadvantage relative to home country authorities, which limits U.S. supervisors' ability to fully assess the liquidity resiliency of the consolidated firm. Further, liquidity crises tend to occur rapidly, leaving banking organizations and supervisors limited time to react and

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[57] *See* Senior Supervisors Group, Observations on Risk Management Practices During the Recent Market Turbulence (March 2008) (2008 SSG Report), available at http://www.newyorkfed.org/newsevents/news/banking/2008/SSG_Risk_Mgt_doc_final.pdf .

[58] *See* Senior Supervisors Group, Risk Management Lessons from the Global Banking Crisis of 2008 (October 2009) (2009 SSG Report), available at http://www.newyorkfed.org/newsevents/news_archive/banking/2009/SSG_report.pdf.

increasing the importance of local management of liquidity sources to cover local vulnerabilities.

Sole reliance on consolidated liquidity risk management of foreign banking organizations has also resulted in a disadvantageous funding structure for the U.S. operations of many firms relative to their home country operations. Many foreign banking organizations provide funding to their U.S. branches on a short-term basis and receive funding from their U.S. branches on a longer-term basis.

To address these risks and help ensure parallel treatment of U.S. and foreign banking organizations operating in the United States that pose risk to U.S. financial stability, this proposal would implement a set of liquidity requirements for foreign banking organizations that build on the core provisions of the Board's SR Letter 10-6, "Interagency Policy Statement on Funding and Liquidity Risk Management" issued March 2010 (Interagency Liquidity Risk Policy Statement).[59] These requirements are broadly consistent with risk management requirements proposed for U.S. bank holding companies in the December 2011 proposal.

In general, the liquidity requirements in this proposal would establish a regulatory framework for the management of liquidity risk for the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more. The proposal would also require the U.S. operations of these companies to conduct monthly liquidity stress tests and maintain a buffer of local liquidity to cover cash flow needs under stressed conditions. The proposal would apply local liquidity buffer requirements to the

[59] SR Letter 10-6, Interagency Policy Statement on Funding and Liquidity Risk Management (March 2010), available at http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm.

U.S. branch and agency networks of these companies, as well as to U.S. intermediate holding companies.

The liquidity requirements for U.S. operations of foreign banking organizations included in this proposal are aimed at increasing the overall liquidity resiliency of these operations during times of idiosyncratic and market-wide stress and reducing the threat of asset fire sales during periods when U.S. dollar funding channels are strained and short-term debt cannot easily be rolled over. The proposed liquidity requirements are intended to reduce the need to rely on parent and government support during periods of stress. This proposal would also provide an incentive for foreign banking organizations to better match the term structure of funding provided by the U.S. operations to the head office with funding provided from the head office to the U.S. operations. Beyond improving the going-concern resiliency of the U.S. operations of foreign banking organizations, the proposed liquidity requirements are aimed at minimizing the risk that extraordinary funding would be needed to resolve the U.S. operations of a foreign banking organization.

The liquidity buffer for the U.S. intermediate holding company and the U.S. branch and agency network included in this proposal is not intended to increase the foreign banking organization's overall consolidated liquidity requirements. Instead, the proposal is aimed at ensuring that the portion of the consolidated liquidity requirement attributable to short-term third-party U.S. liabilities would be held in the United States. Foreign banking organizations that raise funding through U.S. entities on a 30-day or longer basis and match the term structures of intracompany cross-border cash flows would be able to minimize the amount of liquid assets they would be required to hold in

the United States under this proposal. Finally, local *ex ante* liquidity requirements would also allow U.S. supervisors to better monitor the liquidity risk profile of the U.S. operations of large foreign banking organizations, reducing the need to implement destabilizing limits on intragroup flows at the moment when a foreign banking organization is experiencing financial distress.

The proposed rule provides a tailored approach for foreign banking organizations with combined U.S. assets of less than $50 billion, reflecting the lower risk these firms present to U.S. financial stability. Generally, these foreign banking organizations would not be subject to the full set of liquidity requirements in the proposal, but would be required to report to the Board the results of an internal liquidity stress test for the combined U.S. operations on an annual basis. The proposal requires that this internal test be conducted in a manner consistent with BCBS principles for liquidity risk management.[60]

The liquidity risk management requirements in this proposal represent an initial set of enhanced liquidity requirements for foreign banking organizations with $50 billion or more in combined U.S. assets that would be broadly consistent with the December 2011 proposal. The Board intends through future separate rulemakings to implement the quantitative liquidity standards included in the Basel III Accord for the U.S. operations of some or all foreign banking organizations with $50 billion or more in combined U.S. assets, consistent with the international timeline.

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[60] *See* BCBS, *Principles for Sound Liquidity Risk Management and Supervision* (September 2008) (BCBS principles for liquidity risk management), available at http://www.bis.org/publ/bcbs144.htm.

Question 20: Is the Board's approach to enhanced liquidity standards for foreign banking organizations with significant U.S. operations appropriate? Why or why not?

Question 21: Are there other approaches that would more effectively enhance liquidity standards for these companies? If so, provide detailed examples and explanations.

Question 22: The Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt. Should the Board adopt a short-term debt limit in addition to, or in place of, the Basel III liquidity requirements in the future? Why or why not?

B. Liquidity Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More

In general, the liquidity requirements proposed for foreign banking organizations with combined U.S. assets of $50 billion or more would fall into three broad categories. First, the proposal would establish a framework for the management of liquidity risk. Second, the proposal would require these foreign banking organizations to conduct monthly liquidity stress tests. Third, each such company would be required to maintain a buffer of highly liquid assets primarily in the United States to cover cash flow needs under stressed conditions.

A foreign banking organization with combined U.S. assets of $50 billion or more on July 1, 2014, would be required to comply with the proposed liquidity requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization whose combined U.S. assets exceeded $50 billion after July 1, 2014, would be required to comply with the proposed liquidity standards beginning 12 months after it

crossed the $50 billion asset threshold, unless that time is accelerated or extended by the Board in writing.

Framework for managing liquidity risk

A critical element of sound liquidity risk management is effective corporate governance, consisting of oversight of a company's liquidity risk management by its board of directors and the appropriate risk management committee and executive officers.

As discussed further below in section VII of this preamble, the proposal would require that a foreign banking organization with combined U.S. assets of $50 billion or more establish a risk committee to oversee the risk management of the combined U.S. operations of the company.[61] The proposal would also require a foreign banking organization with combined U.S. assets of $50 billion or more to appoint a U.S. chief risk officer with responsibility for implementing the company's risk management practices for the combined U.S. operations.

The U.S. risk committee would be required to review and approve the company's liquidity risk tolerance for its U.S. operations at least annually, with the concurrence of the company's board of directors or the enterprise-wide risk committee (if a different committee than the U.S. risk committee).[62] In reviewing its liquidity risk tolerance, the U.S. risk committee would be required to consider the capital structure, risk profile, complexity, activities, and size of the company's U.S. operations in order to help ensure

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[61] The U.S. risk committee can be the foreign banking organization's enterprise-wide risk committee, as described in section VII of this preamble, as long as the enterprise-wide risk committee specifically assumes the specified responsibilities just described.

[62] Liquidity risk tolerance is the acceptable level of liquidity risk the company may assume in connection with its operating strategies for its combined U.S. operations.

that the established liquidity risk tolerance is appropriate for the company's business strategy with respect to its U.S. operations and the role of those operations in the U.S. financial system. The liquidity risk tolerance for the U.S. operations should also be consistent with the enterprise-wide liquidity risk tolerance established for the consolidated organization by the board of directors or the enterprise-wide risk committee.

The liquidity risk tolerance should reflect the U.S. risk committee's assessment of tradeoffs between the costs and benefits of liquidity. Inadequate liquidity for the U.S. operations could expose the operations to significant financial stress and endanger the ability of the company to meet contractual obligations arising out of its U.S. operations. Conversely, too much liquidity can entail substantial opportunity costs and have a negative impact on the profitability of the company's U.S. operations.

The U.S. risk committee should communicate the liquidity risk tolerance to management within the U.S. operations such that they understand the U.S. risk committee's policy for managing the trade-offs between the risk of insufficient liquidity and generating profit and are able to apply the policy to liquidity risk management throughout the U.S. operations.

The proposal would also require that the U.S. chief risk officer review and approve the liquidity costs, benefits, and risk of each significant new business line engaged in by the U.S. operations and each significant new product offered, managed, or sold through the U.S. operations before the company implements the line or offer the product. In connection with this review, the U.S. chief risk officer would be required to consider whether the liquidity risk of the new strategy or product under current conditions and under liquidity stress scenarios is within the established liquidity risk

tolerance of the U.S. operations. At least annually, the U.S. chief risk officer would be required to review approved significant business lines and products to determine whether each line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each line or product continues to be within the established liquidity risk tolerance of the U.S. operations.

A foreign banking organization with combined U.S. assets of $50 billion or more would be required to establish a contingency funding plan for its combined U.S. operations. The U.S. chief risk officer would be required to review and approve the U.S. operations' contingency funding plan at least annually and whenever the company materially revises the plan either for the company as a whole or for the combined U.S. operations specifically.

As part of ongoing liquidity risk management within the U.S. operations, the proposal would require the U.S. chief risk officer to, at least quarterly, review the cash flow projections to ensure compliance with the liquidity risk tolerance; review and approve the liquidity stress test practices, methodologies, and assumptions; review the liquidity stress test results; approve the size and composition of the liquidity buffer; review and approve the specific limits on potential sources of liquidity risk and review the company's compliance with those limits; and review liquidity risk management information systems necessary to identify, measure, monitor, and control liquidity risk. In addition, the U.S. chief risk officer would be required to establish procedures governing the content of reports on the liquidity risk profile of the combined U.S. operations.

Additional responsibilities of the U.S. chief risk officer

Under the proposed rule, the U.S. chief risk officer would be required to review the liquidity risk management strategies and policies and procedures established by senior management of the combined U.S. operations of the foreign banking organization. These strategies and policies and procedures should include those relating to liquidity risk measurement and reporting systems, cash flow projections, liquidity stress testing, liquidity buffer, contingency funding plan, specific limits, and monitoring procedures required under the proposed rule. The proposal also would require the U.S. chief risk officer to review information provided by the senior management of the U.S. operations to determine whether those operations are managed in accordance with the established liquidity risk tolerance. The U.S. chief risk officer would additionally be required to report at least semi-annually to the U.S. risk committee and enterprise-wide risk committee (or designated subcommittee thereof) on the liquidity risk profile of the combined U.S. operations of the company, and to provide other relevant and necessary information to the U.S. risk committee and the enterprise-wide risk committee to ensure that the U.S. operations are managed within the established liquidity risk tolerance.

Independent review

Under the proposed rule, a foreign banking organization with combined U.S. assets of $50 billion or more would be required to establish and maintain an independent review function to evaluate the liquidity risk management of its combined U.S. operations. The review function would be independent of management functions that execute funding (the treasury function). The independent review function would be required to review and evaluate the adequacy and effectiveness of the U.S. operations' liquidity risk management processes regularly, but no less frequently than annually. It

would also be required to assess whether the U.S. operations' liquidity risk management complies with applicable laws, regulations, supervisory guidance, and sound business practices, and to report statutory and regulatory noncompliance and other material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee (or designated subcommittee) in writing for corrective action.

An appropriate internal review conducted by the independent review function should address all relevant elements of the liquidity risk management process for the U.S. operations, including adherence to the established policies and procedures, and the adequacy of liquidity risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, document, and evaluate the liquidity risk management processes, and recommend solutions to any identified weaknesses.

Cash flow projections

To ensure that a foreign banking organization with combined U.S. assets of $50 billion or more has a sound process for identifying and measuring liquidity risk, the proposed rule would require comprehensive projections for the company's U.S. operations that include forecasts of cash flows arising from assets, liabilities, and off-balance sheet exposures over appropriate time periods, and identify and quantify discrete and cumulative cash flow mismatches over these time periods. The proposed rule would specifically require the company to provide cash flow projections for the U.S. operations over short-term and long-term time horizons that are appropriate to the capital structure,

risk profile, complexity, activities, size, and other risk-related factors of the U.S. operations.[63]

The proposed rule states that a foreign banking organization must establish a methodology for making its cash flow projections for its U.S. operations, and must use reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in the projections. Given the critical importance that the methodology and underlying assumptions play in liquidity risk measurement, the company would also be required to adequately document the methodology and assumptions. In addition, the Board expects senior management to periodically review and approve the assumptions used in the cash flow projections for the U.S. operations to ensure that they are reasonable and appropriate.

To ensure that the cash flow projections incorporate liquidity risk exposure to contingent events, the proposed rule would require that projections include cash flows arising from contractual maturities, and intercompany transactions, as well as cash flows from new business, funding renewals, customer options, and other potential events that may affect the liquidity of the U.S. operations. The Board would expect a company to use dynamic analysis because static projections may inadequately quantify important aspects of potential liquidity risk that could have a significant effect on the liquidity risk profile of the U.S. operations. A dynamic analysis that incorporates management's reasoned assumptions regarding the future behavior of assets, liabilities, and off-balance

[63] A company would be required to update short-term cash flow projections daily, and update long-term cash flow projections at least monthly.

sheet items in projected cash flows is important for identifying potential liquidity risk exposure.

The proposed rule would not require firms to provide specific cash flow information to the Board on their worldwide U.S. dollar activity. However, firms that have large global cash flows in U.S. dollars may require significant funding from sources in the United States during a time of financial stress, which may present risk to the U.S. financial system. The Board therefore is considering whether to require foreign banking organizations with combined U.S. assets of $50 billion or more to report all of their global consolidated cash flows that are in U.S. dollars. This information could assist U.S. supervisors in understanding the extent to which companies conduct their activities around the world in U.S. dollars and the potential need these companies may have for U.S. dollar funding.

Question 23: Should foreign banking organizations with a large U.S. presence be required to provide cash flow statements for all activities they conduct in U.S. dollars, whether or not through the U.S. operations? Why or why not?

Liquidity stress test requirements

The proposal would require a foreign banking organization with combined U.S. assets of $50 billion or more to conduct monthly liquidity stress tests separately on its U.S. intermediate holding company and its U.S. branch and agency network. By considering how severely adverse events, conditions, and outcomes would affect the liquidity risk of its U.S. branch and agency network and its U.S. intermediate holding company, the company can identify vulnerabilities; quantify the depth, source, and degree of potential liquidity strain in its U.S. operations; and analyze the possible effects.

When combined with comprehensive information about an institution's funding position, stress testing can serve as an important tool for effective liquidity risk management.

In conducting liquidity stress test, the foreign banking organization would be required to separately identify adverse liquidity stress scenarios and assess the effects of these scenarios on the cash flow and liquidity of each of the U.S. branch and agency network and the U.S. intermediate holding company. In addition to monthly stress testing, the U.S. operations of the foreign banking organization must be prepared to conduct "ad hoc" stress tests to address rapidly emerging risks or consider the effect of sudden events, upon the request of the Board. The Board may, for example, require the U.S. operations of a company to perform additional stress tests where there has been a significant deterioration in the company's earnings, asset quality, or overall financial condition; when there are negative trends or heightened risk associated with a particular product line of the U.S. operations; or when there are increased concerns over the company's funding of off-balance sheet exposures related to U.S. operations.

Effective stress testing should include adverse scenario analyses that incorporate historical and hypothetical scenarios to assess the effect on liquidity of various events and circumstances, including variations thereof. At a minimum, a company would be required to incorporate stress scenarios for its U.S. operations that account for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses. Additional scenarios should be used as needed to ensure that all of the significant aspects of liquidity risks to the relevant U.S. operations have been modeled. The proposed rule would also require that the stress testing addresses the potential for market disruptions to have an adverse effect on the company's combined

U.S. operations, and the potential actions of other market participants experiencing liquidity stresses under the same market disruption. The stress tests should appropriately consider how stress events would adversely affect not only the U.S. operations on a standalone basis, but also how idiosyncratic or market-related stresses on other operations of the company may affect the U.S. operations' liquidity.

Stress testing should address the full set of activities, exposures and risks, both on- and off-balance sheet, of the U.S. operations, and address non-contractual sources of risks, such as reputational risks. For example, stress testing should address potential liquidity issues arising from use of sponsored vehicles that issue debt instruments periodically to the markets, such as asset-backed commercial paper and similar conduits. Under stress scenarios, elements of the U.S. operations may be contractually required, or compelled in the interest of mitigating reputational risk, to provide liquidity support to such a vehicle.

Effective liquidity stress testing should be conducted over a variety of different time horizons to adequately capture rapidly developing events, and other conditions and outcomes that may materialize in the near or long term. To ensure that a company's stress testing for its U.S. operations contemplates such events, conditions, and outcomes, the proposed rule would require that the stress scenarios use a minimum of four time horizons including an overnight, a 30-day, a 90-day, and a one-year time horizon. Additional time horizons may be necessary to reflect the capital structure, risk profile, complexity, activities, size, and other relevant factors of the company's combined U.S. operations.

The proposal further provides that liquidity stress testing must be tailored to, and provide sufficient detail to reflect the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the U.S. operations. This requirement is intended to ensure that stress testing under the proposed rule would be tied directly to the business profile and the regulatory environment of the U.S. operations.[64] The requirement also addresses relevant risk areas, provides for an appropriate level of aggregation, and captures appropriate risk drivers, internal and external influences, and other key considerations that may affect the liquidity position of the U.S. operations and the company as a whole. In order to fully assess the institution's liquidity risk profile, stress testing by business line or legal entity or stress scenarios that use additional time horizons may be necessary beyond the tests described above.

A foreign banking organization must assume that, for the first 30 days of a liquidity stress horizon, only highly liquid assets that are unencumbered may be used as cash flow sources to meet projected funding needs for the U.S. operations. For time periods beyond the first 30 days of a liquidity stress scenario, highly liquid assets that are unencumbered and other appropriate funding sources may be used.[65]

Liquidity stress testing for the U.S. operations should account for deteriorations in asset valuations when there is market stress. Accordingly, the proposed rule would require discounting the fair market value of an asset that is used as a cash flow source to

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[64] For example, applicable statutory and regulatory restrictions on companies, including restrictions on the transferability of assets between legal entities, would need to be incorporated. These restrictions include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1) and Regulation W (12 CFR part 223), which govern covered transactions between banks and their affiliates.

[65] The liquidity buffer and the definitions of unencumbered and highly liquid asset are discussed below.

offset projected funding needs in order to reflect any credit risk and market price volatility of the asset. The proposed rule would also require that sources of funding used to generate cash to offset projected outflows be diversified by collateral, counterparty, or borrowing capacity, or other factors associated with the liquidity risk of the assets throughout each stress test time horizon. Thus, if U.S. operations hold high quality assets other than cash and securities issued or guaranteed by the U. S. government, a U.S. government agency,[66] or a U.S. government-sponsored entity,[67] to meet future outflows, the assets must be diversified by collateral, counterparty, or borrowing capacity, and other liquidity risk identifiers.

The proposed rule would require that the U.S. operations maintain policies and procedures that outline its liquidity stress testing practices, methodologies, and assumptions, and provide for the enhancement of stress testing practices as risks change and as techniques evolve. The proposal would also require the company to provide to the Board the results of its stress test for U.S. operations on a monthly basis within 14 days of the end of each month.

Foreign banking organizations also would be required to provide to the Board a summary of the results of any liquidity stress test and liquidity buffers established by their home country regulators, on a quarterly basis and within 14 days of completion of

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[66] A U.S. government agency is defined in the proposed rule as an agency or instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

[67] A U.S. government-sponsored entity is defined in the proposed rule as an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

the stress test. This information is required to demonstrate how vulnerabilities identified within its U.S. operations will be covered by a buffer being held by the company for its global operations and how vulnerabilities outside the United States may affect its U.S. operations. The Board may require additional information from foreign banking organizations whose U.S. operations significantly rely on the foreign parent for funding with respect to their home country liquidity stress tests and buffers.

Question 24: What challenges will foreign banking organizations face in formulating and implementing liquidity stress testing described in the proposed rule? What changes, if any, should be made to the proposed liquidity stress testing requirements (including the stress scenario requirements) to ensure that analyses of the stress testing will provide useful information for the management of a company's liquidity risk? What alternatives to the proposed liquidity stress testing requirements, including the stress scenario requirements, should the Board consider? What additional parameters for the liquidity stress tests should the Board consider defining?

Liquidity buffer

To withstand liquidity stress under adverse conditions, a company generally needs a sufficient supply of liquid assets that can be sold or pledged to obtain funds needed to meet its obligations. During the financial crisis, financial companies that experienced severe liquidity difficulties often held insufficient liquid assets to meet their liquidity needs, which had increased sharply as market sources of funding became unavailable. Accordingly, the proposed rule would require a company to maintain a liquidity buffer of unencumbered highly liquid assets for its U.S. operations to meet the cash flow needs identified under the required stress tests described above.

The proposal would require separate liquidity buffers for a foreign banking organization's U.S. branch and agency network and its U.S. intermediate holding company that are equal to their respective net stressed cash flow needs as identified by the required stress test. Each calculation of the net stressed cash flow need described below must be performed for the U.S. branch and agency network and U.S. intermediate holding company separately. These calculations assess the stressed cash flow need both with respect to intracompany transactions and transactions with unaffiliated parties to quantify the liquidity vulnerabilities of the U.S. operations during the 30-day stress horizon.

Liquidity buffer calculation

Under the proposal, each U.S. branch and agency network and U.S. intermediate holding company must maintain a liquidity buffer equal to its net stressed cash flow need over a 30-day stress horizon. The net stressed cash flow need is equal to the sum of (1) the net external stressed cash flow need and (2) the net internal stressed cash flow need. The calculation of external and internal stressed cash flow needs is conducted separately in order to provide different treatment of these two sets of cash flows when sizing the liquidity buffer needs of the U.S. operations. The proposal treats these cash flows differently to minimize the ability of a foreign banking organization to meet its external net stressed cash flow needs with intragroup cash flows. This approach is aimed at addressing the risk that the U.S. operations of a foreign banking organization and its non-U.S. operations will face funding pressures simultaneously.

A U.S. intermediate holding company would be required to calculate its liquidity buffer based on both net internal stressed cash flow needs and net external stressed cash

flow needs, as described below, for the entire 30-day stress period, and maintain the assets comprising the liquidity buffer in the United States. To avoid evasion of these requirements, cash assets counted in the liquidity buffer of the U.S. intermediate holding company may not be held in an account located at an affiliate of the U.S. intermediate holding company.

The U.S. branch and agency network would also be required to hold liquid assets in the United States to meet a portion of its 30-day liquidity buffer. The liquidity buffer requirement for a U.S. branch and agency network is calculated using a different methodology than the U.S. intermediate holding company because U.S. branches and agencies are not separate legal entities from the foreign bank and can engage only in traditional banking activities by the terms of their licenses.

For day 1 through day 14 of the 30-day stress period, the U.S. branch and agency network would be required to take into account net internal stressed cash flow needs and net external stressed cash flow needs. The U.S. branch and agency network would be required to maintain highly liquid assets sufficient to cover its net stressed cash flow needs for day 1 through day 14 in the United States. Consistent with the treatment of the U.S. intermediate holding company, cash assets counted in the 14-day liquidity buffer of the U.S. branch and agency network may not be held in an account located at the U.S. intermediate holding company, head office, or other affiliate. For day 15 through day 30 of the stress test horizon, the U.S. branch and agency network would be permitted to maintain its liquidity buffer to meet net stressed cash flow needs outside of the United States, provided that the company has demonstrated to the satisfaction of the Board that the company has and is prepared to provide, or its affiliate has and would be required to

provide, highly liquid assets to the U.S. branch and agency network sufficient to meet the liquidity needs of the operations of the U.S. branch and agency network for day 15 through day 30 of the stress test horizon. The U.S. branch and agency network would be permitted to calculate the liquidity buffer for day 15 through day 30 based on its external stressed cash flow need only because the buffer may be maintained at the parent level.

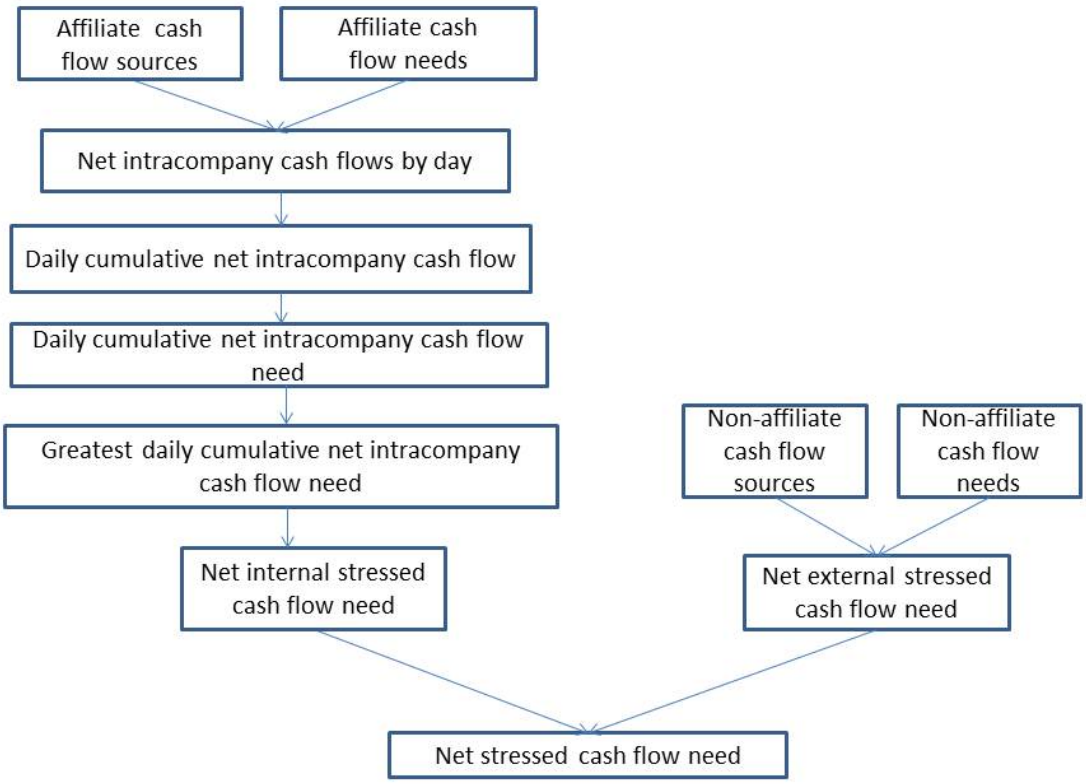
Under the proposal, the net external stressed cash flow need is the difference between (1) the amount that the U.S. branch and agency network or the U.S. intermediate holding company, respectively, must pay unaffiliated parties over the relevant period in the stress test horizon and (2) the amount that unaffiliated parties must pay the U.S. branch and agency network or the U.S. intermediate holding company, respectively, over the relevant period in the stress test horizon.

The net internal stressed cash flow need is the greatest daily cumulative cash flow need of a U.S. branch and agency network or a U.S. intermediate holding company, respectively, with respect to transactions with the head office and other affiliated parties identified during the stress horizon. The daily cumulative cash flow need is calculated as the sum of the net intracompany cash flow need calculated for that day and the net intracompany cash flow need calculated for each previous day of the stress test horizon. The methodology used to calculate the net internal stressed cash flow need is designed to provide a foreign banking organization with an incentive to minimize maturity mismatches in transactions between the U.S. branch and agency network or U.S. intermediate holding company, on the one hand, and the company's head office or affiliates, on the other hand. The methodology allows intracompany cash flow sources of a U.S. branch and agency network or U.S. intermediate holding company to offset

intracompany cash flow needs of a U.S. branch and agency network or U.S. intermediate holding company only to the extent the term of the intracompany cash flow source is the same as or shorter than the term of the intracompany cash flow need. As noted above, these assumptions reflect the risk that during a stress scenario, the U.S. operations, the head office, and other affiliated counterparties may come under stress simultaneously. Under such a scenario, the head office may be unable or unwilling to return funds to the U.S. branch and agency network or the U.S. intermediate holding company when those funds are most needed.

Figure 1 below illustrates the steps required to calculate the components of the liquidity buffer.

Figure 1. Diagram of steps for calculating net stressed cash flow need



The tables below set forth an example of a calculation of net stressed cash flow need as required under the proposal, using a stress period of five days. For purposes of the example, cash flow needs are represented as negative, and cash flow sources are represented as positive.

Example of net external stressed cash flow need

	Day 1	Day 2	Day 3	Day 4	Day 5	Period Total
Non-affiliate cash flow sources						
Maturing loans/placements with other firms	5	5	6	6	6	28
Total non-affiliate cash flow sources	***5***	***5***	***6***	***6***	***6***	***28***
Non-affiliate cash flow needs						
Maturing wholesale funding/deposits	(12)	(8)	(8)	(7)	(7)	(42)
Total non-affiliate cash flow needs	***(12)***	***(8)***	***(8)***	***(7)***	***(7)***	***(42)***
Net external stressed cash flow need	**(7)**	**(3)**	**(2)**	**(1)**	**(1)**	**(14)**

Example of net internal stressed cash flow need

	Day 1	Day 2	Day 3	Day 4	Day 5	Period Total
Affiliate cash flow sources						
Maturing loans to parent	2	2	3	2	1	10
Maturing loans to non-U.S. entities	0	0	1	1	2	4
Total affiliate cash flow sources	***2***	***2***	***4***	***3***	***3***	***14***
Affiliate cash flow needs						
Maturing funding from parent	0	(4)	(10)	0	0	(14)
Maturing deposit from non-U.S. entities	(1)	(1)	(1)	0	0	(3)
Total affiliate cash flow needs	***(1)***	***(5)***	***(11)***	***0***	***0***	***(17)***
Net intracompany cash flows	**1**	**(3)**	**(7)**	**3**	**3**	**(3)**
Daily cumulative net intracompany cash flow	**1**	**(2)**	**(9)**	**(6)**	**(3)**	
Daily cumulative net intracompany cash flow need		**(2)**	**(9)**	**(6)**	**(3)**	
Greatest daily cumulative net intracompany cash flow need			**(9)**			
Net internal stressed cash flow need			**(9)**			**(9)**

Example of net stressed cash flow need calculation

	Period Total
Net external stressed cash flow need	(14)
Net internal stressed cash flow need	(9)
Total net stressed cash flow need calculation	***(23)***
Liquidity buffer	**23**

As discussed above, the proposed liquidity framework provides an incentive for companies to match the maturities of cash flow needs and cash flow sources from affiliates, due to the likely high correlation between liquidity stress events in the U.S. operations and non-U.S. operations of a foreign banking organization. However, the Board recognizes that there may be appropriate alternatives and seeks comment on other approaches to addressing intracompany transactions in determining the size of the required U.S. liquidity buffer. The Board seeks comment on the following additional methods or approaches for calculating the net internal stressed cash flow need requirement:

(1) Assume that any cash flows expected to be received by U.S. operations from the head office or affiliates are received one day after the scheduled maturity date. This would help ensure that the U.S. operations receive any payments owed by affiliates before having to make payments to affiliates, thereby preventing intraday arbitrage of the proposed maturity matching requirement.

(2) Allow the U.S. operations to net all intracompany cash flow needs and sources over the entire stress period, regardless of the maturities within the stress horizon, but apply a 50 percent haircut to all intracompany cash flow sources within the stress horizon. This approach could simplify the calculation and reduce compliance burden, but provides less incentive for foreign banking organizations to achieve maturity matches for their U.S. operations within the stress horizon.

(3) Assume that all intracompany cash flow needs during the relevant stress period mature and roll-off at a 100 percent rate and that all intracompany cash flow sources within the relevant stress period are not received (that is, they could not be used to offset cash flow needs). This approach would simplify the calculation, but assumes that the parent would make none of its contractual payments to the U.S. subsidiary or U.S. branch and agency network may be an unreasonable assumption even under conservatively stressed scenarios. Alternatively, this approach could be used as a heightened standard that could be imposed if the Board has particular concerns about of the ability or willingness of the parent company to serve as a source of strength.

Question 25: The Board requests feedback on the proposed approach to intragroup flows as well as the described alternatives. What are the advantages and disadvantages of the alternatives versus the treatment in the proposal? Are there additional alternative approaches to intracompany cash flows that the Board should consider? Provide detailed answers and supporting data where available.

Question 26: Should U.S. branch and agency networks be required to cover net internal stressed cash flow needs for days 15 to 30 of the required stress scenario within

the United States? Should U.S. branch and agency networks be required to hold the entire 30-day liquidity buffer in the United States?

Composition of the liquidity buffer

Under the proposed rule, only highly liquid assets that are unencumbered may be included in a liquidity buffer for a U.S. intermediate holding company or U.S. branch and agency network. Assets in the liquidity buffer need to be easily and immediately convertible to cash with little or no loss of value. Thus, cash or securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored entity are included in the proposed definition of highly liquid assets. In addition, under the proposed rule, other assets may be included in the liquidity buffer as highly liquid assets if a company demonstrates to the satisfaction of the Board that an asset:

(i) Has low credit risk (low risk of default) and low market risk (low price volatility);[68]

(ii) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

[68] Generally, market risk is the risk of loss that could result from broad market movements, such as changes in the general level of interest rates, credit spreads, equity prices, foreign exchange rates, or commodity prices. *See* 12 CFR part 225, appendix E.

(iii) Is a type of asset that investors historically have purchased in periods of financial market distress during which liquidity is impaired (flight to quality). For example, certain "plain vanilla" corporate bonds (that is, bonds that are neither structured products nor subordinated debt) issued by a nonfinancial company with a strong financial profile have been reliable sources of liquidity in the repo market during past stressed conditions. Assets with the above characteristics may meet the definition of a highly liquid asset as proposed.

The highly liquid assets in the liquidity buffer should be readily available at all times to meet the liquidity needs of the U.S. operations. Accordingly, the assets must be unencumbered. Under the proposed rule, an asset would be unencumbered if: (i) the asset is not pledged, does not secure, collateralize or provide credit enhancement to any transaction, and is not subject to any lien, or, if the asset has been pledged to a Federal Reserve bank or a U.S. government-sponsored entity, the has asset has not been used; (ii) the asset is not designated as a hedge on a trading position under the Board's market risk rule;[69] and (iii) there are no legal or contractual restrictions on the ability of the company to promptly liquidate, sell, transfer, or assign the asset.

Question 27: The Board requests comment on all aspects of the proposed definitions of highly liquid assets and unencumbered. What, if any, other assets should be specifically listed in the definition of highly liquid assets? Why should these other assets be included? Are the criteria for identifying additional assets for inclusion in the

[69] The Board's market risk rule defines a trading position as a position that is held by a company for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock-in arbitrage profits. *See* 12 CFR part 225, appendix E.

definition of highly liquid assets appropriate? If not, how and why should the Board revise the criteria?

Question 28: Should the Board require matching of liquidity risk and the liquidity buffer at the individual branch level rather than allowing the firm to consolidate across U.S. branch and agency networks? Why or why not?

Question 29: Should U.S. intermediate holding companies be allowed to deposit cash portions of their liquidity buffer with affiliated branches or U.S. entities? Why or why not?

Question 30: In what circumstances should the cash portion of the liquidity buffer be permitted to be held in a currency other than U.S. dollars?

Question 31: Should the Board provide more clarity around when the liquidity buffer would be allowed to be used to meet liquidity needs during times of stress? What standards would be appropriate for usage of the liquidity buffer?

Question 32: Are there situations in which compliance with the proposed rule would hinder a foreign banking organization from employing appropriate liquidity risk management practices? Provide specific detail.

Contingency funding plan

The proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain a contingency funding plan for its combined U.S. operations. The objectives of the contingency funding plan are to provide a plan for responding to a liquidity crisis, to identify alternate liquidity sources that the U.S. operations can access during liquidity stress events, and to describe steps that should be taken to ensure that the company's sources of liquidity are sufficient to

fund its operating costs and meet its commitments while minimizing additional costs and disruption.

The contingency funding plan should set out the company's strategies for addressing liquidity needs during liquidity stress events. Under the proposed rule, the contingency funding plan would be required to be commensurate with the U.S. operations and the company's capital structure, risk profile, complexity, activities, size, other relevant factors, and established liquidity risk tolerance. The contingency funding plan should also specify the contingency funding plans related to specific legal entities, including the U.S. branch and agency network and U.S. intermediate holding company. A company would be required to update the contingency funding plan for its U.S. operations at least annually, or whenever changes to market and idiosyncratic conditions warrant an update.

Under the proposed rule, the contingency funding plan would include four components: a quantitative assessment, an event management process, monitoring requirements, and testing requirements. Under the quantitative assessment, a company must: (i) identify liquidity stress events that have a significant effect on the U.S. operations' liquidity; (ii) assess the level and nature of the effect on the U.S. operations' liquidity that may occur during identified liquidity events; (iii) assess available funding sources and needs during the identified liquidity stress events; and (iv) identify alternative funding sources that may be used during the liquidity stress events.

A liquidity stress event that may have a significant effect on a company's liquidity would include deterioration in asset quality, ratings downgrades, widening of credit default swap spreads, operating losses, declining financial institution equity prices,

negative press coverage, or other events that call into question the company or its U.S. operations' ability to meet its obligations.

The contingency funding plan should delineate the various levels of stress severity that can occur during the stress event, and identify the various stages for each type of event. The events, stages, and severity levels should include temporary disruptions, as well as those that might be intermediate or longer term. To meet the requirements of the proposal, the contingency funding plan must assess available funding sources and needs during identified liquidity stress events for the company's combined U.S. operations. This should include an analysis of the potential erosion of available funding at alternative stages or severity levels of each stress event, as well as the identification of potential cash flow mismatches that may occur during the various stress levels. A company is expected to base its analysis on realistic assessments of the behavior of funds providers during the event, and should incorporate alternative funding sources. The analysis should include all material on- and off-balance sheet cash flows and their related effects on the combined U.S. operations. The result should be a realistic analysis of the cash inflows, outflows, and funds available to the combined U.S. operations at different time intervals during the identified liquidity stress event.

Liquidity pressures are likely to spread from one funding source to another during significant liquidity stress events. Accordingly, the proposed rule would require a company to identify alternative funding sources that may be accessed by the combined U.S. operations during identified liquidity stress events. Any legal or other restrictions that exist that may limit the ability of funding sources to be used by different legal entities within the U.S. operations should be identified. Since some of these alternative

funding sources will rarely be used in the normal course of business, the U.S. operations should conduct advance planning and periodic testing to ensure that the funding sources are available when needed. Administrative procedures and agreements are also expected to be in place before the U.S. operations needs to access the alternative funding sources.

Discount window credit may be incorporated into contingency funding plans as a potential source of funds for a foreign bank's U.S. branches and agencies, in a manner consistent with terms provided by Federal Reserve Banks. For example, primary credit is currently available on a collateralized basis for financially sound institutions as a backup source of funds for short-term funding needs. Contingency funding plans that incorporate borrowing from the discount window should specify the actions that would be taken to replace discount window borrowing with more permanent funding, and include the proposed time frame for these actions.

Under the proposed rule, the contingency funding plan must also include an event management process that sets out procedures for managing liquidity during identified liquidity stress events. This process must include an action plan that clearly describes the strategies the combined U.S. operations of the company would use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company or its combined U.S. operations would use to access the alternative funding sources identified in the quantitative assessment.

Under the proposed rule, the event management process must also identify a liquidity stress event management team that would execute the action plan described above and specify the process, responsibilities, and triggers for invoking the contingency funding plan, escalating the responses described in the action plan, decision-making

during the identified liquidity stress events, and executing contingency measures identified in the action plan for the U.S. operations.

In addition, to promote the flow of necessary information during a period of liquidity stress, the proposed rule would require the event management process to include a mechanism that ensures effective reporting and communication within the company and its combined U.S. operations and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

The proposal would also impose monitoring requirements on the company's combined U.S. operations so that the U.S. operations would be able to proactively position themselves into progressive states of readiness as liquidity stress events evolve. These requirements include procedures for monitoring emerging liquidity stress events and for identifying early warning indicators of emerging liquidity stress events that are tailored to a company's capital structure, risk profile, complexity, activities, size, and other relevant factors. Such early warning indicators may include negative publicity concerning an asset class owned by the company, potential deterioration in the company's financial condition, widening debt or credit default swap spreads, and increased concerns over the funding of off-balance-sheet items.

The proposed rule would require a company to periodically test the components of the U.S. operations' contingency funding plan to assess its reliability during liquidity stress events. Such testing would include trial runs of the operational elements of the contingency funding plan to ensure that they work as intended during a liquidity stress event. These tests would include operational simulations to test communications,

coordination, and decision making involving relevant managers, including managers at relevant legal entities within the corporate structure.

A company would also be required to periodically test the methods it will use to access alternate funding for its U.S. operations to determine whether these sources of funding would be readily available when needed. For example, the Board expects that a company would test the operational elements of a contingency funding plan that are associated with lines of credit, the Federal Reserve discount window, or other secured borrowings, since efficient collateral processing during a liquidity stress event is especially important for such funding sources.

Specific limits

To enhance management of liquidity risk, the proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain limits on potential sources of liquidity risk. Proposed limitations would include limits on: concentrations of funding by instrument type, single-counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers; the amount of specified liabilities that mature within various time horizons; and off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.[70] The U.S. operations would also be required to monitor intraday liquidity risk exposure in accordance with procedures established by the foreign banking organization.

[70] Such exposures may be contractual or non-contractual exposures, and include such liabilities as unfunded loan commitments, lines of credit supporting asset sales or securitizations, collateral requirements for derivative transactions, and letters of credit supporting variable demand notes.

A foreign banking organization would additionally be required to monitor its compliance with all limits established and maintained under the specific limit requirements. The size of each limit must reflect the U.S. operations' capital structure, risk profile, complexity, activities, size, and other appropriate risk related factors, and established liquidity risk tolerance.

Question 33: Should foreign banking organizations with a large U.S. presence be required to establish and maintain limits on other potential sources of liquidity risk in addition to the specific sources listed in the proposed rule? If so, identify these additional sources of liquidity risk.

Monitoring

The proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to monitor liquidity risk related to collateral positions of the U.S. operations, liquidity risks across its U.S. operations, and intraday liquidity positions for its combined U.S. operations, each as described below.

Collateral positions

Under the proposed rule, a foreign banking organization with combined U.S. assets of $50 billion or more would be required to establish and maintain procedures for monitoring assets of the combined U.S. operations it has pledged as collateral for an obligation or position, and assets that are available to be pledged. The procedures must address the ability of the company with respect to its combined U.S. operations to:

(i) calculate all of the collateral positions of the U.S. operations on a weekly basis (or more frequently as directed by the Board due to financial stability risks or the financial condition of the U.S. operations), including the value of assets pledged relative

to the amount of security required under the contract governing the obligation for which the collateral was pledged, and the unencumbered assets available to be pledged;

(ii) monitor the levels of available collateral by legal entity (including the U.S. branch and agency networks and U.S. intermediate holding company), jurisdiction, and currency exposure;

(iii) monitor shifts between intraday, overnight, and term pledging of collateral; and

(iv) track operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

Legal entities, currencies, and business lines

Regardless of its organizational structure, it is critical that a company actively monitor and control liquidity risks at the level of individual U.S. legal entities and the U.S. operations as a whole. Such monitoring would aggregate data across multiple systems to develop a U.S. operation-wide view of liquidity risk exposure and identify constraints on the transferability of liquidity within the organization.

To promote effective monitoring across the combined U.S. operations, the proposed rule would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines within its combined U.S. operations. In addition, the proposed rule would require the company to take into account legal and regulatory

restrictions on the transfer of liquidity between legal entities.[71] The company should ensure that legal distinctions and possible obstacles to cash movements between specific legal entities or between separately regulated entities are recognized for the combined U.S. operations.

Intraday liquidity

Intraday liquidity monitoring is an important component of the liquidity risk management process for a company engaged in significant payment, settlement, and clearing activities and is generally an operational risk management function. Given the interdependencies that exist among payment systems, the inability of large complex organizations' to meet critical payments has the potential to lead to systemic disruptions that can prevent the smooth functioning of payments systems and money markets. In addition to the proposed requirements, to ensure that liquidity risk is also appropriately monitored, the Board expects foreign banking organizations subject to these requirements to provide for integrated oversight of intraday exposures within the operational risk and liquidity risk functions of its U.S. operations. The Board also expects that the stringency of the procedures for monitoring and managing intraday liquidity positions would reflect the complexity and scope of the U.S. operations.

Question 34: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation challenges and why? What alternative approaches to liquidity risk management should the Board

[71] For example, such restrictions include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1) and Regulation W (12 CFR part 223), which govern covered transactions between banks and their affiliates.

consider? Are the liquidity management requirements of this proposal too specific or too narrowly defined? If, so explain how. Responses should be detailed as to the nature and effect of these challenges and should address whether the Board should consider implementing transitional arrangements in the proposal to address these challenges.

C. Liquidity Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of Less Than $50 Billion

Under the proposal, a foreign banking organization with $50 billion or more in total consolidated assets and combined U.S. assets of less than $50 billion must report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations only, conducted consistently with the BCBS principles for liquidity risk management and incorporating 30-day, 90-day, and one-year stress test horizons. A company that does not comply with this requirement must cause its combined U.S. operations to remain in a net due to funding position or a net due from funding position with non-U.S. affiliated entities equal to no more than 25 percent of the third-party liabilities of its combined U.S. operations on a daily basis.

A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion on July 1, 2014, would be required to comply with the proposed liquidity requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization with combined U.S. assets of less than $50 billion that crosses the $50 billion total consolidated asset threshold after July 1, 2014 would be required to comply with these standards beginning

12 months after it crosses the asset threshold, unless that time is accelerated or extended by the Board in writing.

VI. Single-Counterparty Credit Limits

A. Background

During the financial crisis, some of the largest financial firms in the world collapsed or nearly did so, with significant financial stability consequences for the United States and the global financial system. Counterparties of a failing firm were placed under severe strain when the failing firm could not meet its financial obligations, in some cases resulting in the counterparties' inability to meet their own obligations.

The financial crisis also revealed that the existing regulatory requirements generally failed to meaningfully limit the interconnectedness among large U.S. and foreign financial institutions in the United States and globally. In the United States, banks were subject to single-borrower lending and investment limits, but those limits were applied at the bank level, rather than the holding company level. In addition, lending limits excluded credit exposures generated by derivatives and some securities financing transactions.[72] Similar weaknesses existed in single-counterparty credit limit regimes around the world.

Section 165(e) of the Dodd-Frank Act addresses single-counterparty concentration risk among large financial companies. It directs the Board to establish

[72] Section 610 of the Dodd-Frank Act amends the term "loans and extensions of credit" for purposes of the lending limits applicable to national banks to include any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. *See* section 610 of the Dodd-Frank Act; 12 U.S.C. 84(b). These types of transactions are also subject to the single-counterparty credit limits of section 165(e) of the Act. 12 U.S.C. § 5365(e)(3).

single-counterparty credit exposure limits for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and U.S. and foreign nonbank financial companies supervised by the Board in order to limit the risks that the failure of any individual firm could pose to the company.[73]

Section 165(e) grants authority to the Board to: (i) issue such regulations and orders as may be necessary to administer and carry out that section; and (ii) exempt transactions, in whole or in part, from the definition of the term "credit exposure," if the Board finds that the exemption is in the public interest and consistent with the purposes of section 165(e).[74]

In the December 2011 proposal, the Board sought comment on regulations that would implement these limits for large U.S. bank holding companies and nonbank financial companies supervised by the Board.[75] The comment period for the December 2011 proposal has closed, and the Board received a large volume of comments on the single-counterparty credit limit. Many comments focused on the proposed valuation methodologies for derivatives and securities financing transactions, the proposal to use a lower threshold for exposures between major covered companies and major

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[73] *See* 12 U.S.C. 5365(e)(1). Credit exposure to a company is defined in section 165(e) of the Dodd-Frank Act to mean all extensions of credit to the company, including loans, deposits, and lines of credit; all repurchase agreements, reverse repurchase agreements, and securities borrowing and lending transactions with the company (to the extent that such transactions create credit exposure to the company); all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company; all purchases of or investments in securities issued by the company; counterparty credit exposure to the company in connection with a derivative transaction with the company; and any other similar transaction that the Board, by regulation, determines to be a credit exposure for purposes of section 165.

[74] *See* 12 U.S.C. 5365(e)(5)-(6).

[75] 77 FR 594 (January 5, 2012).

counterparties, and the treatment of exposures to foreign sovereigns and central counterparties. The Board is currently in the process of reviewing comments on the standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the single-counterparty credit limits should be applied differently to foreign banking organizations.

Consistent with the December 2011 proposal, the proposal would impose a two-tier single-counterparty credit limit on foreign banking organizations. First, the proposal would impose a 25 percent net credit exposure limit between a U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization and a single unaffiliated counterparty. It would prohibit a U.S. intermediate holding company from having aggregate net credit exposure to any single unaffiliated counterparty in excess of 25 percent of the U.S. intermediate holding company's capital stock and surplus. Similarly, it would prohibit the combined U.S. operations of a foreign banking organization from having aggregate net credit exposure to any single unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the foreign banking organization.

Second, the proposal would impose a more stringent net credit exposure limit between a U.S. intermediate holding company or a foreign banking organization with total consolidated assets of $500 billion or more (major U.S. intermediate holding company and major foreign banking organization) and financial counterparties of similar

size (major counterparty).[76] This more stringent limit would be consistent with the stricter limit established for major U.S. bank holding companies and U.S. nonbank financial companies supervised by the Board. The stricter limit was proposed to be 10 percent in the December 2011 proposal.

In response to weaknesses in the large exposures regimes observed in the crisis, the BCBS has established a working group to examine single-counterparty credit limit regimes across jurisdictions and evaluate potential international standards. If an international agreement on large exposure limits for banking organizations is reached, the Board may amend this proposed rule, as necessary, to achieve consistency with the international approach.

B. Single-Counterparty Credit Limit Applicable to Foreign Banking Organizations and U.S. Intermediate Holding Companies

Under the proposal, a foreign banking organization that exceeds the $50 billion asset threshold or, for any more stringent limit that is established, the $500 billion asset threshold, as of July 1, 2014, would be required to comply with the proposed single-counterparty credit limits on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that exceeds the $50 billion or, for any more stringent limit that is established, the $500 billion asset threshold, after July 1, 2014, would be required to comply with the proposed single-counterparty credit limits beginning 12 months after it crossed the relevant asset threshold, unless that time is accelerated or extended by the Board in writing.

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[76] Major counterparty would be defined to include a bank holding company or foreign banking organization with total consolidated assets of $500 billion or more, and their respective subsidiaries, and any nonbank financial company supervised by the Board.

Similarly, a U.S. intermediate holding company that is required to be established on July 1, 2015, would be required to comply with the proposed single-counterparty credit limits beginning on July 1, 2015, unless that time is extended by the Board in writing. A U.S. intermediate holding company established after July 1, 2015, would be required to comply with the proposed single-counterparty credit limits, including any more stringent limit that is established, beginning on the date it is required to be established, unless that time is accelerated or extended by the Board in writing. A U.S. intermediate holding company that meets the $500 billion threshold after July 1, 2015, would be required to comply with any stricter proposed single-counterparty credit limit applicable to major U.S. intermediate holding companies beginning 12 months after it becomes a major U.S. intermediate holding company, unless that time is accelerated or extended by the Board in writing.

Scope of the proposed rule

In calculating its net credit exposure to a counterparty, a foreign banking organization or U.S. intermediate holding company would generally be required to take into account exposures of its U.S. subsidiaries to the counterparty.[77] Similarly, exposure to a counterparty would include exposures to any subsidiaries of the counterparty.

Consistent with the December 2011 proposal, a company is treated as a subsidiary when it is directly or indirectly controlled by another company. A company controls another company if it: (i) owns or controls with the power to vote 25 percent or more of a class of voting securities of the company; (ii) owns or controls 25 percent or more of

[77] Because a foreign banking organization calculates only the credit exposure of its U.S. operations, it would be required to include exposure only of its U.S. subsidiaries.

the total equity of the company; or (iii) consolidates the company for financial reporting purposes. The proposed rule's definition of control differs from that in the Bank Holding Company Act and the Board's Regulation Y in order to provide a simpler, more objective definition of control.[78]

The proposed definition may be underinclusive in certain situations. For instance, by operation of the proposed definition of "subsidiary," a fund or vehicle that is sponsored or advised by a U.S. intermediate holding company or any part of the combined U.S. operations would not be considered a subsidiary of the U.S. intermediate holding company or the combined U.S. operations unless it was "controlled" by the U.S. intermediate holding company or any part of the combined U.S. operations.[79] A special purpose vehicle would not be a subsidiary of the U.S. intermediate holding company or the combined U.S. operations unless it was similarly "controlled." The Board contemplates that it may use its reservation of authority to look through a special purpose vehicle either to the issuer of the underlying assets in the vehicle or to the sponsor. In the alternative, the Board may require a U.S. intermediate holding company or any part of the combined U.S. operations to look through to the underlying assets of a special purpose vehicle, but only if the special purpose vehicle failed certain discrete concentration tests (such as having fewer than 20 underlying exposures).

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[78] *See* 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e)(1).

[79] The same issued is raised with respect to the treatment of funds sponsored and advised by counterparties. Such funds or vehicles similarly would not be considered to be part of the counterparty under the proposed rule's definition of control.

Section 165(e) directs the Board to limit credit exposure of a foreign banking organization to "any unaffiliated company."[80] Consistent with the December 2011 proposal, the proposal would include foreign sovereign entities in the definition of counterparty to limit the vulnerability of a foreign banking organization's U.S. operations to default by a single sovereign state. The severe distress or failure of a sovereign entity could have effects that are comparable to those caused by the failure of a financial firm or nonfinancial corporation. The Board believes that the authority in the Dodd-Frank Act and the Board's general safety and soundness authority in associated banking laws are sufficient to encompass sovereign governments in the definition of counterparty in this manner.[81] As described below, the proposal would provide an exemption from the limits established in this subpart for exposures to a foreign banking organization's home country sovereign entity.

Question 35: What challenges would a foreign banking organization face in implementing the requirement that all subsidiaries of the U.S. intermediate holding

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[80] 12 U.S.C. 5365(e)(2)-(3). "Company" is defined for purposes of the proposed rule to mean a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

[81] *See* 12 U.S.C. 5365(b)(1)(B)(iv) (allowing the Board to establish additional prudential standards as the Board, on its own or pursuant to a recommendation made by the Council in accordance with section 115 of the Dodd-Frank Act, determines are appropriate) and 12 U.S.C. 5368 (providing the Board with general rulemaking authority); *see also* section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)); and section 8(b) of Federal Deposit Insurance Act (12 U.S.C. 1818(b)). Section 5(b) of the Bank Holding Company Act provides the Board with the authority to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of the Bank Holding Company Act. Section 8(b) of the Federal Deposit Insurance Act allows the Board to issue to bank holding companies an order to cease and desist from unsafe and unsound practices.

company and any part of the combined U.S. operations are subject to the proposed single-counterparty credit limit?

Question 36: Because a foreign banking organization may have strong incentives to provide support in times of distress to certain U.S.-based funds or vehicles that it sponsors or advises, the Board seeks comment on whether such funds or vehicles should be included as part of the U.S. intermediate holding company or the combined U.S. operations of the foreign banking organization for purposes of this rule.

Question 37: How should exposures to SPVs and their underlying assets and sponsors be treated? What other alternatives should the Board consider?

Question 38: Should the definition of "counterparty" differentiate between types of exposures to a foreign sovereign entity, including exposures to local governments? Should exposures to a company controlled by a foreign sovereign entity be included in the exposure to that foreign sovereign entity?

Question 39: What additional credit exposures to foreign sovereign entities should be exempted from the limitations of the proposed rule?

Definition of capital stock and surplus

The credit exposure limit is calculated based on the capital stock and surplus of the U.S. intermediate holding company and the foreign banking organization, respectively.[82] Under the proposed rule, capital stock and surplus of a U.S. intermediate holding company is the sum of the company's total regulatory capital as calculated under the risk-based capital adequacy guidelines applicable to that U.S. intermediate holding

[82] *See* 12 U.S.C. 5365(e)(2).

company in subpart L and the balance of the allowance for loan and lease losses of the U.S. intermediate holding company not included in tier 2 capital under the capital adequacy guidelines in subpart L of this proposal. This definition of capital stock and surplus is generally consistent with the definition of the same term in the Board's Regulations O and W and the OCC's national bank lending limit regulation.[83]

In light of differences in international accounting standards, the capital stock and surplus of a foreign banking organization would not reflect the balance of the allowance for loan and lease losses not included in tier 2 capital. Instead, the term would be defined to include the total regulatory capital of such company on a consolidated basis, as determined in accordance with section 252.212(c) of the proposed rule.

An alternative measure of "capital stock and surplus" might focus on common equity. This would be consistent with the post-crisis global regulatory move toward tier 1 common equity as the primary measure of loss absorbing capital for internationally active banking firms. For example, Basel III introduces a specific tier 1 common equity requirement and uses tier 1 common equity measures in its capital conservation buffer and countercyclical buffer.[84] In addition, the BCBS capital surcharge framework for G-SIBs builds on the tier 1 common equity requirement in Basel III.[85] Further, the Board focused on tier 1 common equity in the Supervisory Capital Assessment Program (SCAP) conducted in early 2009 and again in the Comprehensive Capital Analysis and Review

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[83] *See* 12 CFR 215.3(i), 223.3(d); *see also* 12 CFR 32.2(b).

[84] *See* Basel III Accord, *supra* note 40.

[85] *See* BCBS, Global systemically important banks: assessment methodology and the additional loss absorbency requirement, *supra* note 55.

(CCAR) exercises conducted in 2011 and 2012 to assess the capacity of bank holding companies to absorb projected losses.[86]

Question 40: What other alternatives to the proposed definitions of capital stock and surplus should the Board consider?

Credit exposure limit

As discussed above, the proposal would impose a 25 percent limit on all U.S. intermediate holding companies and the combined U.S. operations of foreign banking organizations. In addition, a more stringent limit on major U.S. intermediate holding companies and the combined U.S. operations of major foreign banking organizations would be set, consistent with the stricter limit established for major U.S. bank holding companies and U.S. nonbank financial companies supervised by the Board.

The more stringent limit for major U.S. intermediate holding companies and major foreign banking organizations is consistent with the Dodd-Frank Act's direction to impose stricter limits on companies as necessary to mitigate risks to U.S. financial stability. The Board recognizes, however, that size is only a rough proxy for the systemic footprint of a company. Additional factors specific to a firm—including the nature, scope, scale, concentration, interconnectedness, and mix of its activities, its leverage, and its off-balance-sheet exposures, among other factors—may be determinative of a company's systemic footprint. For example, the BCBS proposal on capital surcharges for

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[86] *See, e.g.*, The Supervisory Capital Assessment Program: Overview of Results (May 7, 2009), available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf (SCAP Overview of Results); Comprehensive Capital Analysis and Review: Objectives and Overview (March 18, 2011), available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf (CCAR Overview of Results); and 76 FR 74631, 74636 (December 1, 2011).

systemically important banking organizations uses a twelve factor approach to determine the systemic importance of a global banking organization.[87] Moreover, the Board recognizes that drawing a line through the foreign banking organization population and imposing stricter limits on exposures between the combined U.S. operations of major foreign banking organizations or major U.S. intermediate holding companies and their respective major counterparties may not take into account nuances that might be captured by other approaches.

Question 41: Should the Board adopt a more nuanced approach, like the BCBS approach, in determining which foreign banking organizations and U.S. intermediate holding companies would be treated as major foreign banking organizations or major U.S. intermediate holding companies or which counterparties should be considered major counterparties?

Question 42: Should the Board introduce more granular categories of foreign banking organizations or U.S. intermediate holding companies to determine the appropriate credit exposure limit? If so, how could such granularity best be accomplished?

Measuring gross credit exposure

The proposal specifies how the gross credit exposure of a credit transaction should be calculated for each type of credit transaction defined in the proposed rule. For purposes of describing the limit, the discussion below refers to U.S. intermediate holding

[87] *See* BCBS, Global systemically important banks: assessment methodology and the additional loss absorbency requirement (November 2011), *supra* note 55.

companies and, with respect to their combined U.S. operations, foreign banking organizations as "covered entities."

The proposed valuation rules are consistent with those set forth in the December 2011 proposal, other than the proposed valuation for derivatives exposures of U.S. branches and agencies that are subject to a qualifying master netting agreement. When calculating a U.S. branch or agency's gross credit exposure to a counterparty for a derivative contract that is subject to a qualifying master netting agreement (and is not an eligible credit derivative or an eligible equity derivative purchased from an eligible protection provider), a foreign banking organization could choose either to use the Basel II-based exposure at default calculation set forth in the Board's advanced approaches capital rules (12 CFR part 225, appendix G, § 32(c)(6) provided that the collateral recognition rules of the proposed rule would apply) or to use the gross valuation methodology for derivatives not subject to a qualified master netting agreements. The approach recognizes that a qualified master netting agreement to which the U.S. branch or agency is subject may cover exposures of the foreign bank outside of the U.S. branch and agency network.

Consistent with the December 2011 proposal, the proposed rule includes the statutory attribution rule that provides that a covered entity must treat a transaction with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty. The proposal adopts a minimal scope of application of this attribution rule in order to minimize burden on foreign banking organizations.

Question 43: The Board seeks comment on all aspects of the valuation methodologies included in the proposed rule.

Question 44: The Board requests comment on whether the proposed scope of the attribution rule is appropriate or whether additional regulatory clarity around the attribution rule would be appropriate. What alternative approaches to applying the attribution rule should the Board consider? What is the potential cost or burden of applying the attribution rule as described above?

Net credit exposure

The proposal describes how a covered entity would convert gross credit exposure amounts to net credit exposure amounts by taking into account eligible collateral, eligible guarantees, eligible credit and equity derivatives, other eligible hedges (that is, a short position in the counterparty's debt or equity security), and for securities financing transactions, the effect of bilateral netting agreements. The proposed treatment described below is consistent with the treatment proposed in the December 2011 proposal.

Eligible collateral

In computing its net credit exposure to a counterparty for a credit transaction, the proposal would *permit* a covered entity to reduce its gross credit exposure on a transaction by the adjusted market value of any eligible collateral. Eligible collateral is generally defined consistently with the December 2011 proposal, but the proposal clarifies that eligible collateral would not include any debt or equity securities (including convertible bonds) issued by an affiliate of the U.S. intermediate holding company or by any part of the combined U.S. operations.

If a covered entity chooses to reduce its gross credit exposure by the adjusted market value of eligible collateral, the covered entity would be required to include the adjusted market value of the eligible collateral when calculating its gross credit exposure to *the issuer of the collateral*.

Question 45: Should the list of eligible collateral be broadened or narrowed? Should a covered entity be able to use its own internal estimates for collateral haircuts as permitted under Appendix G to Regulation Y?

Question 46: Is recognizing the fluctuations in the value of eligible collateral appropriate?

Question 47: What is the burden associated with the proposed rule's approach to changes in the eligibility of collateral?

Question 48: Is the approach to eligible collateral that allows the covered entity to choose whether or not to recognize eligible collateral and shift credit exposure to the issuer of eligible collateral appropriate?

Unused credit lines

In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, the proposal would *permit* a covered entity to reduce its gross credit exposure by the amount of the unused portion of the credit extension. To qualify for this reduction, the covered entity cannot have any legal obligation to advance additional funds under the facility until the counterparty provides collateral in the amount that is required with respect to that unused portion of the facility. In addition, the credit contract would

be required to specify that any used portion of the credit extension must be fully secured at all times by high-quality of collateral.[88]

Question 49: What alternative approaches, if any, to the proposed treatment of the unused portion of certain credit facilities should the Board consider?

Eligible guarantees

In calculating its net credit exposure to the counterparty, the proposal would *require* a covered entity to reduce its gross credit exposure to the counterparty by the amount of any eligible guarantee from an eligible protection provider.[89]

The Board proposes to require gross exposure be reduced by the amount of an eligible guarantee in order to ensure that concentrations in exposures to guarantors are captured by the regime. This requirement is meant to limit the ability of the covered entity to extend loans or other forms of credit to a large number of high risk borrowers that are guaranteed by a single guarantor. As is the case with eligible collateral, in no

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[88] Collateral must be either (i) cash; (ii) obligations of the United States or its agencies; (iii) obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board; or (iv) obligations of the home country sovereign entity.

[89] Eligible protection provider would mean an entity (other than the foreign banking organization or an affiliate thereof) that is one of the following types of entities: a sovereign entity; the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank; a Federal Home Loan Bank; the Federal Agricultural Mortgage Corporation; a U.S. depository institution; a bank holding company; a savings and loan holding company; a registered broker dealer; an insurance company; a foreign banking organization; a non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; or a qualifying central counterparty.

event would a covered entity's gross credit exposure to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the original counterparty on the credit transaction prior to the recognition of the eligible guarantee.

Question 50: Are there any additional or alternative requirements the Board should place on eligible protection providers to ensure their capacity to perform on their guarantee obligations?

Question 51: Should a covered entity have the choice of whether or not to fully shift exposures to eligible protection providers in the case of eligible guarantees or to divide an exposure between the original counterparty and the eligible protection provider in some manner?

Eligible credit and equity derivatives

In the case when the covered entity is a protection purchaser of eligible credit and equity derivatives, the proposal would *require* a covered entity to reduce its credit exposure by the notional amount of those derivatives. To be recognized for purposes of calculating net credit exposure, hedges must meet the definitions of eligible credit and equity derivative hedges.[90] These derivatives must meet certain criteria, including that the derivative be written by an eligible protection provider.[91]

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[90] By contrast, when the covered entity is the protection provider, *any* credit or equity derivative written by the covered entity would be included in the calculation of the covered entity's gross credit exposure to the reference obligor.

[91] The same types of organizations that are eligible protection providers for the purposes of eligible guarantees are eligible protection providers for purposes of eligible credit and equity derivatives.

Other eligible hedges

In addition to eligible credit and equity derivatives, the proposal would *permit* a covered entity to reduce exposure to a counterparty by the face amount of a short sale of the counterparty's debt or equity security.

Question 52: What types of derivatives should be eligible for mitigating gross credit exposure?

Question 53: What alternative approaches, if any, should the Board consider to capture the risk mitigation benefits of proxy or portfolio hedges or to permit U.S. intermediate holding companies or any part of the combined U.S. operations to use internal models to measure potential exposures to sellers of credit protection?

Question 54: Would a more conservative approach to eligible credit or equity derivative hedges be more appropriate, such as one in which the U.S. intermediate holding company or any part of the combined U.S. operations would be required to recognize gross notional credit exposure both to the original counterparty and the eligible protection provider?

Netting of securities financing transactions

In calculating its credit exposure to a counterparty, the proposal would *permit* a covered entity to net the gross credit exposure amounts of (i) its repurchase and reverse repurchase transactions with a counterparty, and (ii) its securities lending and borrowing transactions with a counterparty, in each case, where the transactions are subject to a bilateral netting agreement with that counterparty.

Compliance

Under the proposal, a foreign banking organization would be required to comply with the requirements of the proposed rule on a daily basis as of the end of each business day and must submit a monthly compliance report demonstrating its daily compliance. A foreign banking organization must ensure the compliance of its U.S. intermediate holding company and its combined U.S. operations. If either the U.S. intermediate holding company or the combined U.S. operations is not in compliance, both of the U.S. intermediate holding company and the U.S. operations would be prohibited from engaging in any additional credit transactions with such a counterparty, except in cases when the Board determines that such additional credit transactions are necessary or appropriate to preserve the safety and soundness of the foreign banking organization or financial stability. In considering special temporary exceptions, the Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards.

Question 55: What temporary exceptions should the Board consider, if any?

Exemptions

Section 165(e)(6) of the Dodd-Frank Act permits the Board to exempt transactions from the definition of the term "credit exposure" for purposes of this subsection, if the Board finds that the exemption is in the public interest and is consistent with the purposes of this subsection. The proposal would provide exemptions to the credit exposure limit for exposures to the United States and its agencies, Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (while these entities are operating under the conservatorship or receivership of the Federal Housing

Finance Agency), and a foreign banking organization's home country sovereign entity. The exemption for a foreign banking organization's home country sovereign would recognize that a foreign banking organization's U.S. operations may have exposures to its home country sovereign entity that are required by home country laws or are necessary to facilitate the normal course of business for the consolidated company.

In addition, the proposal would also provide an exception for intraday credit exposure to a counterparty. This exemption would help minimize the effect of the rule on the payment and settlement of financial transactions, which often involve large exposure but are settled on an intraday basis. The Board would have authority to exempt any transaction in the public interest and consistent with the purposes of the proposal.[92]

Question 56: Would additional exemptions for foreign banking organizations be appropriate? Why or why not?

VII. Risk Management

A. Background

The recent financial crisis highlighted the need for large, complex financial companies to have more robust enterprise-wide risk management. A number of companies that experienced material financial distress or failed during the crisis had significant deficiencies in key areas of risk management. Recent reviews of risk management practices of banking organizations conducted by the Senior Supervisors Group (SSG) illustrated these deficiencies.[93]

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[92] *See* 12 U.S.C. 5365(e)(6).

[93] *See* 2008 SSG Report, *supra* note 56; 2009 SSG Report, *supra* note 57.

The SSG found that business line and senior risk managers did not jointly act to address a company's risks on an enterprise-wide basis and business line managers made decisions in isolation. In addition, treasury functions were not closely aligned with risk management processes, preventing market and counterparty risk positions from being readily assessed on an enterprise-wide basis.

The risk management weaknesses revealed during the financial crisis among large U.S. bank holding companies were also apparent in the U.S. operations of large foreign banking organizations. Moreover, consolidated risk management practices across foreign banking organizations, while efficient from a global perspective, have at times limited U.S. supervisors' ability to understand the risks posed to U.S. financial stability by the U.S. operations of foreign banks. Further, centralized risk management practices that focus on risk by business line have generally limited the ability of large foreign banking organizations to effectively aggregate, monitor, and report risks across their U.S. legal entities on a timely basis.

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish overall risk management requirements as part of the enhanced prudential standards to ensure that strong risk management standards are part of the regulatory and supervisory framework for large bank holding companies, including foreign banking organizations, and nonbank companies supervised by the Board.[94] Section 165(h) of the Dodd-Frank Act directs the Board to issue regulations requiring publicly traded bank holding

[94] 12 U.S.C. § 5365(b)(1)(A).

companies with total consolidated assets of $10 billion or more and publicly traded nonbank companies supervised by the Board to establish risk committees.[95]

In its December 2011 proposal, the Board proposed to establish enhanced risk management standards for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board, to address weakness in risk management practices that had emerged during the crisis. The December 2011 proposal would (i) require oversight of enterprise-wide risk management by a stand-alone risk committee of the board of directors and chief risk officer; (ii) reinforce the independence of a firm's risk management function; and (iii) ensure appropriate expertise and stature for the chief risk officer. The Board also proposed to require U.S. bank holding companies with total consolidated assets of $10 billion or more that are publicly traded companies to establish an enterprise-wide risk committee of the board of directors.

This proposal would apply the requirements of the December 2011 proposal to foreign banking organizations in a way that strengthens foreign banking organizations' oversight and risk management of their combined U.S. operations and requires foreign banking organizations with a large U.S. presence to aggregate and monitor risks on a combined U.S. operations basis. The proposal would permit a foreign banking organization some flexibility to structure the oversight of the risks of its U.S. operations in a manner that is efficient and effective in light of its broader enterprise-wide risk management structure.

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[95] 12 U.S.C. § 5365(h).

The proposal includes a general requirement that foreign banking organizations that are publicly traded with total consolidated assets of $10 billion or more and all foreign banking organizations, regardless of whether their stock is publicly traded, with total consolidated assets of $50 billion or more certify that they maintain a risk committee to oversee the U.S. operations of the company. The proposal would set forth additional requirements for the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more and would require these companies to appoint a U.S. chief risk officer in charge of implementing and maintaining a risk management framework for the company's combined U.S. operations.

The Board emphasizes that the enhanced U.S. risk management requirements contained in this proposal supplement the Board's existing risk management guidance and supervisory expectations for foreign banking organizations.[96] All foreign banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk.

B. Risk Committee Requirements for Foreign Banking Organizations with $10 Billion or More in Consolidated Assets

Consistent with the requirements of section 165(h) of the Dodd-Frank Act, the proposal would require a foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more or a foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more, to certify to the Board, on an annual basis, that it maintains a

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[96] *See* SR Letter 08-8 (October 16, 2008), available at http://fedweb.frb.gov/fedweb/bsr/srltrs/SR0808.htm, and SR Letter 08-9 (October 16, 2008), available at http://fedweb.frb.gov/fedweb/bsr/srltrs/SR0809.htm.

committee that (1) oversees the U.S. risk management practices of the company, and (2) has at least one member with risk management expertise. This certification must be filed with the Board concurrently with the foreign banking organization's Form FR Y-7.

At least one member of a U.S. risk committee would be required to have risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the foreign banking organization's combined U.S. operations. The requisite level of risk management expertise for a company's U.S. risk committee should be commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations. Thus, the Board expects that the U.S. risk committee of a foreign banking organization that poses greater risks to the U.S. financial system would have members with commensurately greater risk management expertise than the U.S. risk committees of other companies whose combined U.S. operations pose less systemic risk.

Generally, a foreign banking organization would be permitted to maintain its U.S. risk committee either as a committee of its global board of directors (or equivalent thereof) or as a committee of the board of directors of the U.S. intermediate holding company. If the U.S. risk committee is a committee of the global board of directors, it may be organized on a standalone basis or as part of the enterprise-wide risk committee (or equivalent thereof). A foreign banking organization with combined U.S. assets of $50 billion or more that conducts its operations in the United States solely through a U.S. intermediate holding company would be required to maintain its U.S. risk committee at its U.S. intermediate holding company.

In order to accommodate the diversity in corporate governance philosophies across countries, the proposal would not require the U.S. risk committee of a foreign banking organization with combined U.S. assets of less than $50 billion to maintain a specific number of independent directors on the U.S. risk committee.[97] Further, a foreign banking organization's enterprise-wide risk committee may fulfill the responsibilities of the U.S. risk committee, unless the foreign banking organization has combined U.S. assets of $50 billion or more and operates in the United States solely through a U.S. intermediate holding company.

Under the proposal, foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more or a foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more as of July 1, 2014, would be required to comply with the proposed risk committee certification requirement on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization that crossed the relevant asset threshold after July 1, 2014 would be required to comply with the proposed risk committee certification requirement beginning 12 months after it crosses the relevant asset threshold, unless that time is accelerated or extended by the Board in writing.

Question 57: Should the Board require that a company's certification under section 252.251 of the proposal include a certification that at least one member of the U.S. risk committee satisfies director independence requirements? Why or why not?

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[97] As described below, foreign banking organizations with combined U.S. assets of $50 billion or more would be required to maintain an independent director on its U.S. risk committee.

Question 58: Should the Board consider requiring that all U.S. risk committees required under the proposal not be housed within another committee or be part of a joint committee, or limit the other functions that the U.S. risk committee may perform? Why or why not?

C. Risk Management Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More

The proposal would establish additional requirements for the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more relating to the committee's responsibilities and structure. Each foreign banking organization with combined U.S. assets of $50 billion or more would also be required to appoint a U.S. chief risk officer in charge of overseeing and implementing the risk management framework of the company's combined U.S. operations. In general, the Board has sought to maintain consistency with the risk management requirements included in the December 2011 proposal, with certain adaptations to account for the unique characteristics of foreign banking organizations.

A foreign banking organization with combined U.S. assets of $50 billion or more on July 1, 2014, would be required to comply with the proposed risk management requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization whose combined U.S. assets exceeded $50 billion after July 1, 2014 would be required to comply with the proposed risk management standards beginning 12 months after it crosses the asset threshold, unless that time is accelerated or extended by the Board in writing.

Responsibilities of the U.S. risk committee

The proposal would require a U.S. risk committee to review and approve the risk management practices of the combined U.S. operations and to oversee the operation of an appropriate risk management framework that is commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations.

The risk management framework for the combined U.S. operations must be consistent with the enterprise-wide risk management framework of the foreign banking organization and must include:

- Policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the combined U.S. operations of the company;
- Processes and systems for identifying and reporting risks and risk management deficiencies, including emerging risks, on a combined U.S. operations basis;
- Processes and systems for monitoring compliance with the policies and procedures relating to risk management governance, practices, and risk controls across the company's combined U.S. operations;
- Processes designed to ensure effective and timely implementation of corrective actions to address risk management deficiencies;
- Specification of management and employees' authority and independence to carry out risk management responsibilities; and
- Integration of risk management and control objectives in management goals and compensation structure of the company's combined U.S. operations.

The proposal would require that a U.S. risk committee meet at least quarterly and as needed, and that the committee fully document and maintain records of its proceedings, including risk management decisions.

The Board expects that members of a U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more generally would have an understanding of risk management principles and practices relevant to the U.S. operations of their company. U.S. risk committee members generally should also have experience developing and applying risk management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations.

Question 59: As an alternative to the proposed U.S. risk committee requirement, should the Board consider requiring each foreign banking organization with combined U.S. assets of $50 billion or more to establish a risk management function solely in the United States, rather than permitting the U.S. risk management function to be located in the company's home office? Why or why not? If so, how should such a function be structured?

Question 60: Should the Board consider requiring or allowing a foreign banking organization to establish a "U.S. risk management function" that is based in the United States but not associated with a board of directors to oversee the risk management practices of the company's combined U.S. operations? What are the benefits and drawbacks of such an approach?

Question 61: Should the Board consider allowing a foreign banking organization with combined U.S. assets of $50 billion or more that has a U.S. intermediate holding

company subsidiary and operates no branches or agencies in the United States the option to comply with the proposal by maintaining a U.S. risk committee of the company's global board of directors? Why or why not?

Question 62: Is the scope of review of the risk management practices of the combined U.S. operations of a foreign banking organization appropriate? Why or why not?

Question 63: What unique ownership structures of foreign banking organizations would present challenges for such companies to comply with the requirements of the proposal? Should the Board incorporate flexibility for companies with unique or nontraditional ownership structures into the rule, such as more than one top-tier company? If so, how?

Question 64: Is it appropriate to require the U.S. risk committee of a foreign banking organization to meet at least quarterly? If not, what alternative requirement should be considered and why?

Independent member of the U.S. risk committee

The proposal would require the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more to include at least one member who is not (1) an officer or employee of the company or its affiliates and has not been an officer or employee of the company or its affiliates during the previous three years, or (2) a member of the immediate family of a person who is, or has been within the last three years, an executive officer of the company or its affiliates. This requirement would apply regardless of where the U.S. risk committee was located.

This requirement is adapted from director independence requirements of certain U.S. securities exchanges and is similar to the requirement in the December 2011 proposal that the director of the risk committee of a U.S. bank holding company or nonbank financial company supervised by the Board be independent.[98]

Question 65: Should the Board require that a member of the U.S. risk committee comply with the director independence standards? Why or why not?

Question 66: Should the Board consider specifying alternative or additional qualifications for director independence? If so, describe the alternative or additional qualifications. Should the Board require that the chair of a U.S. risk committee satisfy the director independence standards, similar to the requirements in the December 2011 proposal for large U.S.bank holding companies?

U.S. chief risk officer

The proposal would require a foreign banking organization with combined U.S. assets of $50 billion or more or its U.S. intermediate holding company subsidiary to appoint a U.S. chief risk officer that is employed by a U.S. subsidiary or U.S. office of the foreign banking organization. The U.S. chief risk officer would be required to have risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more. In addition, the U.S.

[98] The December 2011 proposal would require that the director be independent either under the SEC's regulations, or, if the domestic company was not publicly traded, the company be able to demonstrate to the Federal Reserve that the director would qualify as an independent director under the listing standards of a national securities exchange if the company were publicly traded.

chief risk officer would be required to receive appropriate compensation and other incentives to provide an objective assessment of the risks taken by the company's combined U.S. operations. The Board expects that the primary responsibility of the U.S. chief risk officer would be risk management oversight of the combined U.S. operations and that the U.S. chief risk officer would not also serve as the company's global chief risk officer.

In general, a U.S. chief risk officer would report directly to the U.S. risk committee and the company's global chief risk officer. However, the Board may approve an alternative reporting structure on a case-by-case basis if the company demonstrates that the proposed reporting requirements would create an exceptional hardship for the company.

Question 67: Would it be appropriate for the Board to permit the U.S. chief risk officer to fulfill other responsibilities, including with respect to the enterprise-wide risk management of the company, in addition to the responsibilities of section 252.253 of this proposal? Why or why not?

Question 68: What are the challenges associated with the U.S. chief risk officer being employed by a U.S. entity?

Question 69: Should the Board consider approving alternative reporting structures for a U.S. chief risk officer on a case-by-case basis if the company demonstrates that the proposed reporting requirements would create an exceptional hardship or under other circumstances?

Question 70: Should the Board consider specifying by regulation the minimum qualifications, including educational attainment and professional experience, for a U.S. chief risk officer?

Under the proposal, the U.S. chief risk officer would be required to directly oversee the measurement, aggregation, and monitoring of risks undertaken by the company's combined U.S. operations. The proposal would require a U.S. chief risk officer to directly oversee the regular provision of information to the U.S. risk committee, the global chief risk officer, and the Board or Federal Reserve supervisory staff.[99] Such information would include information regarding the nature of and changes to material risks undertaken by the company's combined U.S. operations, including risk management deficiencies and emerging risks, and how such risks relate to the global operations of the company.

In addition, the U.S. chief risk officer would be expected to oversee regularly scheduled meetings, as well as special meetings, with the Board or Federal Reserve supervisory staff to assess compliance with its risk management responsibilities. This would require the U.S. chief risk officer to be available to respond to supervisory inquiries from the Board as needed.

The proposal includes additional responsibilities for which a U.S. chief risk officer must have direct oversight, including:

- Implementation of and ongoing compliance with appropriate policies and procedures relating to risk management governance, practices, and risk controls of

[99] The reporting would generally take place through the traditional supervisory process.

the company's combined U.S. operations and monitoring compliance with such policies and procedures;

- Development appropriate processes and systems for identifying and reporting risks and risk management deficiencies, including emerging risks, on a combined U.S. operations basis;
- Management risk exposures and risk controls within the parameters of the risk control framework for the company's combined U.S. operations;
- Monitoring and testing of the risk controls of the combined U.S. operations; and
- Ensuring that risk management deficiencies with respect to the company's combined U.S. operations are resolved in a timely manner.

Question 71: What alternative responsibilities for the U.S. chief risk officer should the Board consider?

Question 72: Should the Board require each foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to designate an employee to serve as a liaison to the Board regarding the risk management practices of the company's combined U.S. operations? A liaison of this sort would meet annually, and as needed, with the appropriate supervisory authorities at the Board and be responsible for explaining the risk management oversight and controls of the foreign banking organization's combined U.S. operations. Would these requirements be appropriate? Why or why not?

VIII. Stress Test Requirements

A. Background

The Board has long held the view that a banking organization should operate with capital levels well above its minimum regulatory capital ratios and commensurate with its

risk profile.[100] A banking organization should also have internal processes for assessing its capital adequacy that reflect a full understanding of its risks and ensure that it holds capital commensurate with those risks.[101] Stress testing is one tool that helps both bank supervisors and a banking organization measure the sufficiency of capital available to support the banking organization's operations throughout periods of economic and financial stress.[102]

The Board has previously highlighted the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures.[103] In particular, as part of its effort to stabilize the U.S. financial system during the recent financial crisis, the Board, along with other federal financial regulatory agencies, conducted stress tests of large, complex bank holding companies through the Supervisory

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[100] *See* 12 CFR part 225, Appendix A; *see also* SR Letter 99-18, Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles (July 1, 1999) (SR 99-18), available at http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.

[101] *See* SR Letter 09-4, Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies (March 27, 2009) (SR 09-4), available at http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm .

[102] A full assessment of a company's capital adequacy must take into account a range of risk factors, including those that are specific to a particular industry or company.

[103] *See, e.g.*, Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets, 77 FR 29458 (May 17, 2012); SR 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management (March 17, 2010), available at http://www.federalreserve.gov/ boarddocs/srletters/2010/sr1006.htm ; Supervision and Regulation Letter 10–1, Interagency Advisory on Interest Rate Risk (January 11, 2010), available at http://www.federalreserve.gov/boarddocs/srletters/2010/sr1001.htm ; SR 09-4, *supra* note 99; SR Letter 07–1, Interagency Guidance on Concentrations in Commercial Real Estate (January 4, 2007), available at http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm ; Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework, 73 FR 44620 (July 31, 2008); SCAP Overview of Results and CCAR Overview of Results, *supra* note 85.

Capital Assessment Program (SCAP). Building on the SCAP and other supervisory work coming out of the crisis, the Board initiated the annual Comprehensive Capital Analysis and Review (CCAR) in late 2010 to assess the capital adequacy and the internal capital planning processes of large, complex bank holding companies and to incorporate stress testing as part of the Board's regular supervisory program for large bank holding companies.

The global regulatory community has also emphasized the role of stress testing in risk management. Stress testing is an important element of capital adequacy assessments under Pillar 2 of the Basel II framework, and in 2009, the BCBS promoted principles for sound stress testing practices and supervision.[104] The BCBS recently reviewed the implementation of these stress testing principles at its member countries and concluded that, while countries are in various stages of maturity in their implementation of the BCBS's principles, stress testing has become a key component of the supervisory assessment process as well as a tool for contingency planning and communication.[105]

Section 165(i)(1) of the Dodd-Frank Act requires the Board to conduct annual stress tests of bank holding companies with total consolidated assets of $50 billion or more, including foreign banking organizations, and nonbank financial companies supervised by the Board. In addition, section 165(i)(2) requires the Board to issue regulations establishing requirements for certain regulated financial companies, including

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[104] *See* BCBS, Principles for sound stress testing practices and supervision, (May 2009), available at http://www.bis.org/publ/bcbs155.pdf.

[105] *See* BCBS, Peer review of supervisory authorities' implementation of stress testing principles, (April 2012), available at http://www.bis.org/publ/bcbs218.pdf.

foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion, to conduct company-run stress tests.

The December 2011 proposal included provisions that would implement the stress testing provisions in section 165(i) of the Dodd-Frank Act for U.S. companies. On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress testing requirements for U.S. bank holding companies with total consolidated assets of $50 billion or more and U.S. nonbank financial companies supervised by the Board.[106] Concurrently, the Board issued a final rule implementing the company-run stress testing requirements for U.S. bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion.[107]

This proposed rule seeks to adapt the requirements of the final stress testing rules currently applicable to U.S. bank holding companies to the U.S. operations of foreign banking organizations. The proposal would subject U.S. intermediate holding companies to the Board's stress testing rules as if they were U.S. bank holding companies, in order to ensure national treatment and equality of competitive opportunity. As a result, U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would be required to conduct annual company-run stress tests. U.S. intermediate holding companies with assets of $50 billion or more would be required to conduct semi-annual company-run stress tests and would be subject to annual supervisory stress tests.

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[106] *See* 12 CFR part 252, subparts F and G.

[107] *See* 12 CFR part 252, subpart H.

The proposal takes a different approach to the U.S. branches and agencies of a foreign banking organization because U.S. branches and agencies do not hold capital separately from their parent foreign banking organization. Accordingly, the proposal also would apply stress testing requirements to the U.S. branches and agencies by first evaluating whether the home country supervisor for the foreign banking organization conducts a stress test and, if so, whether the stress testing standards applicable to the consolidated foreign banking organization in its home country are broadly consistent with U.S. stress testing standards.

Consistent with the approach taken in the final stress testing rules for U.S. firms, the proposal would tailor the stress testing requirements based on the size of the U.S. operations of the foreign banking organizations.

B. Stress Test Requirements for U.S. Intermediate Holding Companies

U.S. intermediate holding companies with total consolidated assets of $50 billion or more

U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be subject to the annual supervisory and semi-annual company-run stress testing requirements set forth in subparts F and G of Regulation YY.[108] A U.S. intermediate holding company that meets the $50 billion total consolidated asset threshold as of July 1, 2015, would be required to comply with the stress testing final rule requirements beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing. A U.S. intermediate holding company that meets the $50 billion total consolidated asset threshold after July 1, 2015, would be required to comply with the stress test requirements beginning in October of the

[108] *See* 77 FR 62378 (October 12, 2012); 77 FR 62396 (October 12, 2012).

calendar year after the year in which the U.S. intermediate holding company is established or otherwise crosses the $50 billion total consolidated asset threshold, unless that time is accelerated or extended by the Board in writing.

In accordance with subpart G of Regulation YY, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be required to conduct two company-run stress tests per year, with one test using scenarios provided by the Board (the "annual" test) and the other using scenarios developed by the company (the "mid-cycle" test). In connection with the annual test, the U.S. intermediate holding company would be required to file a regulatory report containing the results of its stress test with the Board by January 5 of each year and publicly disclose a summary of the results under the severely adverse scenario between March 15 and March 31.[109] In connection with the mid-cycle test, the company would be required to file a regulatory report containing the results of this stress test by July 5 of each year and disclose a summary of results between September 15 and September 30.

Concurrently with the U.S. intermediate holding company's annual company-run stress test, the Board would conduct a supervisory stress test in accordance with subpart F of Regulation YY of the U.S. intermediate holding company using scenarios identical to those provided for the annual company-run stress test. The U.S. intermediate holding company would be required to file regulatory reports that contain information to support the Board's supervisory stress tests. The Board would disclose a summary of the results of its supervisory stress test no later than March 31 of each calendar year.

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[109] The annual company-run stress tests would satisfy some of a large intermediate holding company's proposed obligations under the Board's capital plan rule (12 CFR 225.8).

U.S. intermediate holding companies with total consolidated assets more than $10 billion but less than $50 billion

U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would be subject to the annual company-run stress testing requirements set forth in subpart H of Regulation YY. A U.S. intermediate holding company subject to this requirement as of July 1, 2015, would be required to comply with the requirements of the stress testing final rules beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing. A U.S. intermediate holding company that becomes subject to this requirement after July 1, 2015, would comply with the final rule stress testing requirements beginning in October of the calendar year after the year in which the U.S. intermediate holding company is established, unless that time is accelerated or extended by the Board in writing.

U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would be required to conduct one company-run stress test per year, using scenarios provided by the Board. In connection with the stress test, a U.S. intermediate holding company would be required to file a regulatory report containing the results of its stress test with the Board by March 31 of each year and publicly disclose a summary of the results of its stress test under the severely adverse scenario between June 15 and June 30.

C. Stress Test Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More

In order to satisfy the proposed stress test requirements, a foreign banking organization with combined U.S. assets of $50 billion or more must be subject to a

consolidated capital stress testing regime that includes either an annual supervisory capital stress test conducted by the foreign banking organization's home country supervisor or an annual evaluation and review by the foreign banking organization's home country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization. In either case, the home country capital stress testing regime must set forth requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization.

A foreign banking organization with combined U.S. assets of $50 billion or more on July 1, 2014, would be required to comply with the proposal beginning in October 2015, unless that time is extended by the Board in writing. A foreign banking organization that exceeds the $50 billion combined U.S. asset threshold after July 1, 2014, would be required to comply with the requirements of the proposal commencing in October of the calendar year after the company becomes subject to the stress test requirement, unless that time is accelerated or extended by the Board in writing.

Question 73: What other standards should the Board consider to determine whether a foreign banking organization's home country stress testing regime is broadly consistent with the capital stress testing requirements of the Dodd-Frank Act?

Question 74: Should the Board consider conducting supervisory loss estimates on the U.S. branch and agency networks of large foreign banking organizations by requiring U.S. branches and agencies to submit data similar to that required to be submitted by U.S. bank holding companies with total consolidated assets of $50 billion or more on the

FR Y-14? Alternatively, should the Board consider requiring foreign banking organizations to conduct internal stress tests on their U.S. branch and agency networks?

Information requirements for foreign banking organizations with combined U.S. assets of $50 billion or more

The proposal would require a foreign banking organization with combined U.S. assets of $50 billion or more to submit information regarding the results of its home country stress test. The information must include: a description of the types of risks included in the stress test; a description of the conditions or scenarios used in the stress test; a summary description of the methodologies used in the stress test; estimates of the foreign banking organization's projected financial and capital condition; and an explanation of the most significant causes for the changes in regulatory capital ratios.

When the U.S. branch and agency network is in a net due from position to the foreign bank parent or its foreign affiliates, calculated as the average daily position from October-October of a given year, the foreign banking organization would be required to report additional information to the Board regarding its stress tests. The additional information would include a more detailed description of the methodologies used in the stress test, detailed information regarding the organization's projected financial and capital position over the planning horizon, and any additional information that the Board deems necessary in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions. The heightened information requirements reflect the greater risk to U.S. creditors and U.S. financial stability posed by U.S. branches and agencies that serve as funding sources to their foreign parent.

All foreign banking organizations with combined U.S. assets of $50 billion or more would be required to provide this information by January 5 of each calendar year,

unless extended by the Board in writing. The confidentiality of any information submitted to the Board with respect to stress testing results would be determined in accordance with the Board's rules regarding availability of information.[110]

Supplemental requirements for foreign banking organizations with combined U.S. assets of $50 billion or more that do not comply with stress testing requirements

Asset maintenance requirement

If a foreign banking organization with combined U.S. assets of $50 billion or more does not meet the stress test requirements above, the Board would require its U.S. branch and agency network to maintain eligible assets equal to 108 percent of third-party liabilities (asset maintenance requirement). The 108 percent asset maintenance requirement reflects the 8 percent minimum risk-based capital standard currently applied to U.S. banking organizations.

The proposal generally aligns the mechanics of the asset maintenance requirement with the asset maintenance requirement that may apply to U.S. branches and agencies under existing federal or state rules. Under the proposal, definitions of the terms "eligible assets" and "liabilities" are generally consistent with the definitions of the terms "eligible assets" and "liabilities requiring cover" used in the New York State Superintendent's Regulations.[111]

Question 75: Should the Board consider alternative asset maintenance requirements, including definitions of eligible assets or liabilities under cover or the percentage?

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[110] *See* 12 CFR part 261; *see also* 5 U.S.C. 552(b).

[111] 3 NYCRR § 322.3-322.4.

Question 76: Do the proposed asset maintenance requirement pose any conflict with any asset maintenance requirements imposed on a U.S. branch or agency by another regulatory authority, such as the FDIC or the OCC?

Stress test of U.S. subsidiaries

If a foreign banking organization with combined U.S. assets of $50 billion or more does not meet the stress testing requirements, the foreign banking organization would be required to conduct an annual stress test of any U.S. subsidiary not held under a U.S. intermediate holding company (other than a section 2(h)(2) company), separately or as part of an enterprise-wide stress test, to determine whether that subsidiary has the capital necessary to absorb losses as a result of adverse economic conditions.[112] The foreign banking organization would be required to report summary information about the results of the stress test to the Board on an annual basis.

Question 77: What alternative standards should the Board consider for foreign banking organizations that do not have a U.S. intermediate holding company and are not subject to broadly consistent stress testing requirements? What types of challenges would the proposed stress testing regime present?

Intragroup Funding Restrictions or Local Liquidity Requirements

In addition to the asset maintenance requirement and the subsidiary-level stress test requirement described above, the Board may impose intragroup funding restrictions

[112] As described above under section III of this preamble, a foreign banking organization with combined U.S. assets (excluding assets held by a branch or agency or by a section 2(h)(2) company) of less than $10 billion would not be required to form a U.S. intermediate holding company.

on the U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more that does not satisfy the stress testing requirements. The Board may also impose increased local liquidity requirements with respect to the U.S. branch and agency network or on any U.S. subsidiary that is not part of a U.S. intermediate holding company. If the Board determines that it should impose intragroup funding restrictions or increased local liquidity requirements as a result of failure to meet the Board's stress testing requirements under this proposal, the Board would notify the company no later than 30 days before it proposes to apply additional standards. The notification will include the basis for imposing the additional requirement. Within 14 calendar days of receipt of a notification under this paragraph, the foreign banking organization may request in writing that the Board reconsider the requirement, including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

Question 78: Should the Board consider alternative prudential standards for U.S. operations of foreign banking organizations that are not subject to home country stress test requirements that are consistent with those applicable to U.S. banking organizations or do not meet the minimum standards set by their home country regulator?

D. Stress Test Requirements for Other Foreign Banking Organizations and Foreign Savings and Loan Holding Companies with Total Consolidated Assets of More than $10 Billion

The Dodd-Frank Act requires the Board to impose stress testing requirements on its regulated entities (including bank holding companies, state member banks, and savings and loan holding companies) with total consolidated assets of more than

$10 billion.[113] Thus, this proposal would apply stress testing requirements to foreign banking organizations with total consolidated assets of more than $10 billion, but combined U.S. assets of less than $50 billion, and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

In order to satisfy the proposed stress testing requirements, a foreign banking organization or foreign savings and loan holding company described above must be subject to a consolidated capital stress testing regime that includes either an annual supervisory capital stress test conducted by the company's country supervisor or an annual evaluation and review by the company's home country supervisor of an internal capital adequacy stress test conducted by the company. In either case, the home country capital stress testing regime must set forth requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the company. These companies would *not* be subject to separate information requirements imposed by the Board related to the results of their stress tests.

If a foreign banking organization or a foreign savings and loan holding company described above does not meet the proposed stress test requirements, the Board would require its U.S. branch and agency network, as applicable, to maintain eligible assets equal to 105 percent of third-party liabilities (asset maintenance requirement). The 105 percent asset maintenance requirement reflects the more limited risks that these companies pose to U.S. financial stability.

In addition, companies that do not meet the stress testing requirements would be required to conduct an annual stress test of any U.S. subsidiary not held under a U.S.

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[113] Section 165(i)(2) of the Dodd-Frank Act; 12 U.S.C. 5363(i)(2).

intermediate holding company (other than a section 2(h)(2) company), separately or as part of an enterprise-wide stress test, to determine whether that subsidiary has the capital necessary to absorb losses as a result of adverse economic conditions.[114] The company would be required to report high-level summary information about the results of the stress test to the Board on an annual basis.

Question 79: Should the Board consider providing a longer phase-in for foreign banking organizations with combined U.S. assets of less than $50 billion?

Question 80: Is the proposed asset maintenance requirement calibrated appropriately to reflect the risks to U.S. financial stability posed by these companies?

Question 81: What alternative standards should the Board consider for foreign banking organizations that do not have a U.S. intermediate holding company and are not subject to consistent stress testing requirements? What types of challenges would the proposed stress testing regime present?

The proposal would require any foreign banking organization or foreign savings and loan holding company that meets the $10 billion asset threshold as of July 1, 2014 to comply with the proposed stress testing requirements beginning in October 2015, unless that time is extended by the Board in writing. A foreign banking organization or foreign savings and loan holding company that meets the asset threshold after July 1, 2014, would be required to comply with the proposed requirements beginning in the October of

[114] As described above under section III of this preamble, a foreign banking organization with combined U.S. assets (excluding assets held by a branch or agency or by a section 2(h)(2) company) of less than $10 billion would not be required to form a U.S. intermediate holding company.

the calendar year after it meets the asset threshold, unless that time is accelerated or extended by the Board in writing.

IX. Debt-to-Equity Limits

Section 165(j) of the Act provides that the Board must require a foreign banking organization with total consolidated assets of $50 billion or more to maintain a debt-to-equity ratio of no more than 15-to-1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States.[115] The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).[116]

The proposal would implement the debt-to-equity ratio limitation with respect to a foreign banking organization by applying a 15-to-1 debt-to-equity limitation on its U.S. intermediate holding company and any U.S. subsidiary not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company), and a 108 percent asset maintenance requirement on its U.S. branch and agency network. Unlike the other provisions of this proposal, the debt-to-equity ratio limitation would be effective on the effective date of the final rule.

Under the proposal, a foreign banking organization for which the Council has made the determination described above would receive written notice from the Council, or from the Board on behalf of the Council, of the Council's determination. Within 180

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[115] The Act requires that, in making its determination, the Council must take into consideration the criteria in Dodd-Frank Act sections 113(a) and (b) and any other risk-related factors that the Council deems appropriate. *See* 12 U.S.C. 5366(j)(1).

[116] 12 U.S.C. 5366(j)(3).

calendar days from the date of receipt of the notice, the foreign banking organization must come into compliance with the proposal's requirements. The proposed rule does not establish a specific set of actions to be taken by a company in order to comply with the debt-to-equity ratio requirement; however, the company would be expected to come into compliance with the ratio in a manner that is consistent with the company's safe and sound operation and preservation of financial stability. For example, a company generally would be expected to make a good faith effort to increase equity capital through limits on distributions, share offerings, or other capital raising efforts prior to liquidating margined assets in order to achieve the required ratio.

The proposal would permit a company subject to the debt-to-equity ratio requirement to request up to two extension periods of 90 days each to come into compliance with this requirement. Requests for an extension of time to comply must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest. In the event that an extension of time is requested, the Board would review the request in light of the relevant facts and circumstances, including the extent of the company's efforts to comply with the ratio and whether the extension would be in the public interest.

A company would no longer be subject to the debt-to-equity ratio requirement of this subpart as of the date it receives notice of a determination by the Council that the company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is no longer necessary.

Question 82: What alternatives to the definitions and procedural aspects of the proposed rule regarding a company that poses a grave threat to U.S. financial stability should the Board consider?

X. Early Remediation

A. Background

The recent financial crisis revealed that the condition of large banking organizations can deteriorate rapidly even during periods when their reported capital ratios are well above minimum regulatory requirements. The crisis also revealed fundamental weaknesses in the U.S. regulatory community's tools to deal promptly with emerging issues.

Section 166 of the Dodd-Frank Act was designed to address these problems by directing the Board to establish a regulatory framework for the early remediation of financial weaknesses of U.S. bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and nonbank companies supervised by the Board. Such a framework would minimize the probability that such companies will become insolvent and mitigate the potential harm of such insolvencies to the financial stability of the United States.[117] The Dodd- Frank Act requires the Board to define measures of a company's financial condition, including regulatory capital, liquidity measures, and other forward-looking indicators that would trigger remedial action. The Dodd-Frank Act also mandates that remedial action requirements increase in stringency as the financial condition of a company deteriorates and include: (i) limits on capital distributions, acquisitions, and asset growth in the early stages of financial

[117] *See* 12 U.S.C. 5366(b).

decline; and (ii) capital restoration plans, capital raising requirements, limits on transactions with affiliates, management changes, and asset sales in the later stages of financial decline.[118]

The December 2011 proposal would establish a regime for early remediation of U.S. bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board. This proposal would adapt the requirements of the December 2011 proposal to the U.S. operations of foreign banking organizations, tailored to address the risk to U.S. financial stability posed by the U.S. operations of foreign banking organizations and taking into consideration their structure.

Similar to the December 2011 proposal, the proposed rule sets forth four levels of remediation. The proposed triggers would be based on capital, stress tests, risk management, liquidity risk management, and market indicators. As in the December 2011 proposal, this proposal does not include an explicit quantitative liquidity trigger because such a trigger could exacerbate funding pressures at the U.S. operations of foreign banking organizations, rather than provide for early remediation of issues. Remediation standards are tailored for each level of remediation and include restrictions on growth and capital distributions, intragroup funding restrictions, liquidity requirements, changes in management, and, if needed, actions related to the resolution or termination of the combined U.S. operations of the company. The U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more that meet the relevant triggers would automatically be subject to the remediation standards upon a trigger event, while the U.S. operations of foreign banking organizations with a more

[118] 12 U.S.C. 5366.

limited U.S. presence would be subject to those remediation standards on a case-by-case basis.

A foreign banking organization with total consolidated assets of $50 billion or more on July 1, 2014, would be required to comply with the proposed early remediation requirements on July 1, 2015, unless that time is extended by the Board in writing. A foreign banking organization whose total consolidated assets exceed $50 billion after July 1, 2014 would be required to comply with the proposed early remediation standards beginning 12 months after it became subject to the early remediation requirements, unless that time is accelerated or extended by the Board in writing.

In implementing the proposed rule, the Board expects to notify the home country supervisor of a foreign banking organization, the primary regulators of a foreign banking organization's U.S. offices and subsidiaries, and the FDIC as the U.S. operations of the foreign banking organization enter into or change remediation levels.

Tables 2 and 3, below, provide a summary of all triggers and associated remediation actions in this proposed rule.

Table 2: Early Remediation Triggers for Foreign Banking Organizations

	Risk-Based Capital/Leverage (U.S. IHC)	Risk-Based Capital/Leverage (Parent)	Stress Tests (U.S. IHC)	Enhanced Risk Management and Risk Committee Standards (U.S. combined operations)	Enhanced Liquidity Risk Management Standards (U.S. combined operations)	Market Indicators (Parent or U.S. IHC as applicable)
Level 1 (Heightened Supervisory Review (HSR))	The firm has demonstrated capital structure or capital planning weaknesses, even though the firm: Maintains risk-based capital ratios that exceed all minimum risk-based and requirements established under subpart L by [200-250] basis points or more; or Maintains applicable leverage ratio(s) that exceed all minimum leverage requirements established under subpart L by [75-100] basis points or more.	The firm has demonstrated capital structure or capital planning weaknesses, even though the firm: Maintains risk-based capital ratios that exceed all minimum risk-based and requirements established under subpart L by [200-250] basis points or more; or Maintains an applicable leverage ratio that exceed all minimum leverage requirements established under subpart L by [75-100] basis points or more.	The firm does not comply with the Board's capital plan or stress testing rules, even though regulatory capital ratios exceed minimum requirements under the supervisory stress test severely adverse scenario.	Firm has manifested signs of weakness in meeting enhanced risk management or risk committee requirements.	Firm has manifested signs of weakness in meeting the enhanced liquidity risk management standards.	The median value of any market indicator over the breach period crosses the trigger threshold.
Level 2 (Initial remediation)	Any risk-based capital ratio is less than [200-250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any leverage ratio is less than [75-125] basis points above a minimum applicable leverage requirement established under subpart L.	Any risk-based capital ratio is less than [200-250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is less than [75-125] basis points above a minimum applicable leverage requirement established under subpart L.	Under the supervisory stress test severely adverse scenario, the firm's tier 1 common risk-based capital ratio falls below 5% during any quarter of the nine quarter planning horizon.	Firm has demonstrated multiple deficiencies in meeting the enhanced risk management and risk committee requirements.	Firm has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management standards.	n.a.
Level 3 (Recovery)	Any risk-based capital ratio is less than a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is less than a minimum applicable leverage requirement established under subpart L. **Or for two complete consecutive calendar quarters:** Any risk-based capital ratio is less than [200-250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any leverage ratio is less than [75-125] basis points above a minimum applicable leverage requirement established under subpart L.	Any risk-based capital ratio is less than a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is less than a minimum applicable leverage requirement established under subpart L. **Or for two complete consecutive calendar quarters:** Any risk-based capital ratio is less than [200-250] basis points above a minimum applicable risk-based capital requirement established under subpart L; or Any leverage ratio is less than [75-125] basis points above a minimum applicable leverage requirement established under subpart L.	Under the severely adverse scenario, the firm's tier 1 common risk-based capital ratio falls below 3% during any quarter of the nine quarter planning horizon.	Firm is in substantial noncompliance with enhanced risk management and risk committee requirements.	Firm is in substantial noncompliance with enhanced liquidity risk management standards.	n.a.
Level 4 (Recommended resolution)	Any risk-based capital ratio is more than [100-250] basis points below a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is more than [50-150] basis points below a minimum applicable leverage requirement established under subpart L.	Any risk-based capital ratio is more than [100-250] basis points below a minimum applicable risk-based capital requirement established under subpart L; or Any applicable leverage ratio is more than [50-150] basis points below a minimum applicable leverage requirement established under subpart L.	n.a.	n.a.	n.a.	n.a.

Table 3: Remediation Actions for Foreign Banking Organizations

	Risk-Based Capital/Leverage (U.S. IHC or Parent Level)	Stress Tests (U.S. IHC)	Enhanced Risk Management and Risk Committee Requirements (U.S. combined operations)	Enhanced Liquidity Risk Management Standards (U.S. combined operations)	Market Indicators (Parent or U.S. IHC as applicable)
Level 1 (Heightened supervisory review)	**For foreign banking organizations with $50 billion or more of global consolidated assets:** The Board will conduct a targeted supervisory review of the combined U.S. operations to evaluate whether the combined U.S. operations are experiencing financial distress or material risk management weaknesses, including with respect to exposures to the foreign banking organization, such that further decline of the combined U.S. operations is probable.				
Level 2 (Initial Remediation)	**For foreign banking organizations with $50 billion or more in U.S. assets:** o **U.S. IHC** capital distributions (e.g., dividends and buybacks) are restricted to no more than 50% of the average of the firm's net income in the previous two quarters. o **U.S. branches and agency network** must remain in a net due to position to head office and non-U.S. affiliates. o **U.S. branch and agency network** must hold 30-day liquidity buffer in the United States (not required in level 3). o **U.S. IHC and U.S. branch and agency network** face restrictions on growth (no more than 5% growth in total assets or total risk-weighted assets per quarter or per annum), and must obtain prior approval before directly or indirectly acquiring controlling interest in any company. o **Foreign banking organization** must enter into non-public MOU to improve U.S. condition. o **U.S. IHC and U.S. branch and agency network** may be subject to other limitations and conditions on their conduct or activities as the Board deems appropriate. **For foreign banking organizations with less than $50 billion in U.S. assets:** Supervisors may undertake some or all of the actions outlined above on a case-by-case basis.				n.a.
Level 3 (Recovery)	**For foreign banking organizations with $50 billion or more in U.S. assets:** o **Foreign banking organization** must enter into written agreement that specifying that the U.S. IHC must take appropriate actions to restore its capital to or above the applicable minimum capital requirements and take such other remedial actions as prescribed by the Board o **U.S. IHC** is prohibited from making capital distributions. o **U.S. branch and agency network** must remain in a net due to position to office and non-U.S. affiliates o **U.S. branch and agency network** is subject to a 108% asset maintenance requirement. o **U.S. IHC and U.S. branch and agency network** will be subject to a prohibition on growth, and must obtain prior approval before directly or indirectly acquiring controlling interest in any company. o **Foreign banking organization and U.S. IHC** are prohibited from increasing pay or paying bonus to U.S. senior management o **U.S. IHC** may be required to remove culpable senior management o **U.S. IHC and U.S. branch and agency network** may be subject to other limitations and conditions on their conduct or activities as the Board deems appropriate. **For foreign banking organizations with less than $50 billion in U.S. assets:** Supervisors may undertake some or all of the actions outlined above on a case-by-case basis.				n.a.
Level 4 (Recommended Resolution)	The Board will consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the U.S. combined operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch or agency network be terminated or that a U.S. subsidiary be resolved.	n.a.			n.a.

B. Early Remediation Triggering Events

The proposal would establish early remediation triggers based on the risk-based capital and leverage, stress tests, liquidity risk management, and risk management standards set forth in the other subparts of this proposal. These triggers are broadly consistent with the triggers set forth in the December 2011 proposal but are modified to reflect the structure of foreign banking organizations. Consistent with the December 2011 proposal, the proposal also includes early remediation triggers based on market indicators.

As noted above, the Board is currently in the process of reviewing comments on the remaining standards in the December 2011 proposal and is considering modifications to the proposal in response to those comments. Comments on this proposal will help inform how the enhanced prudential standards should be applied differently to foreign banking organizations.

Risk-based capital and leverage

The proposed risk-based capital and leverage triggers for the U.S. operations of foreign banking organizations are based on the risk-based capital and leverage standards set forth in subpart L of this proposal applicable to U.S. intermediate holding companies and foreign banking organizations. If a home country supervisor establishes higher minimum capital ratios for a foreign banking organization, the Board will consider the foreign banking organization's capital with reference to the minimum capital ratios set forth in the Basel III Accord, rather than the home country supervisor's higher standards.

The capital triggers for each level of remediation reflect deteriorating levels of risk-based capital and leverage levels. The level 1 capital triggers are based on the

Board's qualitative assessment of the capital levels of a foreign banking organization or U.S. intermediate holding company. The capital triggers for levels 2, 3 and 4 of early remediation are based on the quantitative measures of the capital ratios of a foreign banking organization or U.S. intermediate holding company relative to the minimum capital ratios applicable to that entity. The Board is considering a range of numbers that would establish these levels at this time, as set forth below and in the proposal. The final rule will include specific levels for the capital triggers for levels 2, 3, and 4 of early remediation, and the Board expects that the levels in the final rule will be within, or near to, the proposed range. The Board seeks comment on the numbers within the range.

Question 83: Should the Board consider a level outside of the specified range? Why or why not?

Level 1 capital trigger

Level 1 remediation would be triggered based on a determination by the Board that a foreign banking organization's or a U.S. intermediate holding company's capital position has evidenced signs of deterioration. The U.S. operations of a foreign banking organization would be subject to level 1 remediation if the Board determined that the capital position of the foreign banking organization or the U.S. intermediate holding company were not commensurate with the level and nature of the risks to which it is exposed in the United States. This trigger would apply even if the foreign banking organization or U.S. intermediate holding company maintained risk-based capital ratios that exceed any applicable minimum requirements under subpart L of the proposal by [200-250] basis points or more or leverage ratios that exceed any applicable minimum requirements by [75-125] basis points or more. The qualitative nature of the proposed

level 1 capital trigger is consistent with the level 1 remedial action, the heightened supervisory review described below.

In addition, level 1 remediation would be triggered if the U.S. intermediate holding company of a foreign banking organization fell out of compliance with the Board's capital plan rule.[119]

Level 2 capital trigger

The U.S. operations of a foreign banking organization would be subject to level 2 remediation when any risk-based capital ratio of the foreign banking organization or the U.S. intermediate holding company fell below [200-250] basis points above the minimum applicable risk-based capital requirements under subpart L of this proposal, or any applicable leverage ratio of the foreign banking organization or the U.S. intermediate holding company fell below [75-125] basis points above the minimum applicable leverage requirements under subpart L of this proposal.

For a foreign banking organization, the applicable level of risk-based capital ratios and minimum leverage ratio would be those established by the Basel III Accord, including relevant transition provisions, calculated in accordance with home country standards that are consistent with the Basel Capital Framework. As proposed, a U.S. intermediate holding company's minimum risk-based capital ratios and leverage ratios would be the same as those that apply to U.S. bank holding companies.

Assuming implementation of the Basel III Accord and the U.S. Basel III proposals, after the transition period, the relevant minimum risk-based capital ratios

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[119] Only U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be subject to the capital plan rule.

applicable to the foreign banking organization and the U.S. intermediate holding company would be a 4.5 percent risk-based tier 1 common ratio, 6.0 percent risk-based tier 1 ratio, and 8.0 percent risk-based total capital ratio. Thus, the level 2 trigger would be breached if any of the foreign banking organization's or U.S. intermediate holding company's risk-based capital ratios fell below a [6.5-7.0] percent tier 1 common, [8.0-8.5] percent tier 1, or [10.0-10.5] percent total risk-based capital ratio.

Similarly, assuming implementation of the Basel III Accord and the U.S. Basel III proposals, after the transition period, the relevant minimum leverage ratio applicable to a foreign banking organization would be the international leverage ratio of 3.0 percent, and the relevant minimum leverage ratio(s) applicable to a U.S. intermediate holding company would be the U.S. leverage ratio of 4.0 percent, and, if the U.S. intermediate holding company is subject to the advanced approaches rule,[120] a supplementary leverage ratio of 3.0 percent. Thus, the level 2 trigger would be breached if the foreign banking organization's leverage ratio fell below [3.75-4.25] or if the U.S. intermediate holding company's U.S. leverage ratio fell below [4.75-5.25] percent or its supplementary leverage ratio fell below [3.75-4.25] percent, if applicable.

Level 3 capital trigger

The level 3 trigger would be breached where either: (1) *for two complete consecutive quarters,* any risk-based capital ratio of the foreign banking organization or the U.S. intermediate holding company fell below [200-250] basis points above the

[120] A U.S. intermediate holding company would be subject to the advanced approaches rules if its total consolidated assets are $250 billion or more or its consolidated total on-balance sheet foreign exposures are $10 billion or more. *See* 12 CFR part 225, appendix G.

minimum applicable risk-based capital ratios under subpart L, or any leverage ratio of the foreign banking organization or the U.S. intermediate holding company fell below [75-125] basis points above any minimum applicable leverage ratio under subpart L; or (2) any risk-based capital ratio or leverage ratio of the foreign banking organization or the U.S. intermediate holding company fell below the minimum applicable risk-based capital ratio or leverage ratio under subpart L.

Level 4 capital trigger

For the U.S. operations of a foreign banking organization, the level 4 trigger would be breached where any of the foreign banking organization's or U.S. intermediate holding company's risk-based capital ratios fell [100-200] basis points or more below the applicable minimum risk-based capital ratios under subpart L or where any of the foreign banking organization's or U.S. intermediate holding company's leverage ratios fell [50-150] basis points or more below applicable leverage requirements under subpart L.

Question 84: The Board seeks comment on the proposed risk-based capital and leverage triggers. What is the appropriate level within the proposed ranges above and below minimum requirements that should be established for the triggers in a final rule? Provide support for your answer.

Question 85: The Board seeks comment on how and to what extent the proposed risk-based capital and leverage triggers should be aligned with the capital conservation buffer of 250 basis points presented in the Basel III rule proposal.

Question 86: What alternative or additional risk-based capital or leverage triggering events, if any, should the Board adopt? Provide a detailed explanation of such alternative triggering events with supporting data.

Stress tests

Under subpart P of this proposal, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would be subject to supervisory and company-run stress tests, and all other U.S. intermediate holding companies would be subject to annual company-run stress tests. The proposal would use the stress test regime as an early remediation trigger, as stress tests can provide a forward-looking indicator of a company's ability to absorb losses in stressed conditions.

The stress test triggers for level 2 and 3 remediation would be based on the results of the Board's supervisory stress test of a U.S. intermediate holding company with total consolidated assets of $50 billion or more. Foreign banking organizations that do not own U.S. intermediate holding companies that meet the $50 billion asset threshold would not be subject to the triggers for levels 2 and 3 remediation.

Level 1 stress test trigger

The U.S. operations of a foreign banking organization would enter level 1 of early remediation if a U.S. intermediate holding company is not in compliance with the proposed rules regarding stress testing, including the company-run and supervisory stress test requirements applicable to U.S. intermediate holding companies.

Level 2 stress test trigger

The U.S. operations of a foreign banking organization would enter level 2 remediation if the results of a supervisory stress test of its U.S. intermediate holding company reflect a tier 1 common risk-based capital ratio of less than 5.0 percent, under the severely adverse scenario during any quarter of the nine-quarter planning horizon. A

severely adverse scenario is defined as a set of conditions that affect the U.S. economy or the financial condition of a U.S. intermediate holding and that overall are more severe than those associated with the adverse scenario, and may include trading or other additional components.[121]

Level 3 stress test trigger

The U.S. operations of a foreign banking organization would enter level 3 remediation if the results of a supervisory stress test of its U.S. intermediate holding company reflect a tier 1 common risk-based capital ratio of less than 3.0 percent, under the severely adverse scenario during any quarter of the nine-quarter planning horizon.

Question 87: What additional factors should the Board consider when incorporating stress test results into the early remediation framework for foreign banking organizations? What alternative forward looking triggers should the Board consider in addition to or in lieu of stress test triggers?

Question 88: Is the severely adverse scenario appropriately incorporated as a triggering event? Why or why not?

Risk management

Material weaknesses and deficiencies in risk management contribute significantly to a firm's decline and ultimate failure. Under the proposal, if the Board determines that the U.S. operations of a foreign banking organization have failed to comply with the enhanced risk management provisions of subpart O of the proposed rule, the U.S.

[121] 77 FR 62378, 62391 (October 12, 2012).

operations of the foreign banking organization would be subject to level 1, 2, or 3 remediation, depending on the severity of the compliance failure.

Thus, for example, level 1 remediation would be triggered if the Board determines that any part of the U.S. operations of a foreign banking organization had manifested signs of weakness in meeting the proposal's enhanced risk management and risk committee requirements.

Similarly, level 2 remediation would be triggered if the Board determines that any part of the company's combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced risk management or risk committee requirements, and level 3 remediation would be triggered if the Board determines that any part of the company's combined U.S. operations is in substantial noncompliance with the enhanced risk management and risk committee requirements of the proposal.

Question 89: The Board seeks comment on triggers tied to risk management. Should the Board consider specific risk management triggers tied to particular events? If so, what might such triggers involve? How should failure to promptly address material risk management weaknesses be addressed by the early remediation regime? Under such circumstances, should companies be moved to progressively more stringent levels of remediation, or are other actions more appropriate? Provide a detailed explanation.

Liquidity risk management

The Dodd-Frank Act provides that the measures of financial condition to be included in the early remediation framework must include liquidity measures. This proposal would implement liquidity risk management triggers related to the liquidity risk management standards in subpart M of this proposal. The level of remediation to which

the U.S. operations of a foreign banking organization would be subject would vary depending on the severity of the compliance failure.

The U.S. operations of a foreign banking organization would be subject to level 1 remediation if the Board determines that any part of the combined U.S. operations of the company has manifested signs of weakness in meeting the proposal's enhanced liquidity risk management standards. Similarly, the U.S. operations of a foreign banking organization would be subject to level 2 remediation if the Board determines that any part of its combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management standards of this proposal, and level 3 remediation would be triggered if the Board determines that any part of its combined U.S. operations is in substantial noncompliance with the enhanced liquidity risk management standards.

Market indicators

Section 166(c)(1) of the Dodd-Frank Act directs the Board, in defining measures of a foreign banking organization's condition, to utilize "other forward-looking indicators." A review of market indicators in the lead up to the recent financial crisis reveals that market-based data often provided an early signal of deterioration in a company's financial condition. Moreover, numerous academic studies have concluded that market information is complementary to supervisory information in uncovering problems at financial companies.[122] Accordingly, the Board is considering whether to

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[122] *See, e.g.*, Berger, Davies, and Flannery, *Comparing Market and Supervisory Assessments of Bank Performance: Who Knows What When?, Journal of Money, Credit, and Banking*, 32 (3), at 641-667 (2000). Krainer and Lopez, *How Might Financial Market Information Be Used for Supervisory Purposes?*, FRBSF Economic Review, at 29-45 (2003). Furlong and Williams, *Financial Market Signals and Banking*

use a variety of market-based triggers designed to capture both emerging idiosyncratic and systemic risk across foreign banking organizations in the early remediation regime.

The market-based triggers would trigger level 1 remediation, prompting heighted supervisory review of the financial condition and risk management of a foreign banking organization's U.S. operations. In addition to the Board's authority under section 166 of the Dodd-Frank Act, the Board may also use other supervisory authority to cause the U.S. operations of a foreign banking organization to take appropriate actions to address the problems reviewed by the Board under level 1 remediation.

The Board recognizes that market-based early remediation triggers—like all early warning metrics—have the potential to trigger remediation for firms that have no material weaknesses (false positives) and fail to trigger remediation for firms whose financial condition has deteriorated (false negatives), depending on the sample, time period and thresholds chosen. Further, the Board notes that if market indicators are used to trigger corrective actions in a regulatory framework, market prices may adjust to reflect this use and potentially become less revealing over time. Accordingly, the Board is not proposing to use market-based triggers to subject the U.S. operations of a foreign banking organization directly to remediation levels 2, 3, or 4 at this time. The Board expects to review this approach after gaining additional experience with the use of market data in the supervisory process.

Given that the informational content and availability of market data will change over time, the Board also proposes to publish for notice and comment the market-based

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Supervision: Are Current Practices Consistent with Research Findings?, FRBSF Economics Review, at 17-29 (2006).

triggers and thresholds on an annual basis (or less frequently depending on whether the Board determines that changes to an existing regime would be appropriate), rather than specifying these triggers in this proposal. In order to ensure transparency, the Board's disclosure of market-based triggers would include sufficient detail to allow the process to be replicated in general form by market participants. While the Board is not proposing market-based triggers at this time, it seeks comment on the potential use of market indicators for the U.S. operations of foreign banking organizations described in section G—Potential market indicators and potential trigger design.

Question 90: Should the Board include market indicators described in section G—Potential market indicators and potential trigger design of this preamble in the early remediation regime for the U.S. operations of foreign banking organizations? If not, what other market indicators or forward-looking indicators should the Board include?

Question 91: How should the Board consider the liquidity of an underlying security when it chooses indicators for the U.S. operations of foreign banking organizations?

Question 92: Should the Board consider using market indicators to move the U.S. operations of foreign banking organizations directly to level 2 (initial remediation)? If so, what time thresholds should be considered for such a trigger? What would be the drawbacks of such a second trigger?

Question 93: To what extent do these indicators convey different information about the short-term and long-term performance of foreign banking organizations that should be taken into account for the supervisory review?

Question 94: Should the Board use peer comparisons to trigger heightened supervisory review for foreign banking organizations? How should the peer group be defined for foreign banking organizations?

Question 95: How should the Board account for overall market movements in order to isolate idiosyncratic risk of foreign banking organizations?

C. Notice and Remedies

Under the proposal, the Board would notify a foreign banking organization when it determines that a remediation trigger event has occurred and will provide a description of the remedial actions that would apply to the U.S. operations of the foreign banking organization as a result of the trigger. The U.S. operations of a foreign banking organization would remain subject to the requirements imposed by early remediation until the Board notifies the foreign banking organization that its financial condition or risk management no longer warrants application of the requirement. In addition, a foreign banking organization has an affirmative duty to notify the Board of triggering events and other changes in circumstances that could result in changes to the early remediation provisions that apply to it.

Question 96: What additional monitoring requirements should the Board impose to ensure timely notification of trigger breaches?

D. Early Remediation Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More

Level 1 remediation (heightened supervisory review)

The first level of remediation for the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more would consist of

heightened supervisory review of the U.S. operations of the foreign banking organization. In conducting the review, the Board would evaluate whether the U.S. operations of a foreign banking organization are experiencing financial distress or material risk management weaknesses, including with respect to exposures that the combined operations have to the foreign banking organization, such that further decline of the combined U.S. operations is probable.

The Board may also use other supervisory authority to cause the U.S. operations of a foreign banking organization to take appropriate actions to address the problems reviewed by the Board under level 1 remediation.

Level 2 remediation (initial remediation)

The Dodd-Frank Act provides that remedial actions of companies in the initial stages of financial decline must include limits on capital distributions, acquisitions, and asset growth. The proposal would implement these remedial actions for the U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more that have breached a level 2 trigger by imposing limitations on its U.S. intermediate holding company, its U.S. branch and agency network, and its combined U.S. operations.

Upon a level 2 trigger event, the U.S. intermediate holding company of a foreign banking organization would be prohibited from making capital distributions in any calendar quarter in an amount that exceeded 50 percent of the average of its net income for the preceding two calendar quarters. Capital distributions would be defined consistently with the Board's capital plan rule (12 CFR 225.8) to include any redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the

issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Board determines to be in substance a distribution of capital. The limitation would help to ensure that U.S. intermediate holding companies preserve capital through retained earnings during the earliest periods of financial stress. Prohibiting a weakened company from distributing more than 50 percent of its recent earnings should promote the company's ability to build a capital cushion to absorb additional potential losses while still allowing the firm some room to pay dividends and repurchase shares.[123] This cushion is important to making the company's failure less likely, and also to minimize the external costs that the company's distress or possible failure could impose on markets and the United States economy generally.

The U.S. branches and agencies of a foreign banking organization in level 2 remediation would also be subject to limitations. While in level 2 remediation, the U.S. branch and agency network would be required to remain in a net due to position to the foreign banking organization's home office and to non-U.S. affiliates. The U.S. branch and agency network would also be required to maintain a liquid asset buffer in the United States sufficient to cover 30 days of stressed outflows, calculated as the sum of net external stressed cash flow needs and net internal stressed cash flow needs for the full 30-day period. However, this requirement would cease to apply were the foreign banking organization to become subject to level 3 remediation.

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[123] The Board notes that the capital conservation buffer implemented under the *Basel III Accord* is similarly designed to impose increasingly stringent restrictions on capital distributions and employee bonus payments by banking organizations as their capital ratios approach regulatory minima. *See* Basel III Accord, *supra* note 40.

In addition, the U.S. operations of the foreign banking organization in level 2 remediation would be subject to growth limitations. The foreign banking organization would be prohibited from allowing the average daily total assets or average daily total risk-weighted assets of its combined U.S. operations in any *calendar quarter* to exceed average daily total assets and average daily total risk-weighted assets, respectively, during the preceding *calendar quarter* by more than 5 percent. Similarly, it would be prohibited from allowing the average daily total assets or average daily total risk-weighted assets of its combined U.S. operations in any *calendar year* to exceed average daily total assets and average daily total risk-weighted assets, respectively, during the preceding *calendar year* by more than 5 percent. These restrictions on asset growth are intended to prevent the consolidated U.S. operations of foreign banking organizations that are encountering the initial stages of financial difficulties from growing at a rate inconsistent with preserving capital and focusing on resolving material financial or risk management weaknesses. A 5 percent limit should generally be consistent with reasonable growth in the normal course of business.

In addition to existing requirements for prior Board approval to make certain acquisitions or establishing new branches or other offices, the foreign banking organization would also be prohibited, without prior Board approval, from establishing a new branch, agency, or representative office in the United States; engaging in any new line of business in the United States; or directly or indirectly acquiring a controlling interest (as defined in the proposal) in any company that would be required to be a subsidiary of a U.S. intermediate holding company under the proposal. This would include acquiring controlling interests in U.S. nonbank companies engaged in financial

activities. Non-controlling acquisitions, such as the acquisition of less than 5 percent of the voting shares of a company, generally would not require prior approval. The level 2 remediation restriction on acquisitions of controlling interests in companies would also prevent foreign banking organizations that are experiencing initial stages of financial difficulties from materially increasing their size in the United States or their systemic interconnectedness to the United States. Under this provision, the Board would evaluate the materiality of acquisitions on a case-by-case basis to determine whether approval is warranted. Acquisitions of non-controlling interests would continue to be permitted to allow the U.S. operations of foreign banking organizations to proceed with ordinary business functions (such as equity securities dealing) that may involve acquisitions of shares in other companies that do not rise to the level of control.

Question 97: Should the Board provide an exception to the prior approval requirement for *de minimis* acquisitions or other acquisitions in the ordinary course? If so, how would this exception be drafted in a narrow way so as not to subvert the intent of this restriction?

A foreign banking organization subject to level 2 remediation would be required to enter into a non-public memorandum of understanding, or other enforcement action acceptable to the Board. In addition, the Board may impose limitations or conditions on the conduct or activities of the combined U.S. operations of the foreign banking organization as the Board deems appropriate and consistent with the purposes of Title I of the Dodd-Frank Act. Those may include limitations or conditions deemed necessary to improve the safety and soundness of the consolidated U.S. operations of the foreign

banking organization, promote financial stability, or limit the external costs of the potential failure of the foreign banking organization or its affiliates.

Level 3 remediation (recovery)

The Dodd-Frank Act provides that remediation actions for companies in later stages of financial decline must include a capital restoration plan and capital raising requirements, limits on transactions with affiliates, management changes and asset sales. The proposal would implement these remedial actions for the U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more that has breached a level 3 trigger by imposing limitations on its U.S. intermediate holding company, its U.S. branch and agency network, and its combined U.S. operations.

A foreign banking organization and its U.S. intermediate holding company would be required to enter into a written agreement or other formal enforcement action with the Board that specifies that the U.S. intermediate holding company must take appropriate actions to restore its capital to or above the applicable minimum risk-based capital and leverage requirements under subpart L of this proposal and to take such other remedial actions as prescribed by the Board. If the company fails to satisfy the requirements of such a written agreement, the company may be required to divest assets identified by the Board as contributing to the financial decline or posing substantial risk of contributing to further financial decline of the company.

The U.S. intermediate holding company and other U.S. subsidiaries of a foreign banking organization also would be prohibited from making capital distributions.

In addition, the foreign banking organization in level 3 remediation would be subject to growth limitations with respect to its combined U.S. operations. It would be

prohibited from allowing the average daily total assets or average daily risk-weighted assets of its combined U.S. operations in any *calendar quarter* to exceed average daily total assets and average daily risk-weighted assets, respectively, during the preceding *calendar quarter*. Similarly, it would be prohibited from allowing the average daily total assets or average daily total risk-weighted assets of its combined U.S. operations in any *calendar year* to exceed average daily total assets and average daily total risk-weighted assets, respectively, during the preceding *calendar year*.

As in level 2 remediation, in addition to existing requirements for prior Board approval to making certain acquisitions or establishing new branches or other offices, the foreign banking organization would be prohibited, with prior Board approval, from establishing a new branch, agency, representative office or place of business in the United States, engaging in any new line of business in the United States, or directly or indirectly acquiring a controlling interest (as defined in the proposal) in any company that would be required to be a subsidiary of a U.S. intermediate holding company under the proposal. This would include acquiring controlling interests in nonbank companies engaged in financial activities.

In addition, the foreign banking organization and its U.S. intermediate holding company would not be able to increase the compensation of, or pay any bonus to, an executive officer whose primary responsibility pertains to any part of the combined U.S. operations or any member of the board of directors (or its equivalent) of the U.S. intermediate holding company. The Board could also require the U.S. intermediate holding company of a foreign banking organization in level 3 remediation to replace its board of directors, or require the U.S. intermediate holding company or foreign banking

organization to dismiss U.S. senior executive officers or the U.S. intermediate holding company to dismiss members of its board of directors who have been in office for more than 180 days, or add qualified U.S. senior executive officers subject to approval by the Board. To the extent that a U.S. intermediate holding company's or U.S. branch and agency network's management is a primary cause of a foreign banking organization's level 3 remediation status, the proposal would allow the Board to take appropriate action to ensure that such management could not increase the risk profile of the company or make its failure more likely.

Furthermore, the foreign banking organization would be required to cause its U.S. branch and agency network to remain in a net due to position with respect to the foreign bank's head office and non-U.S. affiliates and maintain eligible assets that equal at least 108 percent of the U.S. branch and agency network's third-party liabilities. However, the U.S. branch and agency network would not be subject to the liquid asset buffer required by level 2 remediation in order to allow the foreign banking organization to make use of those assets to mitigate liquidity stress.

The Board believes that these restrictions would appropriately limit a foreign banking organization's ability to increase its risk profile in the United States and ensure maximum capital conservation when its condition or risk management failures have deteriorated to the point that it is subject to level 3 remediation. These restrictions, while potentially disruptive to aspects of the company's U.S. business, are consistent with the purpose of section 166 of the Dodd-Frank Act: to arrest a foreign banking organization's decline in the United States and help to mitigate external costs in the United States associated with a potential failure.

Under the proposed rule, the Board has discretion to impose limitations or conditions on the conduct of activities at the combined U.S. operations of the company as the Board deems appropriate and consistent with Title I of the Dodd-Frank Act. Taken together, the mandatory and optional restrictions and actions of level 3 remediation provide the Board with important tools to make a foreign banking organization's potential failure less costly to the U.S. financial system.

Level 4 remediation (resolution assessment)

Under the proposed rule, if level 4 remediation is triggered, the Board would consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the combined U.S. operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch and agency network be terminated or that a U.S. subsidiary be resolved.

Question 98: The Board seeks comment on the proposed mandatory actions that would occur at each level of remediation. What, if any, additional or different restrictions should the Board impose on distressed foreign banking organizations or their U.S. operations?

E. Early Remediation Requirements for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of Less than $50 Billion

The proposal would tailor the application of the proposed early remediation regime for the U.S. operations of foreign banking organizations with total consolidated

assets of $50 billion or more and combined U.S. assets of less than $50 billion. The U.S. operations of these foreign banking organizations would be subject to the same triggers and notification requirements applicable to the U.S. operations of foreign banking organizations with a larger presence in the United States. When the Board is aware that a foreign banking organization breached a trigger, the Board may apply any of the remedial provisions that would be applicable to a foreign banking organization with combined U.S. assets of $50 billion or more. In exercising this authority, the Board will consider the activities, scope of operations, structure, and risk to U.S. financial stability posed by the foreign banking organization.

F. Relationship to Other Laws and Requirements

The early remediation regime that would be established by the proposed rule would supplement rather than replace the Board's other supervisory processes with respect to the U.S. operations of foreign banking organizations. The proposed rule would not limit the Board's supervisory authority, including authority to initiate supervisory actions to address deficiencies, unsafe or unsound conduct, practices, conditions, or violations of law. For example, the Board may respond to signs of a foreign banking organization's or a U.S. intermediate holding company's financial stress by requiring corrective measures in addition to remedial actions required under the proposed rule. The Board also may use other supervisory authority to cause a foreign banking organization or U.S. intermediate holding company to take remedial actions enumerated in the early remediation regime on a basis other than a triggering event.

G. Potential market indicators and potential trigger design

As noted above in section B—Early Remediation Triggering Events, the Board is considering whether to use market indicators as a level 1 trigger. In considering market indicators to incorporate into the early remediation regime, the Board focused on indicators that have significant information content, that is for which prices quotes are available for foreign banking organizations, and provide a sufficiently early indication of emerging or potential issues. The Board is considering using the following or similar market-based indicators in its early remediation framework for the U.S. operations of foreign banking organizations:

1. Equity-based indicators

Expected default frequency (EDF). EDF measures the expected probability of default in the next 365 days. EDFs could be calculated using Moody's KMV RISKCALC model.

Marginal expected shortfall (MES). The MES of a financial institution is defined as the expected loss on its equity when the overall market declines by more than a certain amount. Each financial institution's MES depends on the volatility of its stock price, the correlation between its stock price and the market return, and the co-movement of the tails of the distributions for its stock price and for the market return. The Board may use MES calculated following the methodology of Acharya, Pederson, Phillipon, and Richardson (2010). MES data are available at http://vlab.stern.nyu.edu/welcome/risk.

Market Equity Ratio. The market equity ratio could be defined as the ratio of market value of equity to market value of equity plus book value of debt.

Option-implied volatility. The option-implied volatility of a firm's stock price is calculated from out-of-the-money option prices using a standard option pricing model,

for example as reported as an annualized standard deviation in percentage points by Bloomberg.

2. Debt-based indicators

Credit default swaps (CDS). The Board would refer to CDS offering protection against default on a 5-year maturity, senior unsecured bond by a financial institution.

Subordinated debt (bond) spreads. The Board would refer to financial companies' subordinated bond spreads with a remaining maturity of at least 5 years over the Treasury rate with the same maturity or the LIBOR swap rate as published by Bloomberg.

3. Considerations for foreign banking organizations

The Board recognizes that some market indicators may not be available for foreign banking organizations and that market indicators for different foreign banking organizations are not traded with the same frequency and therefore may not contain the same level of informational content. Further, the Board anticipates analyzing market indicators available for both U.S. subsidiaries of foreign banking organizations, if available and the consolidated foreign banking organization. The use of market indicators at the consolidated level is appropriate for foreign banking organizations since the U.S. operations are likely to be affected by any deterioration in financial condition of the consolidated company.

Question 99: The Board seeks comment on the proposed approach to market-based triggers detailed below, alternative specifications of market-based indicators, and the potential benefits and challenges of introducing additional market-based triggers for

remediation levels 2, 3, or 4 of the proposal. In addition, the Board seeks comment on the sufficiency of information content in market-based indicators generally.

Proposed trigger design

The Board's proposed market indicator-based regime would trigger heightened supervisory review when any of a foreign banking organization's indicators cross a threshold based on different percentiles of historical distributions. The triggers described below have been designed based on observations for U.S. financial institutions but are indicative of the approach the Board anticipates proposing for foreign banking organizations.

Time-variant triggers capture changes in the value of a company's market-based indicator relative to its own past performance and the past performance of its peers. Peer groups would be determined on an annual basis. Current values of indicators, measured in levels and changes, would be evaluated relative to a foreign banking organization's own time series (using a rolling 5-year window) and relative to the median of a group of predetermined low-risk peers (using a rolling 5-year window), and after controlling for market or systematic effects.[124] The value represented by the percentiles for each signal varies over time as data is updated for each indicator.

For all time-variant triggers, heightened supervisory review would be required when the median value of at least one market indicator over a period of 22 consecutive business days, either measured as its level, its 1-month change, or its 3-month change, both absolute and relative to the median of a group of predetermined low-risk peers, is

[124] Market or systemic effects are controlled by subtracting the median of corresponding changes from the peer group.

above the 95th percentile of the firm's or the median peer's market indicator 5-year rolling window time series. The Board proposes to use time-variant triggers based on all six market indicators listed above.

Time-invariant triggers capture changes in the value of a company's market-based indicators relative to the historical distribution of market-based variables over a specific fixed period of time and across a predetermined peer group. Time-invariant triggers are used to complement time-variant triggers since time-variant triggers could lead to excessively low or high thresholds in cases where the rolling window covers only an extremely benign period or a highly disruptive financial period. The Board acknowledges that a time-invariant threshold should be subject to subsequent revisions when warranted by circumstances.

As currently contemplated, the Board would consider all pre-crisis panel data for the peer group (January 2000-December 2006), which contain observations from the subprime crisis in the late 1990s and early 2000s as well as the tranquil period of 2004-2006. For each market indicator, percentiles of the historical distributions would be computed to calibrate time-invariant thresholds. The Board would focus on five indicators for time-invariant triggers, calibrated to balance between their propensity to produce false positives and false negatives: CDS prices, subordinated debt spreads, option-implied volatility, EDF and MES. The market equity ratio is not used in the time-invariant approach because the cross-sectional variation of this variable was not found to be informative of early issues across financial companies. Time-invariant thresholds would trigger heightened supervisory review if the median value for a foreign banking

organization over 22 consecutive business days was above the threshold for any of the market indicators used in the regime.

In considering all thresholds for each time-invariant trigger, the Board has evaluated the tradeoff between early signals and supervisory burden associated with potentially false signals. Data limitations in the time-invariant approach also require the construction of different thresholds for different market indicators. The Board is considering the following calibration:

CDS. The CDS price data used to create the distribution consist of an unbalanced panel of daily CDS price observations for 25 financial companies over the 2001- 2006 period. Taking the skewed distribution of CDS prices in the sample and persistent outliers into account, the threshold was set at 44 basis points, which corresponds to the 80th percentile of the distribution.

Subordinated debt (bond) spreads. The data covered an unbalanced panel of daily subordinated debt spread observations for 30 financial companies. Taking the skewed distribution into account, the threshold was set to 124 basis points, which corresponds to the 90th percentile of the distribution.

MES. The data covered a balanced panel of daily observations for 29 financial companies. The threshold was set to 4.7 percent, which corresponds to the 95th percentile of the distribution.

Option-implied volatility. The data covered a balanced panel of daily option-implied volatility observations for 29 financial companies. The threshold was set to 45.6 percent, which corresponds to the 90th percentile of the distribution.

EDF. The monthly EDF data cover a balanced panel of 27 financial companies. The threshold was set to 0.57 percent, which corresponds to the 90th percentile of the distribution.

The Board invites comment on the use of market indicators, including time-variant and time-invariant triggers to prompt early remediation actions.

Question 100: The Board is considering using both absolute levels and changes in indicators, as described in section G—Potential market indicators and potential trigger design. Over what period should changes be calculated?

Question 101: Should the Board use both time-variant and time-invariant indicators? What are the comparative advantages of using one or the other?

Question 102: Is the proposed trigger time (when the median value over a period of 22 consecutive business days crosses the predetermined threshold) to trigger heightened supervisory review appropriate for foreign banking organizations? What periods should be considered and why?

Question 103: Should the Board use a statistical threshold to trigger heightened supervisory review or some other framework?

X. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 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 Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon 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 regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

B. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501-3521) (PRA), the Board 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 OMB control numbers are 7100-0350, 7100-0125, 7100-0035, 7100-0319, 7100-0073, 7100-0297, 7100-0126, 7100-0128, 7100-0297, 7100-0244, 7100-0300, 7100-NEW, 7100-0342, 7100-0341. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains requirements subject to the PRA. The reporting requirements are found in sections 252.202(b); 252.203(b); 252.212(c)(3); 252.226(c); 252.231(a); 252.262; 252.263(b)(1), (b)(2), (c)(2), and (d); 252.264(b)(2); and

252.283(b). The recordkeeping requirements are found in sections 252.225(c); 252.226(b)(1); 252.228; 252.229(a); 252.230(a) and (c); 252.252(a); and 252.262. The disclosure requirements are found in section 252.262. Detailed burden estimates for these requirements are provided below. These information collection requirements would implement section 165 and 166 of the Dodd-Frank Act.

Proposed Revisions to Information Collections

1. *Title of Information Collection*: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Frequency of Response: Annual, semiannual, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: Foreign banking organizations, U.S. intermediate holding companies, foreign savings and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to establish enhanced prudential standards on bank holding companies with consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board, and section 166 requires the Board to establish an early remediation framework for these companies. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability. The proposal would implement these requirements for foreign

banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board.

Reporting Requirements

Section 252.202(b) would require a foreign banking organization with total consolidated assets of $50 billion or more that submits a request to the Board to adopt an alternative organizational structure to submit its request at least 180 days prior to the date that the foreign banking organization would establish the U.S. intermediate holding company and include a description of why the request should be granted and any other information the Board may require.

Section 252.203(b) would require that within 30 days of establishing a U.S. intermediate holding company, a foreign banking organization with total consolidated assets of $50 billion or more would provide to the Board: (1) a description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure; (2) a certification that the U.S. intermediate holding company meets the requirements of this subpart; and (3) any other information that the Board determines is appropriate.

Section 252.226(c) would require a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of $50 billion or more to report (1) the results of the stress tests for its combined U.S. operations conducted under this section to the Board within 14 days of completing the stress test. The report would include the amount of liquidity buffer established by the foreign banking organization for its combined U.S. operations under § 252.227 of the proposal and (2) the results of any liquidity internal stress tests and establishment of liquidity

buffers required by regulators in its home jurisdiction to the Board on a quarterly basis within 14 days of completion of the stress test. The report required under this paragraph would include the results of its liquidity stress test and liquidity buffer, if as required by the laws, regulations, or expected under supervisory guidance implemented in the home jurisdiction.

Section 252.231(a) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations conducted consistent with the BCBS principles for liquidity risk management and incorporating 30-day, 90-day and one-year stress test horizons.

Section 252.263(b)(1) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to report summary information to the Board by January 5 of each calendar year, unless extended by the Board, about its stress testing activities and results, including the following quantitative and qualitative information: (1) a description of the types of risks included in the stress test; (2) a description of the conditions or scenarios used in the stress test; (3) a summary description of the methodologies used in the stress test; (4) estimates of: (a) aggregate losses; (b) pre-provision net revenue; (c) Total loan loss provisions; (d) Net income before taxes; and (e) Pro forma regulatory capital ratios required to be computed by the home country supervisor of the foreign banking organization and any other relevant capital ratios; and (5) an explanation of the most significant causes for the changes in regulatory capital ratios.

Section 252.263(b)(2) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more whose U.S. branch and agency network provides funding on a net basis to its foreign banking organization's head office and its non-U.S. affiliates (calculated as the average daily position over a stress test cycle for a given year) to report the following more detailed information to the Board by the following January 5 of each calendar year, unless extended by the Board: (1) a detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, total loan loss provisions, and changes in capital positions over the planning horizon; (2) estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by sub-portfolio; and (3) any additional information that the Board requests in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions and thereby continue to support its combined U.S. operations.

Section 252.263(c)(2) would require the foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more that does not satisfy the proposed stress testing requirements under section 252.262 to separately or as part of an enterprise-wide stress test conduct an annual stress test of its U.S. subsidiaries not organized under a U.S. intermediate holding company to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization would report a summary

of the results of the stress test to the Board on an annual basis that includes the information required under paragraph (b)(1) of this section.

Section 252.263(d) would require that if the Board determines to impose one or more standards under paragraph (c)(3) of that section on a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more, the Board would notify the company no later than 30 days before it proposes to apply additional standard(s). The notification would include a description of the additional standard(s) and the basis for imposing the additional standard(s). Within 14 calendar days of receipt of a notification under this paragraph, the foreign banking organization may request in writing that the Board reconsider the requirement that the company comply with the additional standard(s), including an explanation as to why the reconsideration should be granted. The Board would respond in writing within 14 calendar days of receipt of the company's request.

Section 252.264(b)(2) would require a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion or a foreign savings and loan holding company with total consolidated assets of $50 billion or more to separately, or as part of an enterprise-wide stress test, conduct an annual stress test over a nine-quarter forward-looking planning horizon of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization or foreign savings and loan holding company would report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph § 252.253(b)(1) of this subpart.

Section 252.283(b) would require a foreign banking organization to provide notice to the Board within 5 business days of the date it determines that one or more triggering events set forth in section 252.283 of that subpart has occurred, identifying the nature of the triggering event or change in circumstances.

Recordkeeping Requirements

Sections 252.225(c), 252.226(b)(1), 252.228, 252.229(a), 252.230(a), and 252.230(c) would require foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to adequately document all material aspects of its liquidity risk management processes and its compliance with the requirements of Subpart M and submit all such documentation to its U.S. risk committee.

Section 252.252(a) would require the U.S. risk committee of a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to review and approve the risk management practices of the U.S. combined operations; and oversee the operation of an appropriate risk management framework for the combined U.S. operations that is commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations. The risk management framework of the company's combined U.S. operations must be consistent with the company's enterprise-wide risk management policies and must include: (i) policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the combined U.S. operations of the company; (ii) processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on a combined U.S.

operations-basis; (iii) processes and systems for monitoring compliance with the policies and procedures relating to risk management governance, practices, and risk controls across the company's combined U.S. operations; (iv) processes designed to ensure effective and timely implementation of corrective actions to address risk management deficiencies; (v) specification of authority and independence of management and employees to carry out risk management responsibilities; and (vi) integration of risk management and control objectives in management goals and compensation structure of the company's combined U.S. operations. Section 252.252(a) would also require that the U.S. risk committee meet at least quarterly and otherwise as needed, and fully document and maintain records of its proceedings, including risk management decisions.

Reporting, Recordkeeping, and Disclosure Requirements

Section 252.262 would require (1) a U.S. intermediate holding company with total consolidated assets $50 billion or more to comply with the stress testing requirements of subparts F and G of the Board's Regulation YY (12 CFR 252.131 et seq., 12 CFR 252.141) to the same extent and in the same manner as if it were a covered company as defined in that subpart and (2) a U.S. intermediate holding company that has average total consolidated assets of greater than $10 billion but less than $50 billion would comply with the stress testing requirements of subpart H of the Board's Regulation YY (12 CFR 252.151 et seq.) to the same extent and in the same manner as if it were a bank holding company with total consolidated assets of greater than $10 billion but less than $50 billion, as determined under that subpart.

Estimated Paperwork Burden for 7100-0350

NOTE: The burden estimate associated with 7100-0350 does not include the current burden.

Estimated Burden per Response:

Reporting burden

Foreign banking organizations with total consolidated assets of $50 billion or more

Section 252.202b – 160 hours.

Section 252.203b – 100 hours.

Section 252.283b – 2 hours.

Foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more

Section 252.226c1 – 40 hours.

Section 252.226c2 – 40 hours.

Section 252.263b1 – 40 hours.

Section 252.263b2 – 40 hours.

Section 252.263c2 – 80 hours.

Section 252.263d – 10 hours.

Foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion

Section 252.231a – 50 hours.

Intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion

Section 252.262 – 80 hours (Initial setup 200 hours)

Foreign banking organizations with total consolidated assets of more than $10 billion and combined U.S. assets of less than $50 billion and foreign savings and loan holding companies with total consolidated assets of $10 billion or more

Section 252.264b2 – 80 hours.

Recordkeeping burden

Foreign banking organizations of total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more

Sections 252.225c, 252.226b1, 252.228, 252.229a, 252.230a, and 252.230c – 200 hours (Initial setup 160 hours).

Section 252.252a – 200 hours.

Intermediate holding companies with total consolidated assets of $50 billion or more

Section 252.262 – 40 hours (Initial setup 280 hours)

Intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion

Section 252.262 – 40 hours (Initial setup 240 hours)

Disclosure burden

Intermediate holding companies with total consolidated assets of $50 billion or more

Section 252.262 – 80 hours (Initial setup 200 hours)

Number of respondents: 23 foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more, 26 U.S. intermediate holding companies (18 U.S. intermediate holding companies with total consolidated assets of $50 billion or more), and 113 foreign banking organizations with total consolidated assets of more than $10 billion and combined U.S. assets of less than $50 billion.

Total estimated annual burden: 58,660 hours (19,440 hours for initial setup and 39,220 hours for ongoing compliance).

2. *Title of Information Collection*: The Capital and Asset Report for Foreign Banking Organizations.

Frequency of Response: Quarterly.

Affected Public: Businesses or other for-profit.

Respondents: Foreign banking organizations.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to establish enhanced prudential standards on bank holding companies with consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board, and section 166 requires the Board to establish an early remediation framework for these companies. The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability. The proposal would implement these requirements for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board.

Reporting Requirements

Section 252.212(c)(3) would require that a foreign banking organization with total consolidated assets of $50 billion or more provide the following information to the Federal Reserve concurrently with the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q; OMB No. 7100-0125): (1) the tier 1 risk-based capital ratio, total risk-based capital ratio and amount of tier 1 capital, tier 2 capital, risk-weighted

assets and total assets of the foreign banking organization, as of the close of the most recent quarter and as of the close of the most recent audited reporting period; (2) consistent with the transition period in the Basel III Accord, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets of the foreign banking organization; and (3) a certification that the foreign banking organization meets the standard in (c)(1)(i) of this section.

Estimated Paperwork Burden for 7100-0125

NOTE: The burden estimate associated with 7100-0125 does not include the current burden.

Estimated Burden per Response: Section 252.212c3 reporting – 0.5 hours.

Number of respondents: 107 foreign banking organizations.

Total estimated annual burden: 214 hours.

In addition to the requirements discussed above, section 252.203(c) would require U.S. intermediate holding companies to submit the following reporting forms:

- Country Exposure Report (FFIEC 009; OMB No. 7100-0035);
- Country Exposure Information Report (FFIEC 009a; OMB No. 7100-0035);
- Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 7100-0319);
- Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314; OMB No. 7100-0073);
- Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314S; OMB No. 7100-0073);
- Annual Report of Holding Companies (FR Y-6; OMB No. 7100-0297);
- The Bank Holding Company Report of Insured Depository Institution's Section 23A Transactions with Affiliates (FR Y-8; OMB No. 7100-0126);
- Consolidated Financial Statements for Bank Holding Companies (FR Y-9C; OMB No. 7100-0128);

- Parent Company Only Financial Statements for Large Bank Holding Companies (FR Y-9LP; OMB No. 7100-0128);
- Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y-9ES; OMB No. 7100-0128);
- Report of Changes in Organization Structure (FR Y-10; OMB No. 7100-0297);
- Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11; OMB No. 7100-0244);
- Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11S; OMB No. 7100-0244);
- Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies (FR Y-12; OMB No. 7100-0300);
- Annual Report of Merchant Banking Investments Held for an Extended Period (FR Y-12A; OMB No. 7100-0300); and
- Banking Organization Systemic Risk Report (FR Y-15; OMB No. 7100-NEW). This reporting form will be implemented in December 2012.[125]

The Board would increase the respondent panels for these reporting forms to include U.S. intermediate holding companies.

Also, section 252.212(b) would increase the respondent panels for the following information collections to include U.S. intermediate holding companies with total consolidated assets of $50 billion or more:

- Recordkeeping and Reporting Requirements Associated with Regulation Y (Reg Y-13; OMB No. 7100-0342);
- Capital Assessments and Stress Testing (FR Y-14M and Q; OMB No. 7100-0341).

Section 252.212 would increase the respondent panel for the Capital Assessments and Stress Testing (FR Y-14A; OMB No. 7100-0341) to include U.S. intermediate holding companies with total consolidated assets of $10 billion or more.

[125] See 77 FR 50102 (August 20, 2012).

Finally, the reporting requirement found in section 252.245(a) will be addressed in a separate *Federal Register* notice at a later date.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

(b) The accuracy of the Federal Reserve's estimate of the burden of the proposed 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 startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section. 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 or by facsimile to 202-395-5806, Attention, Commission and Federal Banking Agency Desk Officer.

C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act[126] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with sections 165 and 166 of the Dodd-Frank Act, the Board is proposing to amend Regulation YY (12 CFR 252 *et seq*.) to establish enhanced prudential standards and early remediation requirements applicable for foreign banking organizations and foreign nonbank financial companies supervised by the Board.[127] The enhanced prudential standards include a requirement to establish a U.S. intermediate holding company, risk-based capital and leverage requirements, liquidity standards, risk management and risk committee requirements, single-counterparty credit limits, stress test requirements, and debt-to-equity limits for companies that the Council has determined pose a grave threat to financial stability.

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[126] 5 U.S.C. 601 *et seq*.

[127] *See* 12 U.S.C. 5365 and 5366.

Under regulations issued by the Small Business Administration (SBA), a "small entity" includes those firms within the "Finance and Insurance" sector with asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[128] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in actives that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of $175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the proposed rule generally would apply to foreign banking organizations with total consolidated assets of $50 billion or more, and to foreign nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. However, foreign banking organizations with publicly traded stock and total consolidated assets of $10 billion or more would be required to establish a U.S. risk committee. The company-run stress test requirements part of the proposal being established pursuant to section 165(i)(2) of the Act also would apply to any foreign banking organization and foreign savings and loan holding company with more than $10 billion in total assets. Companies that are subject to the proposed rule therefore substantially exceed the $175 million asset threshold at which a banking entity is considered a "small entity" under SBA regulations.[129] The proposed rule would apply to a nonbank financial company designated by the Council under section 113 of the

[128] 13 CFR 121.201.

[129] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the $50 billion asset threshold for the application of certain of the enhanced prudential standards. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[130] It is therefore unlikely that a financial firm that is at or below the $175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the proposed rule is not likely to apply to any company with assets of $175 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with sections 165 and 166 of the Dodd-Frank Act.

[130] *See* 77 FR 21637 (April 11, 2012).

List of Subjects in 12 CFR Part 252

12 CFR Chapter II

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

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to add the text of the rule as set forth at the end of the Supplementary Information as part 252 to 12 CFR chapter II as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (Regulation YY).

1. The authority citation for part 252 shall read as follows:

Authority: 12 U.S.C. 321-338a, 481-486, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 3904, 3906-3909, 4808, 5365, 5366, 5367, 5368, 5371.

2. Part 252 is amended to read as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

Sec.

Subpart A - General Provisions

252.1 [Reserved]

252.2 Authority, purpose, and reservation of authority for foreign banking organizations and foreign nonbank financial companies supervised by the Board.

252.3 Definitions

Subparts B through E—[Reserved]

Subpart F - Supervisory Stress Test Requirements for Covered Companies

Subpart G - Company-Run Stress Test Requirements for Covered Companies

Subpart H - Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion That Are Not Covered Companies

Subpart I - [Reserved]

Subpart J - [Reserved]

Subpart K - Intermediate Holding Company Requirements for Covered Foreign Banking Organizations

252.200 Applicability.

252.201 U.S. intermediate holding company requirement.

252.202 Alternative organizational structure.

252.203 Corporate form, notice, and reporting.

252.204 Liquidation of intermediate holding companies

Subpart L - Risk-Based Capital Requirements and Leverage Limits for Covered Foreign Banking Organizations

252.210 Definitions.

252.211 Applicability.

252.212 Enhanced risk-based capital and leverage requirements.

Subpart M - Liquidity Requirements for Covered Foreign Banking Organizations

252.220 Definitions.

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252.222 Responsibilities of the U.S. risk committee and U.S. chief risk officer.

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252.226 Liquidity stress testing.

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252.230 Monitoring.

252.231 Requirements for foreign banking organizations with combined U.S. assets of less than $50 billion.

Subpart N - Single-Counterparty Credit Limits for Covered Foreign Banking Organizations

252.240 Definitions.

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Subpart O - Risk Management for Covered Foreign Banking Organizations

252.250 Applicability.

252.251 U.S. risk committee certification.

252.252 Additional U.S. risk committee requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

252.253 U.S. chief risk officer of a foreign banking organization.

252.254 Board of directors of a U.S. intermediate holding company.

Subpart P - Stress Test Requirements for Covered Foreign Banking Organizations and Other Foreign Companies

252.260 Definitions.

252.261 Applicability.

252.262 Stress test requirements for intermediate holding companies.

252.263 Stress test requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

252.264 Stress test requirements for foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

Subpart Q - Debt-to-Equity Limits for Certain Covered Foreign Banking Organizations

252.270 Definitions.

252.271 Debt-to-equity ratio limitation.

Subpart R - Early Remediation Framework for Covered Foreign Banking Organizations

252.280 Definitions.

252.281 Applicability.

252.282 Remediation triggering events.

252.283 Notice and remedies.

252.284 Remediation actions for U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more.

252.285 Remediation actions for foreign banking organizations with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion.

Subpart A—General Provisions

§ 252.1 [Reserved]

§ 252.2 Authority, purpose, and reservation of authority for foreign banking organizations and foreign nonbank financial companies supervised by the Board.

(a) *Authority*. This part is issued by the Board of Governors of the Federal Reserve System (the Board) under sections 165, 166, 168, and 171 of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) (Pub. L. No. 111-203, 124 Stat. 1376, 1423-1432, 12 U.S.C. 5365, 5366, 5367, 5368, and 5371); section 9 of the Federal Reserve Act (12 U.S.C. 321-338a); section 5(b) of the

Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)); section 10(g) of the Home Owners' Loan Act, as amended (12 U.S.C. 1467a(g)); and sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b) and 1831p-1); International Banking Act of 1978 (12 U.S.C. 3101 *et seq*.); Foreign Bank Supervision Enhancement Act of 1991 (12 U.S.C. 3101 note); and 12 U.S.C. 3904, 3906-3909, 4808.

(b) *Purpose*. This part implements certain provisions of sections 165, 166, 167, and 168 of the Dodd-Frank Act (12 U.S.C. 5365, 5366, 5367, and 5368), which require the Board to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $50 billion or more and certain other companies.

(c) *Reservation of authority*. (1) *In general*. Nothing in this part limits the authority of the Board under any provision of law or regulation to impose on any company additional enhanced prudential standards, including, but not limited to, additional risk-based capital or liquidity requirements, leverage limits, limits on exposures to single counterparties, risk management requirements, stress tests, or other requirements or restrictions the Board deems necessary to carry out the purposes of this part or Title I of the Dodd-Frank Act, or to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

(2) *Separate operations*. If a foreign banking organization owns more than one foreign bank, the Board may apply the standards applicable to the foreign banking organization under this part in a manner that takes into account the separate operations of such foreign banks.

(d) *Foreign nonbank financial companies*. (1) *In general.* The following subparts of this part will apply to a foreign nonbank financial company supervised by the Board, unless the Board determines that application of those subparts, or any part thereof, would not be appropriate:

(i) Subpart L—Risk-Based Capital Requirements and Leverage Limits for Covered Foreign Banking Organizations;

(ii) Subpart M—Liquidity Requirements for Covered Foreign Banking Organizations;

(iii) Subpart N—Single-Counterparty Credit Limits for Covered Foreign Banking Organizations;

(iv) Subpart O—Risk Management for Covered Foreign Banking Organizations;

(v) Subpart P—Stress Test Requirements for Covered Foreign Banking Organizations and Other Foreign Companies;

(vi) Subpart Q—Debt-to-Equity Limits for Certain Covered Foreign Banking Organizations; and

(vii) Subpart R—Early Remediation Framework for Covered Foreign Banking Organizations.

(2) *Intermediate holding company criteria*. In determining whether to apply subpart K (Intermediate Holding Company Requirement for Covered Foreign Banking Organizations) to a foreign nonbank financial company supervised by the Board in accordance with section 167 of the Dodd-Frank Act (12 U.S.C. 5367), the Board will consider the following criteria regarding the foreign nonbank financial company:

(i) The structure and organization of the U.S. activities and subsidiaries of the foreign nonbank financial company;

(ii) The riskiness, complexity, financial activities, and size of the U.S. activities and subsidiaries of a foreign nonbank financial company, and the interconnectedness of those U.S. activities and subsidiaries with foreign activities and subsidiaries of the foreign banking organization;

(iii) The extent to which an intermediate holding company would help to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of the foreign nonbank financial company;

(iv) The extent to which the foreign nonbank financial company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority; and

(v) Any other risk-related factor that the Board determines appropriate.

§ 252.3 Definitions

Unless otherwise specified, the following definitions will apply for purposes of subparts K through R of this part:

Affiliate means any company that controls, is controlled by, or is under common control with, another company.

Applicable accounting standards means U.S. generally applicable accounting principles (GAAP), international financial reporting standards (IFRS), or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

Bank has the same meaning as in section 225.2(b) of the Board's Regulation Y (12 CFR 225.2(b)).

Bank holding company has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)) and section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

Combined U.S. operations means, with respect to a foreign banking organization:

(a) Any U.S. intermediate holding company and its consolidated subsidiaries;

(b) Any U.S. branch or U.S. agency; and

(c) Any other U.S. subsidiary of the foreign banking organization that is not a section 2(h)(2) company.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Control has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)), and the terms *controlled* and *controlling* shall be construed consistently with the term *control*.

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

FFIEC 002 means the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks reporting form.

Foreign bank has the same meaning as in section 211.21(n) of the Board's Regulation K (12 CFR 211.21(n)).

Foreign banking organization has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

Foreign nonbank financial company supervised by the Board means a company incorporated or organized in a country other than the United States that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

FR Y-9C means the Consolidated Financial Statements for Bank Holding Companies reporting form.

FR Y-7Q means the Capital and Asset Report for Foreign Banking Organizations reporting form.

Non-U.S. affiliate means any affiliate that is incorporated or organized in a country other than the United States.

Nonbank financial company supervised by the Board means a company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

Publicly traded means traded on:

(a) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(b) Any non-U.S.-based securities exchange that:

(1) Is registered with, or approved by, a national securities regulatory authority; and

(2) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such a price within a

reasonable time period conforming with trade custom. A company can rely on its determination that a particular non-U.S.-based exchange provides a liquid two-way market unless the Board determines that the exchange does not provide a liquid two-way market.

Section 2(h)(2) company has the same meaning as in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

Subsidiary has the same meaning as in section 225.2(o) of Regulation K (12 CFR 225.2(o)).

U.S. agency has the same meaning as the term "agency" in section 211.21(b) of the Board's Regulation K (12 CFR 211.21(b)).

U.S. branch has the same meaning as the term "branch" in section 211.21(e) of the Board's Regulation K (12 CFR 211.21(e)).

U.S. branch and agency network means all U.S. branches and U.S. agencies of a foreign bank.

U.S. intermediate holding company means the top-tier U.S. company that is required to be formed pursuant to § 252.202 of subpart K of this part and that controls the U.S. subsidiaries of a foreign banking organization.

U.S. subsidiary means any subsidiary that is organized in the United States or in any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the North Mariana Islands, the American Samoa, Guam, or the United States Virgin Islands.

Subparts B-E [Reserved]

Subpart F- Supervisory Stress Test Requirements for Covered Companies

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Subpart G - Company-Run Stress Test Requirements for Covered Companies

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Subpart H - Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion That Are Not Covered Companies

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Subparts I [Reserved]

Subpart J [Reserved]

Subpart K- Intermediate Holding Company Requirement for Covered Foreign Banking Organizations

§ 252.200 Applicability.

(a) *In general*. (1) *Total consolidated assets*. This subpart applies to a foreign banking organization with total consolidated assets of $50 billion or more, as determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y-7Q; or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of this subpart unless and until total assets as reported on its FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date*. For purposes of paragraphs (a)(1) and (a)(2) of this section, total assets are measured on the quarter-end for each quarter used in the calculation of the average.

(b) *Initial applicability*. A foreign banking organization is subject to this subpart as of July 1, 2014, under paragraph (a)(1) of this section, must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(c) *Ongoing applicability*. A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraph (a)(1) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

§ 252.201 U.S. intermediate holding company requirement.

(a) *In general*. (1) A foreign banking organization with total consolidated assets of $50 billion or more must establish a U.S. intermediate holding company if the foreign banking organization has combined U.S. assets (excluding assets of U.S. branches and U.S. agencies) of $10 billion or more.

(2) For purposes of this section, combined U.S. assets (excluding assets of U.S. branches and U.S. agencies) is equal to the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y-7Q; or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not filed an FR Y-7Q, as determined under applicable accounting standards.

(3) A company may reduce its combined U.S. assets (excluding assets of U.S. branches and U.S. agencies) as calculated under paragraph (a)(2) of this section by the amount corresponding to any balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

(b) *Organizational structure*. A foreign banking organization that is required to form a U.S. intermediate holding company under paragraph (a) of this section must hold its interest in any U.S. subsidiary through the U.S. intermediate holding company, other than any interest in a section 2(h)(2) company.

§ 252.202 Alternative organizational structure.

(a) *In general*. Upon written request by a foreign banking organization subject to this subpart, the Board will consider whether to permit the foreign banking organization to establish multiple intermediate holding companies or use an alternative organizational structure to hold its combined U.S. operations, if:

(1) The foreign banking organization controls another foreign banking organization that has separate U.S. operations;

(2) Under applicable law, the foreign banking organization may not own or control one or more of its U.S. subsidiaries (excluding any section 2(h)(2) company) through a single U.S. intermediate holding company; or

(3) The Board determines that the circumstances otherwise warrant an exception based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

(b) *Request*. A request under this section must be submitted to the Board at least 180 days prior to the date that the foreign banking organization is required to establish the U.S. intermediate holding company and include a description of why the request should be granted and any other information the Board may require.

§ 252.203 Corporate form, notice, and reporting

(a) *Corporate form*. A U.S. intermediate holding company must be organized under the laws of the United States, any state, or the District of Columbia.

(b) *Notice*. Within 30 days of establishing a U.S. intermediate holding company under this section, a foreign banking organization must provide to the Board:

(1) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure;

(2) A certification that the U.S. intermediate holding company meets the requirements of this subpart; and

(3) Any other information that the Board determines is appropriate.

(c) *Reporting*. Each U.S. intermediate holding company shall furnish, in the manner and form prescribed by the Board, any reporting form in the same manner and to

the same extent as a bank holding company. Additional information and reports shall be furnished as the Board may require.

(d) *Examinations and inspections*. The Board may examine or inspect any U.S. intermediate holding company and each of its subsidiaries and prepare a report of their operations and activities.

(e) *Enhanced prudential standards*. A U.S. intermediate holding company is subject to the enhanced prudential standards of subparts K through R of this part. A U.S. intermediate holding company is not otherwise subject to requirements of subparts B through J of this part, regardless of whether the company meets the scope of application of those subparts.

§ 252.204 Liquidation of intermediate holding companies.

(a) *Prior notice*. A foreign banking organization that seeks to voluntarily liquidate its U.S. intermediate holding company but would remain a foreign banking organization after such liquidation must provide the Board with 60 days' prior written notice of the liquidation.

(b) *Waiver of notice period*. The Board may waive the 60-day period in paragraph (a) of this section in light of the circumstances presented.

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Subpart L—Risk-Based Capital Requirements and Leverage Limits for Covered Foreign Banking Organizations

§ 252.210 Definitions.

For purposes of this subpart, the following definition applies:

Basel Capital Framework means the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time.

§ 252.211 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $50 billion or more*. A foreign banking organization with total consolidated assets of $50 billion or more is subject to the requirements of § 252.212(c) of this subpart.

(1) *Total consolidated assets*. For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y-7Q; or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of § 252.212(c) of this subpart unless and until total assets as reported on its FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date*. For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(b) *U.S. intermediate holding companies*. (1) *In general*. A U.S. intermediate holding company is subject to the requirements of § 252.212(a) of this subpart.

(2) *U.S. intermediate holding companies with total consolidated assets of $50 billion or more*. A U.S. intermediate holding company that has total consolidated

assets of $50 billion or more also is subject to the requirements of § 252.212(b) of this subpart.

(i) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total consolidated assets:

(A) For the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y-9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards.

(ii) *Cessation of requirements*. A U.S. intermediate holding company will remain subject to the requirements of § 252.212(b) of this subpart unless and until total assets as reported on its FR Y-9C are less than $50 billion for each of the four most recent consecutive calendar quarters.

(iii) *Measurement date*. For purposes of this paragraph, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability*. (1) *Foreign banking organizations*. A foreign banking organization that is subject to the requirements of this subpart as of July 1, 2014, under paragraph (a)(1) of this section must comply with the requirements of § 252.212(c) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(2) *U.S. intermediate holding companies*. A U.S. intermediate holding company that is subject to the requirements of this subpart as of July 1, 2015, under paragraph (b)(1) or (b)(2) of this section, must comply with the requirements of § 252.212(a) and § 252.212(b) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability*. (1) *Foreign banking organizations*. A foreign banking organization that becomes subject to the requirements of this subpart after July 1, 2014, under paragraph (a)(1) of this section, must comply with the requirements of § 252.212(c) of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies*. (i) A U.S. intermediate holding company that becomes subject to the requirements of this subpart after July 1, 2015, under paragraph (b)(1) of this section, must comply with the requirements of § 252.212(a) of this subpart on the date it is required to be established, unless that time is accelerated or extended by the Board in writing.

(ii) A U.S. intermediate holding company that becomes subject to this subpart after July 1, 2015, under paragraph (b)(2) of this section, must comply with the requirements of § 252.212(b) of this subpart beginning in October of the calendar year after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.212 Enhanced risk-based capital and leverage requirements.

(a) *Risk-based capital and leverage requirements*. A U.S. intermediate holding company, regardless of whether it controls a bank, must calculate and meet all applicable

capital adequacy standards, including minimum risk-based capital and leverage requirements, and comply with all restrictions associated with applicable capital buffers, in the same manner and to the same extent as a bank holding company in accordance with any capital adequacy standards established by the Board for bank holding companies, including 12 CFR part 225, appendices A, D, E, and G and any successor regulation.

(b) *Capital planning*. A U.S. intermediate holding company with total consolidated assets of $50 billion or more must comply with section 225.8 of Regulation Y in the same manner and to the same extent as a bank holding company subject to that section.

(c) *Foreign banking organizations*. (1) *General requirements*. A foreign banking organization with total consolidated assets of $50 billion or more must:

(i) Certify to the Board that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework in accordance with any capital adequacy standards established by its home country supervisor; or

(ii) Demonstrate to the satisfaction of the Board that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework.

(2) *Consistency with Basel Capital Framework*. For purposes of paragraph (c)(1) of this section, consistency with the Basel Capital Framework shall require, without limitation, a company to meet all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on applicable capital buffers set forth in Basel III: A global regulatory framework for more resilient banks and banking systems (2010), each as applicable and as implemented in accordance with the Basel Capital Framework, including any transitional provisions set forth therein.

(3) *Reporting*. A foreign banking organization with total consolidated assets of $50 billion or more must provide the following information to the Federal Reserve concurrently with its FR Y-7Q:

(i) The tier 1 risk-based capital ratio, total risk-based capital ratio and amount of tier 1 capital, tier 2 capital, risk-weighted assets and total assets of the foreign banking organization, as of the close of the most recent quarter and as of the close of the most recent audited reporting period; and

(ii) Consistent with the transition period in the Basel III Accord, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets of the foreign banking organization, as of the close of the most recent quarter and as of the close of the most recent audited reporting period.

(4) *Noncompliance with the Basel Capital Framework*. If a foreign banking organization does not satisfy the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

Subpart M—Liquidity Requirements for Covered Foreign Banking Organizations

§ 252.220 Definitions.

For purposes of this subpart, the following definitions apply:

BCBS principles for liquidity risk management means the document titled "Principles for Sound Liquidity Risk Management and Supervision" (September 2008) as

published by the Basel Committee on Banking Supervision, as supplemented and revised from time to time.

Global headquarters means the chief administrative office of a company in the jurisdiction in which the company is chartered or organized.

Highly liquid assets means:

(a) Cash;

(b) Securities issued or guaranteed by the U. S. government, a U.S. government agency, or a U.S. government-sponsored entity; and

(c) Any other asset that the foreign banking organization demonstrates to the satisfaction of the Federal Reserve:

(1) Has low credit risk and low market risk;

(2) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(3) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity is impaired.

Liquidity means a company's capacity to efficiently meet its expected and unexpected cash flows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the foreign banking organization.

Liquidity risk means the risk that a company's financial condition or safety and soundness will be adversely affected by its inability or perceived inability to meet its cash and collateral obligations.

Unencumbered means, with respect to an asset, that:

(a) The asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien, or, if the asset has been pledged to a Federal Reserve bank or a U.S. government-sponsored entity, it has not been used;

(b) The asset is not designated as a hedge on a trading position under the Board's market risk rule under 12 CFR 225, appendix E, or any successor regulation thereto; or

(c) There are no legal or contractual restrictions on the ability of the foreign banking organization to promptly liquidate, sell, transfer, or assign the asset.

U.S. government agency means an agency or instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government.

U.S. government-sponsored entity means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

§ 252.221 Applicability.

(a) *Foreign banking organizations with combined U.S. assets of $50 billion or more*. A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of §§ 252.222 through 252.230 of this subpart.

(1) *Combined U.S. assets*. For purposes of this paragraph, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002; or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002; or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y-9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the FR Y-7Q; or

(B) If the foreign banking organization has not yet filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-7Q; or

(C) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *U.S. intercompany transactions*. The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch or U.S. agency to the extent such items are not already eliminated in consolidation.

(3) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of §§ 252.222 through 252.230 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y-9C or FR Y-7Q is less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date*. For purposes of paragraphs (a)(1) and (a)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with combined U.S. assets of less than $50 billion*. A foreign banking organization with total consolidated assets of $50 billion

or more and combined U.S. assets of less than $50 billion is subject to the requirements of § 252.231 of this subpart.

(1) *Total consolidated assets*. For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y-7Q; or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *Combined U.S. assets*. For purposes of this paragraph, combined U.S. assets are determined in accordance with paragraph (a)(1) of this section.

(3) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of § 252.231 of this subpart unless and until total assets as reported on its FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date*. For purposes of paragraph (b) of this section, total assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability*. A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a) or (b) of this section, must comply with the applicable requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability*. A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

§ 252.222 Responsibilities of the U.S. risk committee and U.S. chief risk officer.

(a) *Liquidity risk tolerance*. (1) The U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must review and approve the liquidity risk tolerance for the company's combined U.S. operations at least annually, with concurrence from the company's board of directors or its enterprise-wide risk committee. The liquidity risk tolerance for the combined U.S. operations must be consistent with the enterprise-wide liquidity risk tolerance established for the foreign banking organization. The liquidity risk tolerance for the combined U.S. operations is the acceptable level of liquidity risk that the company may assume in connection with its operating strategies for its combined U.S. operations. In determining the foreign banking organization's liquidity risk tolerance for the combined U.S. operations, the U.S. risk committee must consider capital structure, risk profile, complexity, activities, size, and other relevant factors of the foreign banking organization and its combined U.S. operations.

(b) *Business strategies and products*. (1) The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review and approve the liquidity costs, benefits, and risks of each significant new business line and each significant new product offered, managed or sold through the company's combined U.S. operations before the foreign banking organization implements the business line or

offers the product through the combined U.S. operations. In connection with this review, the U.S. chief risk officer must consider whether the liquidity risk of the new business line or product under current conditions and under liquidity stress conditions is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(2) At least annually, the U.S. chief risk officer must review significant business lines and products offered, managed or sold through the combined U.S. operations to determine whether each business line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product continues to be within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(c) *Contingency funding plan*. The U.S. chief risk officer of a foreign banking organization must review and approve contingency funding plan for its combined U.S. operations established pursuant to § 252.228 of this subpart at least annually, and at any such time that the foreign banking organization materially revises its contingency funding plan either for the company as a whole or for its combined U.S. operations specifically.

(d) *Other reviews*. (1) At least quarterly, the U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must:

(i) Review the cash flow projections produced under § 252.225 of this subpart that use time periods in excess of 30 days for the long-term cash flow projections required under that section to ensure that the liquidity risk of the company's combined U.S. operations is within the established liquidity risk tolerance;

(ii) Review and approve the liquidity stress testing practices, methodologies, and assumptions for the combined U.S. operations described in § 252.226 of this subpart;

(iii) Review the liquidity stress testing results for the combined U.S. operations produced under § 252.226 of this subpart;

(iv) Approve the size and composition of the liquidity buffer for the combined U.S. operations established under § 252.227 of this subpart;

(v) Review and approve the specific limits established under § 252.229 of this subpart and review the company's compliance with those limits; and

(vi) Review the liquidity risk management information for the combined U.S. operations necessary to identify, measure, monitor, and control liquidity risk and to comply with this subpart.

(2) Whenever the foreign banking organization materially revises its liquidity stress testing, the U.S. chief risk officer must also review and approve liquidity stress testing practices, methodologies, and assumptions of the company's combined U.S. operations.

(3) The U.S. chief risk officer must establish procedures governing the content of reports generated within the combined U.S. operations on the liquidity risk profile of the combined U.S. operations and other information described in § 252.223(b) of this subpart.

(e) *Frequency of reviews*. The U.S. chief risk officer must conduct more frequent reviews and approvals than those required under this section if changes in market conditions or the liquidity position, risk profile, or financial condition of the foreign banking organization indicate that the liquidity risk tolerance, business strategies and

products, or contingency funding plan of the foreign banking organization should be reviewed or modified.

§ 252.223 Additional responsibilities of the U.S. chief risk officer.

(a) The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review the strategies and policies and procedures for managing liquidity risk established by senior management of the combined U.S. operations. The U.S. chief risk officer must review information provided by the senior management of the combined U.S. operations to determine whether the foreign banking organization is complying with the established liquidity risk tolerance for the combined U.S. operations.

(b) The U.S. chief risk officer must regularly report to the foreign banking organization's U.S. risk committee and enterprise-wide risk committee (or designated subcommittee thereof) on the liquidity risk profile of the foreign banking organization's combined U.S. operations at least semi-annually and must provide other information to the U.S. risk committee and the enterprise-wide risk committee relevant to compliance of the foreign banking organization with the established liquidity risk tolerance for the U.S. operations.

§ 252.224 Independent review.

(a) A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain a review function, independent of the management functions that execute funding for its combined U.S. operations, to evaluate the liquidity risk management for its combined U.S. operations.

(b) The independent review function must:

(1) Regularly, and no less frequently than annually, review and evaluate the adequacy and effectiveness of the foreign banking organization's liquidity risk management processes within the combined U.S. operations;

(2) Assess whether the foreign banking organization's liquidity risk management of its combined U.S. operations complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(3) Report material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee in writing for corrective action.

§ 252.225 Cash flow projections.

(a) *Requirement.* A foreign banking organization with combined U.S. assets of $50 billion or more must produce comprehensive cash flow projections for its combined U.S. operations in accordance with the requirements of this section. Cash flow projections for the combined U.S. operations must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, size, and any other relevant factors of the foreign banking organization and its combined U.S. operations, including where appropriate analyses by business line or legal entity. The foreign banking organization must update short-term cash flow projections daily and must update long-term cash flow projections at least monthly.

(b) *Methodology.* A foreign banking organization with combined U.S. assets of $50 billion or more must establish a methodology for making cash flow projections for its combined U.S. operations. The methodology must include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures.

(c) *Cash flow projections.* A foreign banking organization with combined U.S. assets of $50 billion or more must produce comprehensive cash flow projections for its combined U.S. operations that:

(1) Project cash flows arising from assets, liabilities, and off-balance sheet exposures over short-term and long-term periods that are appropriate to the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company and its combined U.S. operations;

(2) Identify and quantify discrete and cumulative cash flow mismatches over these time periods;

(3) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding renewals, customer options, and other potential events that may impact liquidity; and

(4) Provide sufficient detail to reflect the capital structure, risk profile, complexity, activities, size, and any other relevant factors with respect to the company and its combined U.S. operations.

§ 252.226 Liquidity stress testing.

(a) *Stress testing requirement.* (1) *In general*. In accordance with the requirements of this section, a foreign banking organization with combined U.S. assets of $50 billion or more must, at least monthly, conduct stress tests of cash flow projections separately for its U.S. branch and agency network and its U.S. intermediate holding company, as applicable. The required stress test analysis must identify liquidity stress scenarios in accordance with paragraph (a)(3) of this section that would have an adverse effect on the U.S. operations of the foreign banking organization, and assess the effects of

these scenarios on the cash flows and liquidity of each of the U.S. branch and agency network and U.S. intermediate holding company. The foreign banking organization must use the results of this stress testing to determine the size of the liquidity buffer for each of its U.S. branch and agency network and U.S. intermediate holding company required under § 252.227 of this subpart, and must incorporate the information generated by stress testing in the quantitative component of its contingency funding plan under § 252.228 of this subpart.

(2) *Frequency*. If there is a material deterioration in the foreign banking organization's financial condition, market conditions, or if other supervisory concerns indicate that the monthly stress test required by this section is insufficient to assess the liquidity risk profile of the foreign banking organization's U.S. operations, the Board may require the foreign banking organization to perform stress testing for its U.S. branch and agency network and its U.S. intermediate holding company more frequently than monthly and to vary the underlying assumptions and stress scenarios. The foreign banking organization must be able to perform more frequent stress tests in accordance with this section upon the request of the Board.

(3) *Stress scenarios*. (i) Stress testing must incorporate a range of stress scenarios that may have a significant adverse impact the liquidity of the foreign banking organization's U.S.operations, taking into consideration their balance sheet exposures, off-balance sheet exposures, business lines, organizational structure, and other characteristics.

(ii) At a minimum, stress testing must incorporate separate stress scenarios to account for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses.

(iii) The stress testing must:

(A) Address the potential direct adverse impact of market disruptions on the foreign banking organization's combined U.S. operations;

(B) Address the potential adverse impact of market disruptions on the foreign banking organization and the related indirect effect such impact could have on the combined U.S. operations of the foreign banking organization; and

(C) Incorporate the potential actions of other market participants experiencing liquidity stresses under market disruptions that would adversely affect the foreign banking organization or its combined U.S. operations.

(iv) The stress scenarios must be forward-looking and must incorporate a range of potential changes in the activities, exposures, and risks of the foreign banking organization and its combined U.S. operations, as appropriate, as well as changes to the broader economic and financial environment.

(v) The stress scenarios must use a variety of time horizons. At a minimum, these time horizons must include an overnight time horizon, a 30-day time horizon, 90-day time horizon, and a one-year time horizon.

(4) *Operations included*. Stress testing under this section must comprehensively address the activities, exposures, and risks, including off-balance sheet exposures, of the company's combined U.S. operations.

(5) *Tailoring*. Stress testing under this section must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the combined U.S. operations of the foreign banking organization and, as appropriate, the foreign banking organization as a whole. This may require analyses by business line or legal entity, and stress scenarios that use more time horizons than the minimum required under paragraph (a)(3)(v) of this section.

(6) *Assumptions*. A foreign banking organization subject to this section must incorporate the following assumptions in the stress testing required under this section:

(i) For the first 30 days of a liquidity stress scenario, only highly liquid assets that are unencumbered may be used as cash flow sources to offset projected cash flow needs as calculated pursuant to § 252.227 of this subpart;

(ii) For time periods beyond the first 30 days of a liquidity stress scenario, highly liquid assets that are unencumbered and other appropriate funding sources may be used as cash flow sources to offset projected cash flow needs as calculated pursuant to § 252.227 of this subpart;

(iii) If an asset is used as a cash flow source to offset projected cash flow needs as calculated pursuant to § 252.227 of this subpart, the fair market value of the asset must be discounted to reflect any credit risk and market price volatility of the asset; and

(iv) Throughout each stress test time horizon, assets used as sources of funding must be diversified by collateral, counterparty, or borrowing capacity, or other factors associated with the liquidity risk of the assets.

(b) *Process and systems requirements*.

(1) *Stress test function.* A foreign banking organization with combined U.S. assets of $50 billion or more, within its combined U.S. operations and its enterprise-wide risk management, must establish and maintain policies and procedures that outline its liquidity stress testing practices, methodologies, and assumptions; incorporate the results of liquidity stress tests; and provide for the enhancement of stress testing practices as risks change and as techniques evolve.

(2) *Controls and oversight*. A foreign banking organization must have an effective system of controls and oversight over the stress test function described above to ensure that:

(i) Each stress test is designed in accordance with the requirements of this section; and

(ii) Each stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress test process, taking into consideration the capital structure, risk profile, complexity, activities, size, and other relevant factors of the U.S. operations. These assumptions must be approved by the U.S. chief risk officer and be subject to the independent review under § 252.224 of this subpart.

(3) *Systems and processes*. A foreign banking organization must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to the liquidity stress testing of its combined U.S. operations.

(c) *Reporting Requirements*. (1) *Liquidity stress tests required by this subpart.* A foreign banking organization with combined U.S. assets of $50 billion or more must

report the results of the stress tests for its combined U.S. operations conducted under this section to the Board within 14 days of completing the stress test. The report must include the amount of liquidity buffer established by the foreign banking organization for its combined U.S. operations under § 252.227 of this subpart.

(2) *Liquidity stress tests required by home country regulators*. A foreign banking organization with combined U.S. assets of $50 billion or more must report the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction to the Board on a quarterly basis within 14 days of completion of the stress test. The report required under this paragraph must include the results of its liquidity stress test and liquidity buffer, if required by the laws, regulations, or expected under supervisory guidance implemented in the home jurisdiction.

§ 252.227 Liquidity buffer.

(a) *General requirement.* A foreign banking organization with combined U.S. assets of $50 billion or more must maintain a liquidity buffer for its U.S. branch and agency network and a separate buffer for its U.S. intermediate holding company. Each liquidity buffer must consist of highly liquid assets that are unencumbered and that are sufficient to meet the net stressed cash flow need over the first 30 days of its stress test horizon, calculated in accordance with this section.

(b) *Net stressed cash flow need*. (1) *U.S. intermediate holding company*. The net stressed cash flow need for a U.S. intermediate holding company is equal to the sum of its net external stressed cash flow need and net internal stressed cash flow need for the first 30 days of its stress test horizon, each as calculated under paragraph (c)(1) and (d)(1) of this section.

(2) *U.S. branch and agency network.* (i) For the first 14 days of its stress test horizon, the net stressed cash flow need for a U.S. branch and agency network is equal to the sum of its net external stressed cash flow need and net internal stressed cash flow need, each as calculated in paragraph (c)(2) and (d)(2) of this section.

(ii) For day 15 through day 30 of its stress test horizon, the net stressed cash flow need for a U.S. branch and agency network is equal to its net external stressed cash flow need, as calculated under this paragraph (c)(2).

(c) *Net external stressed cash flow need calculation*. (1) *U.S. intermediate holding company*. (i) The net external stressed cash flow need for a U.S. intermediate holding company equals the difference between:

(A) The projected amount of cash flow needs that results from transactions between the U.S. intermediate holding company and entities that are not its affiliates; and

(B) The projected amount of cash flow sources that results from transactions between the U.S. intermediate holding company and entities that are not its affiliates.

(ii) Each of the projected amounts of cash flow needs and cash flow sources must be calculated for the first 30 days of its stress test horizon in accordance with the stress test requirements and incorporating the stress scenario required by § 252.226 of this subpart.

(2) *U.S. branch and agency network.* (i) The net external stressed cash flow need for a U.S. branch and agency network equals the difference between:

(A) The projected amount of cash flow needs that results from transactions between the U.S. branch and agency network and entities other than foreign banking organization's head office and affiliates thereof; and

(B) The projected amount of cash flow sources that results from transactions between the U.S. branch and agency network and entities other than foreign banking organization's head office and affiliates thereof.

(ii) Each of the projected amounts of cash flow needs and cash flow sources must be calculated for the first 30 days of its stress test horizon in accordance with the stress test requirements and incorporating the stress scenario required by § 252.226 of this subpart.

(d) *Net internal stressed cash flow need calculation*. (1) *U.S. intermediate holding company*. The net internal stressed cash flow need for a U.S. intermediate holding company equals the greater of:

(i) The greatest daily cumulative net intracompany cash flow need for the first 30 days of its stress test horizon as calculated under paragraph (e)(1) of this section; and

(ii) Zero.

(2) *U.S. branch and agency network.* The net internal stressed cash flow need for a U.S. branch and agency network equals the greater of:

(i) The greatest daily cumulative net intracompany cash flow need for the first 14 days of its stress test horizon, as calculated under paragraph (b)(5) of this section; and

(ii) Zero.

(e) *Daily cumulative net intracompany cash flow need calculation*. The daily cumulative net intracompany cash flow need for the U.S. intermediate holding company and the U.S. branch and agency network for purposes of paragraph (b)(4) of this section is calculated as follows:

(1) *U.S. intermediate holding company*. (i) *Daily cumulative net intracompany cash flow*. A U.S. intermediate holding company's daily cumulative net intracompany cash flow on any given day in the first 30 days of its stress test horizon equals the sum of the net intracompany cash flow calculated for that day and the net intracompany cash flow calculated for each previous day of the stress test horizon, each as calculated in accordance with paragraph (e)(1)(ii) of this section.

(ii) *Net intracompany cash flow*. For any day of its stress test horizon, the net intracompany cash flow equals the difference between:

(A) The amount of cash flow needs under the stress scenario required by § 252.226 of this subpart resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency); and

(B) The amount of cash flow sources under the stress scenario required by § 252.226 of this subpart resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency).

(iii) *Daily cumulative net intracompany cash flow need*. Daily cumulative net intracompany cash flow need means, for any given day in the stress test horizon, a daily cumulative net intracompany cash flow that is greater than zero.

(2) *U.S. branch and agency network*. (i) *Daily cumulative net intracompany cash flows*. For the first 14 days of the stress test horizon, a U.S. branch and agency network's daily cumulative net intracompany cash flow equals the sum of the net intracompany cash flow calculated for that day and the net intracompany cash flow calculated for each previous day of its stress test horizon, each as calculated in accordance with this paragraph (e)(2)(ii).

(ii) *Net intracompany cash flow*. For any day of the stress test horizon, the net intracompany cash flow must equal the difference between:

(A) The amount of cash flow needs under the stress scenario required by § 252.226 of this subpart resulting from transactions between a U.S. branch or U.S. agency within the U.S. branch and agency network and the foreign bank's head office and its affiliates; and

(B) The amount of cash flow sources under the stress scenario required by § 252.226 of this subpart resulting from transactions between a U.S. branch or U.S. agency within the U.S. branch and agency network and the foreign bank's head office and its affiliates.

(iii) *Daily cumulative net intracompany cash flow need*. Daily cumulative net intracompany cash flow need means, for any given day in the stress test horizon, a daily cumulative net intracompany cash flow that is greater than zero.

(3) *Amounts secured by highly liquid assets*. For the purposes of calculating net intracompany cash flow under this paragraph, the amounts of intracompany cash flow needs and intracompany cash flow sources that are secured by highly liquid assets must be excluded from the calculation.

(f) *Location of liquidity buffer*. (1) *U.S. intermediate holding companies*. A U.S. intermediate holding company must maintain in accounts in the United States the highly liquid assets comprising the liquidity buffer required under this section. To the extent that the assets consist of cash, the cash may not be held in an account located at a U.S. branch or U.S. agency of the affiliated foreign bank or other affiliate.

(2) *U.S. branch and agency networks*. The U.S. branch and agency network of a foreign banking organization must maintain in accounts in the United States the highly liquid assets that cover its net stressed cash flow need for at least the first 14 days of its stress test horizon, calculated under paragraph (b)(2)(i) of this section. To the extent that the assets consist of cash, the cash may not be held in an account located at the U.S. intermediate holding company or other affiliate. The company may maintain the highly liquid assets to cover its net stressed cash flow need amount for day 15 through day 30 of the stress test horizon, calculated under paragraph (b)(2)(ii) of this section, at the head office of the foreign bank of which the U.S. branches and U.S. agencies are a part, provided that the company has demonstrated to the satisfaction of the Board that it has and is prepared to provide, or its affiliate has and would be required to provide, highly liquid assets to the U.S. branch and agency network sufficient to meet the liquidity needs of the operations of the U.S. branch and agency network for day 15 through day 30 of the stress test horizon.

(g) *Asset requirements*. (1) *Valuation*. In computing the amount of an asset included in the liquidity buffer or buffers for its combined U.S. operations, a U.S. intermediate holding company or U.S. branch and agency network must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(2) *Diversification.* Assets that are included in the pool of unencumbered highly liquid assets in the liquidity buffer of a U.S. intermediate holding company or U.S. branch and agency network other than cash and securities issued by the U.S. government, or securities issued or guaranteed by a U.S. government agency or U.S. government-sponsored entity must be diversified by collateral, counterparty, or borrowing capacity, or

other factors associated with the liquidity risk of the assets, for each day of the relevant stress period in accordance with paragraph (b) of this section.

§ 252.228 Contingency funding plan.

(a) *Contingency funding plan*. A foreign banking organization must establish and maintain a contingency funding plan for its combined U.S. operations that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company and of its combined U.S. operations. It must also be commensurate with the established liquidity risk tolerance for the combined U.S. operations. The company must update the contingency funding plan for its combined U.S. operations at least annually, and must update the plan when changes to market and idiosyncratic conditions would have a material impact on the plan.

(b) *Components of the contingency funding plan*. (1) *Quantitative Assessment.* The contingency funding plan must:

(i) Identify liquidity stress events that could have a significant impact on the liquidity of the foreign banking organization and its combined U.S. operations;

(ii) Assess the level and nature of the impact on the liquidity of the foreign banking organization and its combined U.S. operations that may occur during identified liquidity stress events;

(iii) Assess available funding sources and needs during the identified liquidity stress events;

(iv) Identify alternative funding sources that may be used during the liquidity stress events; and

(v) In implementing subparagraphs (i) through (iv) of this paragraph (b)(1), incorporate information generated by the liquidity stress testing required under § 252.226 of this subpart.

(2) *Event management process*. The contingency funding plan for a foreign banking organization's combined U.S. operations must include an event management process that sets out the company's procedures for managing liquidity during identified liquidity stress events for the combined U.S. operations. This process must:

(i) Include an action plan that clearly describes the strategies that the company will use to respond to liquidity shortfalls in its combined U.S. operations for identified liquidity stress events, including the methods that the company or the combined U.S. operations will use to access alternative funding sources;

(ii) Identify a liquidity stress event management team that would execute the action plan in paragraph (b)(2)(i) of this section for the combined U.S. operations;

(iii) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, escalating the responses described in the action plan, decision-making during the identified liquidity stress events, and executing contingency measures identified in the action plan; and

(iv) Provide a mechanism that ensures effective reporting and communication within the combined U.S. operations of the foreign banking organization and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(3) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the foreign banking organization and its combined U.S. operations.

(4) *Testing.* A foreign banking organization must periodically test the components of the contingency funding plan for its combined U.S. operations to assess the plan's reliability during liquidity stress events.

(i) The company must periodically test the operational elements of the contingency funding plan for its combined U.S. operations to ensure that the plan functions as intended. These tests must include operational simulations to test communications, coordination, and decision-making involving relevant managers, including managers at relevant legal entities within the corporate structure.

(ii) The company must periodically test the methods it will use to access alternative funding sources for its combined U.S. operations to determine whether these funding sources will be readily available when needed.

§ 252.229 Specific limits.

(a) *Required limits.* A foreign banking organization must establish and maintain limits on potential sources of liquidity risk, including:

(1) Concentrations of funding by instrument type, single-counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers;

(2) The amount of specified liabilities that mature within various time horizons; and

(3) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(b) *Size of limits*. The size of each limit described in paragraph (a) of this section must reflect the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company's combined U.S. operations , as well as the established liquidity risk tolerance for the combined U.S. operations.

(c) *Monitoring of limits*. A foreign banking organization must monitor its compliance with all limits established and maintained under this section.

§ 252.230 Monitoring.

(a) *Collateral monitoring requirements*. A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain procedures for monitoring the assets that it has pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties and the assets that are available to be pledged for its combined U.S. operations.

(1) These procedures must provide that the foreign banking organization:

(i) Calculates all of the collateral positions for its combined U.S. operations on a weekly basis (or more frequently, as directed by the Board due to financial stability risks or the financial condition of the U.S. operations) including:

(A) The value of assets pledged relative to the amount of security required under the contract governing the obligation for which the collateral was pledged; and

(B) Unencumbered assets available to be pledged;

(ii) Monitors the levels of available collateral by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(b) *Legal entities, currencies and business lines.* A foreign banking organization must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs that are not covered by § 252.229 of this subpart or paragraph (a) of this section, within and across significant legal entities, currencies, and business lines for its combined U.S. operations, and taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(c) *Intraday liquidity positions.* A foreign banking organization must establish and maintain procedures for monitoring intraday liquidity risk exposure for its combined U.S. operations. These procedures must address how the management of the combined U.S. operations will:

(1) Monitor and measure expected daily inflows and outflows;

(2) Manage and transfer collateral when necessary to obtain intraday credit;

(3) Identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected;

(4) Settle less critical obligations as soon as possible;

(5) Control the issuance of credit to customers where necessary; and

(6) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the overall liquidity needs of the combined U.S. operations.

§ 252.231 Requirements for foreign banking organizations with combined U.S. assets of less than $50 billion

(a) A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations conducted consistent with the BCBS principles for liquidity risk management and incorporating 30-day, 90-day and one-year stress test horizons.

(b) A foreign banking organization subject to this section that does not comply with paragraph (a) must limit the net aggregate amount owed by the foreign banking organization's head office and its non-U.S. affiliates to the combined U.S. operations to 25 percent or less of the third party liabilities of its combined U.S. operations, on a daily basis.

Subpart N - Single-Counterparty Credit Limits for Covered Foreign Banking Organizations

§ 252.240 Definitions.

For purposes of this subpart:

Adjusted market value means, with respect to any eligible collateral, the fair market value of the eligible collateral after application of the applicable haircut specified in Table 2 of this subpart for that type of eligible collateral.

Bank eligible investments means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

Capital stock and surplus means:

(a) With respect to a U.S. intermediate holding company, the sum of the following amounts in each case as reported by a U.S. intermediate holding company on the most recent FR Y-9C:

(1) The total regulatory capital of the U.S. intermediate holding company, as calculated under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart L of this part; and

(2) The excess allowance for loan and lease losses of the U.S. intermediate holding company not included in tier 2 capital under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart L of this part; and

(b) With respect to a foreign banking organization, the total regulatory capital as reported on the foreign banking organization's most recent FR Y-7Q or other reporting form specified by the Board.

Control. A company controls another company if it:

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

(b) Owns or controls 25 percent or more of the total equity of the company; or

(c) Consolidates the company for financial reporting purposes.

Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

Credit transaction means:

(a) Any extension of credit, including loans, deposits, and lines of credit, but excluding advised or other uncommitted lines of credit;

(b) Any repurchase or reverse repurchase agreement;

(c) Any securities lending or securities borrowing transaction;

(d) Any guarantee, acceptance, or letter of credit (including any confirmed letter of credit or standby letter of credit) issued on behalf of a counterparty;

(e) Any purchase of, or investment in, securities issued by a counterparty;

(f) In connection with a derivative transaction:

(1) Any credit exposure to a counterparty, and

(2) Any credit exposure to the reference entity (described as a counterparty for purposes of this subpart), where the reference asset is an obligation or equity security of a reference entity.

(g) Any transaction that is the functional equivalent of the above, and any similar transaction that the Board determines to be a credit transaction for purposes of this subpart.

Derivative transaction means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

Eligible collateral means collateral in which a U.S. intermediate holding company or any part of the foreign banking organization's combined U.S. operations has a perfected, first priority security interest (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent) or, outside of the United States, the legal equivalent thereof and is in the form of:

(a) Cash on deposit with the U.S. intermediate holding company or any part of the U.S. operations, the U.S. branch, or the U.S. agency, (including cash held for the foreign banking organization or U.S. intermediate holding company by a third-party custodian or trustee);

(b) Debt securities (other than mortgage- or asset-backed securities) that are bank eligible investments;

(c) Equity securities that are publicly traded (including convertible bonds); and

(d) Does not include any debt or equity securities (including convertible bonds), issued by an affiliate of the U.S. intermediate holding company or by any part of the combined U.S. operations.

Eligible credit derivative has the same meaning as in subpart G of the Board's Regulation Y (12 CFR part 225, appendix G).

Eligible equity derivative means an equity-linked total return swap, provided that:

(a) The derivative contract has been confirmed by the counterparties;

(b) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(c) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

Eligible guarantee has the same meaning as in subpart G of the Board's Regulation Y (12 CFR part 225, appendix G).

Eligible protection provider means an entity (other than the foreign banking organization or an affiliate thereof) that is:

(a) A sovereign entity;

(b) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(c) A Federal Home Loan Bank;

(d) The Federal Agricultural Mortgage Corporation;

(e) A depository institution;

(f) A bank holding company;

(g) A savings and loan holding company (as defined in 12 U.S.C. 1467a);

(h) A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*);

(i) An insurance company that is subject to the supervision by a State insurance regulator;

(j) A foreign banking organization;

(k) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; or

(l) A qualifying central counterparty.

Equity derivative includes an equity-linked swap, purchased equity-linked option, forward equity-linked contract, and any other instrument linked to equities that gives rise to similar counterparty credit risks.

Intraday credit exposure means credit exposure of the U.S. intermediate holding company or any part of the U.S. operations to a counterparty that the U.S. intermediate holding company or any part of the U.S. operations by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

Immediate family means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

Major counterparty means:

(a) A bank holding company that has total consolidated assets of $500 billion or more, and all of its subsidiaries, collectively;

(b) A nonbank financial company supervised by the Board, and all of its subsidiaries, collectively; and

(c) A major foreign banking organization, and all of its subsidiaries, collectively.

Major foreign banking organization any foreign banking organization that has total consolidated assets of $500 billion or more, calculated pursuant to § 252.241(a) of subpart.

Major U.S. intermediate holding company means a U.S. intermediate holding company that has total consolidated assets of $500 billion or more, pursuant to § 252.241(b) of this subpart.

Qualifying central counterparty has the same meaning as in subpart G of the Board's Regulation Y (12 CFR part 225, appendix G).

Qualifying master netting agreement means a legally enforceable written bilateral agreement that:

(a) Creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding of the counterparty;

(b) Provides the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdiction; and

(c) Does not contain a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter is a net creditor under the agreement.

Short sale means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank.

Subsidiary of a specified company means a company that is directly or indirectly controlled by the specified company.

§ 252.241 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $50 billion or more.* (1) *In general.* A foreign banking organization with total consolidated assets of $50 billion or more is subject to the general credit exposure limit set forth in § 252.242(a) of this subpart.

(2) *Major foreign banking organizations.* A foreign banking organization with total consolidated assets of $500 billion or more also is subject to the more stringent credit exposure limit set forth in § 252.242(b) of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y-7Q; or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(4) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of § 252.242(a) and, as applicable, § 252.242(b) of this subpart unless and until total assets as reported on its FR Y-7Q are less than $50 billion

or, as applicable, $500 billion for each of the four most recent consecutive calendar quarters.

(5) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(b) *U.S. intermediate holding companies*. (1) *In general*. A U.S. intermediate holding company is subject to the general credit exposure limit set forth in § 252.242(a) of this subpart.

(2) *Major U.S. intermediate holding companies.* A U.S. intermediate holding company that has total consolidated assets of $500 billion or more also is subject to the more stringent credit exposure limit set forth in § 252.242(c) of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total consolidated assets:

(i) For the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y-9C, or

(ii) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-9C, or

(iii) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards.

(4) *Cessation of requirements.* A major U.S. intermediate holding company will remain subject to the more stringent credit exposure limit set forth in § 252.242(c) of this subpart unless and until total assets as reported on its FR Y-9C are less than $500 billion for each of the four most recent consecutive calendar quarters.

(5) *Measurement date.* For purposes of this paragraph, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability.* (1) *Foreign banking organizations.* A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a)(1) or (a)(2) of this section, must comply with the requirements of § 252.242(a) and § 252.242(b) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that is subject to the requirements of this subpart as of July 1, 2015, under paragraph (b)(1) or (b)(2) of this section, must comply with the requirements § 252.242(a) and § 252.242(c) of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability.* (1) *Foreign banking organizations.* A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraph (a)(1) and, as applicable, (a)(2) of this section, must comply with the requirements of § 252.242(a) and § 252.242(b) of this subpart beginning 12 months after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* (i) A U.S. intermediate holding company that becomes subject to this subpart after July 1, 2015, under paragraph (b)(1) of this section, must comply with the requirements of § 252.242(a) of this subpart on the date it is required to be established, unless that time is accelerated or extended by the Board in writing.

(ii) A U.S. intermediate holding company that becomes subject to this subpart after July 1, 2015, under paragraph (b)(2) of this section, must comply with the requirements of § 252.242(c) of this subpart beginning 12 months after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.242 Credit exposure limit.

(a) *General limit on aggregate net credit exposure*. (1) No U.S. intermediate holding company, together with its subsidiaries, may have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the U.S. intermediate holding company.

(2) No foreign banking organization may permit its combined U.S. operations, together with any subsidiary of an entity within the combined U.S. operations, to have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the foreign banking organization.

(b) *Major foreign banking organization limits on aggregate net credit exposure*. No major foreign banking organization, together with its subsidiaries, may have an aggregate net credit exposure to an unaffiliated major counterparty in excess of [x] percent of the consolidated capital stock and surplus of the major foreign banking organization. For purposes of this section, [x] will be a more stringent limit that is aligned with the limit imposed on U.S. bank holding companies with $500 billion or more in total consolidated assets.

(c) *Major U.S. intermediate holding company limits on aggregate net credit exposure*. No U.S. intermediate holding company, together with its subsidiaries, may

have an aggregate net credit exposure to any unaffiliated major counterparty in excess of [x] percent of the consolidated capital stock and surplus of the U.S. intermediate holding company. For purposes of this section, [x] will be a more stringent limit that is aligned with the limit imposed on U.S. bank holding companies with $500 billion or more in total consolidated assets.

(d) *Rule of construction*. For purposes of this subpart, a counterparty includes:

(1) A person and members of the person's immediate family;

(2) A company and all of its subsidiaries, collectively;

(3) The United States, the United States and all of its agencies and instrumentalities (but not including any State or political subdivision of a State) collectively;

(4) A State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively; and

(5) A foreign sovereign entity and all of its agencies, instrumentalities, and political subdivisions, collectively.

§ 252.243 Gross credit exposure.

(a) *Calculation of gross credit exposure for U.S. intermediate holding companies and foreign banking organizations*. The amount of gross credit exposure of a U.S. intermediate holding company or, with respect to any part of its combined U.S. operations, a foreign banking organization (each a covered entity), to a counterparty is:

(1) In the case of a loan by a covered entity to a counterparty or a lease in which a covered entity is the lessor and a counterparty is the lessee, an amount equal to the amount owed by the counterparty to the covered entity under the transaction.

(2) In the case of a debt security held by a covered entity that is issued by the counterparty, an amount equal to:

(i) For trading and available for sale securities, the greater of the amortized purchase price or market value of the security, and

(ii) For securities held to maturity, the amortized purchase price.

(3) In the case of an equity security held by a covered entity that is issued by a counterparty, an amount equal to the greater of the purchase price or market value of the security.

(4) In the case of a repurchase agreement, an amount equal to:

(i) The market value of securities transferred by a covered entity to the counterparty, plus

(ii) The amount in paragraph (4)(i) of this section multiplied by the collateral haircut in Table 2 applicable to the securities transferred by the covered entity to the counterparty.

(5) In the case of a reverse repurchase agreement, an amount equal to the amount of cash transferred by the covered entity to the counterparty.

(6) In the case of a securities borrowing transaction, an amount equal to the amount of cash collateral plus the market value of securities collateral transferred by the covered entity to the counterparty.

(7) In the case of a securities lending transaction, an amount equal to:

(i) The market value of securities lent by the covered entity to the counterparty, plus

(ii) The amount in paragraph (7)(i) of this section multiplied by the collateral haircut in Table 2 applicable to the securities lent by the covered entity to the counterparty.

(8) In the case of a committed credit line extended by a covered entity to a counterparty, an amount equal to the face amount of the credit line.

(9) In the case of a guarantee or letter of credit issued by the covered entity on behalf of a counterparty, an amount equal to the lesser of the face amount or the maximum potential loss to the covered entity on the transaction.

(10) In the case of a derivative transaction between a covered entity and a counterparty that is not an eligible credit or equity derivative purchased from an eligible protection provider and is not subject to a qualifying master netting agreement, an amount equal to the sum of:

(i) The current exposure of the derivatives contract equal to the greater of the mark-to-market value of the derivative contract or zero and

(ii) The potential future exposure of the derivatives contract, calculated by multiplying the notional principal amount of the derivative contract by the appropriate conversion factor in Table 1.

(11) In the case of a derivative transaction:

(i) Between a U.S. intermediate holding company and a counterparty that is not an eligible credit or equity derivative purchased from an eligible protection provider and is subject to a qualifying master netting agreement, an amount equal to the exposure at default amount calculated in accordance with 12 CFR part 225, appendix G, § 32(c)(6)

(provided that the rules governing the recognition of collateral set forth in this subpart shall apply); and

(ii) Between an entity within the combined U.S. operations and a counterparty that is not an eligible credit or equity derivative purchased from an eligible protection provider and is subject to a qualifying master netting agreement between the part of the combined U.S. operations and the counterparty, an amount equal to either the exposure at default amount calculated in accordance with 12 CFR part 225, appendix G, § 32(c)(6) (provided that the rules governing the recognition of collateral set forth in this subpart shall apply); or the gross credit exposure amount calculated under § 252.243(a)(10) of this subpart.

(12) In the case of a credit or equity derivative transaction between a covered entity and a third party, where the covered entity is the protection provider and the reference asset is an obligation or equity security of the counterparty, an amount equal to the lesser of the face amount of the transaction or the maximum potential loss to the covered entity on the transaction.

Table 1 – Conversion Factor Matrix for OTC Derivative Contracts[1]							
Remaining Maturity[2]	Interest Rate	Foreign Exchange Rate	Credit (bank-eligible investment reference obligor)[3]	Credit (non-bank-eligible reference obligor)	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one year and less than or equal to	0.005	0.05	0.05	0.10	0.08	0.07	0.12

five years							
Greater than 5 years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3] A company must use the column labeled "Credit (bank-eligible investment reference obligor)" for a credit derivative whose reference obligor has an outstanding unsecured debt security that is a bank eligible investment. A company must use the column labeled "Credit (non-bank-eligible investment reference obligor)" for all other credit derivatives.

(b) *Attribution rule*. A U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, must treat any of its respective transactions with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.

§ 252.244 Net credit exposure.

(a) *In general*. Net credit exposure is determined by adjusting gross credit exposure of a U.S. intermediate holding company, or with respect to its combined U.S. operations, a foreign banking organization, in accordance with the rules set forth in this section.

(b) *Calculation of initial net credit exposure for securities financing transactions.* (1) *Repurchase and reverse repurchase transactions.* For repurchase and reverse repurchase transactions with a counterparty that are subject to a bilateral netting agreement, a U.S. intermediate holding company or, with respect to its combined U.S.

operations, a foreign banking organization, may use the net credit exposure associated with the netting agreement.

(2) *Securities lending and borrowing transactions.* For securities lending and borrowing transactions with a counterparty that are subject to a bilateral netting agreement with that counterparty, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may use the net credit exposure associated with the netting agreement.

(c) *Eligible collateral*. In computing its net credit exposure to a counterparty for any credit transaction (including transactions described in paragraph (b) of this section), the U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may reduce its gross credit exposure (or as applicable, net credit exposure for transactions described in paragraph (a) of this section) on the transaction by the adjusted market value of any eligible collateral, provided that:

(1) The U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, includes the adjusted market value of the eligible collateral when calculating its gross credit exposure to the issuer of the collateral;

(2) The collateral used to adjust the gross credit exposure of the U.S. intermediate holding company or the combined U.S. operations to a counterparty is not used to adjust the gross credit exposure of the U.S. intermediate holding company or combined U.S. operations to any other counterparty; and

(3) In no event will the gross credit exposure of the U.S. intermediate holding company or the combined U.S. operations to the issuer of collateral be in excess of the gross credit exposure to the counterparty on the credit transaction.

(d) *Unused portion of certain extensions of credit.* (1) In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the U.S. intermediate holding company or any part of the combined U.S. operations does not have any legal obligation to advance additional funds under the extension of credit, until the counterparty provides collateral of the type described in paragraph (d)(2) of this section in the amount, based on adjusted market value (calculated in accordance with § 252.240 of this subpart) that is required with respect to that unused portion of the extension of credit.

(2) To qualify for this reduction, the credit contract must specify that any used portion of the credit extension must be fully secured by collateral that is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government sponsored entity as determined by the Board; or

(iv) Obligations of the foreign banking organization's home country sovereign entity.

(e) *Eligible guarantees*.

(1) In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization must reduce the gross credit exposure to the counterparty by the amount of any eligible guarantees from an eligible protection provider that covers the transaction.

(2) The U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization, must include the amount of the eligible guarantees when calculating its gross credit exposure to the eligible protection provider.

(3) In no event will the gross credit exposure of the U.S. intermediate holding or the combined U.S. operations to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee.

(f) *Eligible credit and equity derivatives.*

(1) In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization, must reduce its gross credit exposure to the counterparty by the notional amount of any eligible credit or equity derivative from an eligible protection provider that references the counterparty, as applicable.

(2) The U.S. intermediate holding company or with respect to its combined U.S. operations, the foreign banking organization, includes the face amount of the eligible credit or equity derivative when calculating its gross credit exposure to the eligible protection provider; and

(3) In no event will the gross credit exposure of the U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization, to an eligible protection provider with respect to an eligible credit or equity derivative be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible credit or equity derivative.

(g) *Other eligible hedges*. In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or with respect to its combined U.S. operations, a foreign banking organization, may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt or equity security.

Table 2: Collateral Haircuts
Sovereign Entities

	Residual maturity	Haircut without currency mismatch[131]
OECD Country Risk Classification[132] 0-1	≤ 1 year	0.005
	>1 year, ≤ 5 years	0.02
	> 5 years	0.04
OECD Country Risk Classification 2-3	≤ 1 year	0.01
	>1 year, ≤ 5 years	0.03
	> 5 years	0.06

[131] In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8 percent haircut will apply.

[132] OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits.

Corporate and Municipal Bonds that are Bank Eligible Investments

	Residual maturity for debt securities	Haircut without currency mismatch
All	≤ 1 year	0.02
All	>1 year, ≤ 5 years	0.06
All	> 5 years	0.12

Other Eligible Collateral

Main index[133] equities (including convertible bonds)	0.15
Other publicly traded equities (including convertible bonds)	0.25
Mutual funds	Highest haircut applicable to any security in which the fund can invest
Cash collateral held	0

§ 252.245 Compliance.

(a) *Scope of compliance*. A foreign banking organization must ensure the compliance of its U.S. intermediate holding company and combined U.S. operations with the requirements of this section on a daily basis at the end of each business day and submit to the Board on a monthly basis a report demonstrating its daily compliance.

[133] Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the U.S. intermediate holding company, or with respect to the combined U.S. operations, the foreign banking organization can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(b) *Systems*. A foreign banking organization and its U.S. intermediate holding company must establish and maintain procedures to monitor potential changes in relevant law and monitor the terms of its qualifying master netting agreements to support a well-founded position that the agreements appear to be legal, valid, binding, and enforceable under the laws of the relevant jurisdiction.

(c) *Noncompliance*. If either the U.S. intermediate holding company or the foreign banking organization is not in compliance with this subpart, neither the U.S. intermediate holding company nor the combined U.S. operations may engage in any additional credit transactions with such a counterparty in contravention of this subpart, unless the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the foreign banking organization or U.S. financial stability. In considering this determination, the Board will consider whether any of the following circumstances exist:

(1) A decrease in the U.S. intermediate holding company's or foreign banking organization's capital stock and surplus;

(2) The merger of the U.S. intermediate holding company or foreign banking organization with a bank holding company with total consolidated assets of $50 billion or more, a nonbank financial company supervised by the Board, a foreign banking organization, or U.S. intermediate holding company; or

(3) A merger of two unaffiliated counterparties.

(d) *Other measures*. The Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with this subpart.

§ 252.246 Exemptions.

The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(1) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the United States and its agencies (other than as provided in paragraph (2) of this section);

(2) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency;

(3) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the foreign banking organization's home country sovereign entity;

(4) Intraday credit exposure to a counterparty; and

(5) Any transaction that the Board finds should be exempt in the public interest and consistent with the purpose of this section.

Subpart O—Risk Management for Covered Foreign Banking Organizations

§ 252.250 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $10 billion or more*. (1) *Publicly traded foreign banking organizations with total consolidated assets of $10 billion or more*. A foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more is subject to the requirements of § 252.251 of this subpart.

(2) *Foreign banking organizations with total consolidated assets of $50 billion or more*. A foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more is subject to the requirements of § 252.251 of this subpart and, if applicable, § 252.254 of this subpart.

(3) *Total consolidated assets*. For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its FR Y-7Q; or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(4) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of § 252.251 of this subpart unless and until total assets as reported on its FR Y-7Q are less than $10 billion or $50 billion, as applicable, for each of the four most recent consecutive calendar quarters.

(5) *Measurement date*. For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with combined U.S. assets of $50 billion or more.* A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of §§ 252.251 through 252.254 of this subpart.

(1) For purposes of this paragraph, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002, or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002, or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y-9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the FR Y-7Q; or

(B) If the foreign banking organization has not yet filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-7Q; or

(C) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch to the extent such items are not already eliminated in consolidation.

(3) A foreign banking organization will remain subject to the requirements of §§ 252.251 through 252.254 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y-9C or FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) For purposes of paragraphs (b)(1) and (b)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability*. A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability*. A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraphs (a) or (b) of this section, must comply

with the requirements of this subpart beginning 12 months after it becomes subject to this subpart, unless that time is accelerated or extended by the Board in writing.

§ 252.251 U.S. risk committee certification.

(a) *U.S. risk committee certification*. A foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more and a foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more, must, on an annual basis, certify to the Board that it maintains a U.S. risk committee that:

(1) Oversees the risk management practices of the combined U.S. operations of the company; and

(2) Has at least one member with risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations.

(b) *Placement of U.S. risk committee.* (1) Subject to paragraph (b)(2) of this section, a foreign banking organization may maintain its U.S. risk committee either:

(i) As a committee of the global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof), or

(ii) As a committee of the board of directors of its U.S. intermediate holding company.

(2) If a foreign banking organization with combined U.S. assets of $50 billion or more conducts its operations in the United States solely through a U.S. intermediate

holding company, the foreign banking organization must maintain its U.S. risk committee at its U.S. intermediate holding company.

(c) *Timing of certification.* The certification required under paragraph (a) of this section must be filed on an annual basis with the Board concurrently with the Annual Report of Foreign Banking Organizations (FR Y-7).

(d) *Responsibilities of the foreign banking organization.* The foreign banking organization must take appropriate measures to ensure that its combined U.S. operations implement the risk management framework overseen by the U.S. risk committee, and its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(e) *Noncompliance with this section.* If a foreign banking organization is unable to satisfy the requirements of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

§ 252.252 Additional U.S. risk committee requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *Responsibilities of U.S. risk committee*. (1) The U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must:

(i) Review and approve the risk management practices of the combined U.S. operations; and

(ii) Oversee the operation of an appropriate risk management framework for the combined U.S. operations that is commensurate with the capital structure, risk profile, complexity, activities, and size of the company's combined U.S. operations and

consistent with the company's enterprise-wide risk management policies. The framework must include:

(A) Policies and procedures relating to risk management governance, risk management practices, and risk control infrastructure for the combined U.S. operations of the company;

(B) Processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on a combined U.S. operations-basis;

(C) Processes and systems for monitoring compliance with the policies and procedures relating to risk management governance, practices, and risk controls across the company's combined U.S. operations;

(D) Processes designed to ensure effective and timely implementation of corrective actions to address risk management deficiencies;

(E) Specification of authority and independence of management and employees to carry out risk management responsibilities; and

(F) Integration of risk management and control objectives in management goals and compensation structure of the company's combined U.S. operations.

(2) The U.S. risk committee must meet at least quarterly and otherwise as needed, and fully document and maintain records of its proceedings, including risk management decisions.

(b) *Independent member of U.S. risk committee.* A U.S. risk committee must have at least one member who:

(1) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the company or its affiliates during the previous three years; and

(2) Is not a member of the immediate family, as defined in section 225.41(a)(3) of the Board's Regulation Y (12 CFR 225.41(a)(3)), of a person who is, or has been within the last three years, an executive officer, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)) of the company or its affiliates.

(c) *Noncompliance with this section*. If a foreign banking organization is unable to satisfy the requirements of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

§ 252.253 U.S. chief risk officer of a foreign banking organization.

(a) *U.S. chief risk officer*. A foreign banking organization with combined U.S. assets of $50 billion or more or its U.S. intermediate holding company must appoint a U.S. chief risk officer.

(b) *General requirements for U.S. chief risk officer*. A U.S. chief risk officer must:

(1) Have risk management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the foreign banking organization's combined U.S. operations;

(2) Be employed by the U.S. branch, U.S. agency, U.S. intermediate holding company, or another U.S. subsidiary;

(3) Receive appropriate compensation and other incentives to provide an objective assessment of the risks taken by the combined U.S. operations of the foreign banking organization; and

(4) Unless the Board approves an alternative reporting structure based on circumstances specific to the foreign banking organization, report directly to:

(i) The U.S. risk committee; and

(ii) The global chief risk officer or equivalent management official (or officials) of the foreign banking organization who is responsible for overseeing, on an enterprise-wide basis, the implementation of and compliance with policies and procedures relating to risk management governance, practices, and risk controls of the foreign banking organization.

(c) *U.S. chief risk officer responsibilities*. A U.S. chief risk officer is directly responsible for:

(1) Measuring, aggregating, and monitoring risks undertaken by the combined U.S. operations;

(2) Regularly providing information to the U.S. risk committee, global chief risk officer, and the Board regarding the nature of and changes to material risks undertaken by the company's combined U.S. operations, including risk management deficiencies and emerging risks, and how such risks relate to the global operations of the foreign banking organization;

(3) Meeting regularly and as needed with the Board to assess compliance with the requirements of this section;

(4) Implementation of and ongoing compliance with appropriate policies and procedures relating to risk management governance, practices, and risk controls of the company's combined U.S. operations and monitoring compliance with such policies and procedures;

(5) Developing appropriate processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks, on a combined U.S. operations basis;

(6) Managing risk exposures and risk controls within the parameters of the risk control framework for the combined U.S. operations;

(7) Monitoring and testing the risk controls of the combined U.S. operations; and

(8) Ensuring that risk management deficiencies with respect to the combined U.S. operations are resolved in a timely manner.

(d) *Noncompliance with this section*. If a foreign banking organization is unable to satisfy the requirements of this section, the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant U.S. licensing authority in the implementation of such conditions or restrictions.

§ 252.254 Board of directors of a U.S. intermediate holding company.

A U.S. intermediate holding company of an foreign banking organization with total consolidated assets of $50 billion or more must be governed by a board of managers or directors that is elected or appointed by the owners and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and

responsibilities as a board of directors of a company chartered as a corporation under the laws of the United States, any state, or the District of Columbia.

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Subpart P—Stress Test Requirements for Covered Foreign Banking Organizations and Other Foreign Companies

§ 252.260 Definitions.

For purposes of this subpart, the following definitions apply:

Eligible assets means any asset of the U.S. branch or U.S. agency (reduced by the amount of any specifically allocated reserves established on the books in connection with such assets) held in the United States and recorded on the general ledger of a U.S. branch or U.S. agency of the foreign bank, subject to the following exclusions and rules of valuation.

(a) The following assets do not qualify as eligible assets:

(1) Equity securities;

(2) Any assets classified as loss, and accrued income on assets classified loss, doubtful, substandard or value impaired, at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(3) All amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts, except that the Board may determine to treat amounts due from other offices or affiliates located in the United States as eligible assets;

(4) The balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the Board for any other reason until the underlying reasons for the disallowance have been removed;

(5) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(6) Any other asset that the Board determines should not qualify as an eligible asset.

(b) The following rules of valuation apply:

(1) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(2) A restructured foreign debt bond backed by United States Treasury obligations (commonly known as Brady Bonds), whether carried on the books of the U.S. branch or U.S. agency as a loan or a security, is allowed at its book value or market value, whichever is lower;

(3) An asset classified doubtful or substandard at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff, is valued at 50 percent and 20 percent, respectively.

(4) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve which would be required for such exposure at a domestically chartered bank is valued at 0; and the residual exposure is valued at 80 percent.

(5) Precious metals are valued at 75 percent of the market value.

(6) Real estate located in the United States and carried on the accounting records as an asset are eligible at net book value or appraised value, whichever is less.

Foreign 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(a)) that is incorporated or organized under the laws of a country other than the United States.

Liabilities of a U.S. branch and agency network shall include all liabilities of the U.S. branch and agency network, including acceptances and any other liabilities (including contingent liabilities), but excluding the following:

(a) Amounts due to and other liabilities to other offices, agencies, branches and affiliates of such foreign banking organization, including its head office, including unremitted profits; and

(b) Reserves for possible loan losses and other contingencies.

Pre-provision net revenue means revenue less expenses before adjusting for total loan loss provisions.

Stress test cycle has the same meaning as in subpart G of this part.

Total loan loss provisions means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

§ 252.261 Applicability.

(a) *Foreign banking organizations with combined U.S. assets of $50 billion or more.* A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of § 252.263 of this subpart.

(1) *Combined U.S. assets.* For purposes of this paragraph, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002, or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002, or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y-9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q); or

(B) If the foreign banking organization has not yet filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-7Q; or

(C) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *U.S. intercompany transactions.* The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch to the extent such items are not already eliminated in consolidation.

(3) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of § 252.263 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y-9C or FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date.* For purposes of paragraphs (a)(1) and (a)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with total consolidated assets of more than $10 billion but with combined U.S. assets of less than $50 billion.* A foreign banking organization with total consolidated assets of more than $10 billion and with combined U.S. assets of less than $50 billion is subject to the requirements of § 252.264 of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q); or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of § 252.264 of this subpart unless and until total assets as reported on its FR Y-7Q are less than $10 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(4) *Calculation of combined U.S. assets.* For purposes of this paragraph, combined U.S. assets are determined in accordance with paragraph (a)(1) of this section.

(c) *Foreign savings and loan holding companies with total consolidated assets of more than $10 billion.* A foreign savings and loan holding company with total consolidated assets of more than $10 billion is subject to the requirements of § 252.264 of this subpart.

(1) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign savings and loan holding company on the applicable regulatory report, or

(ii) If the foreign savings and loan holding company has not filed an applicable regulatory report for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the applicable regulatory report, or

(iii) If the foreign savings and loan holding company has not yet filed a regulatory report, as determined under applicable accounting standards.

(2) *Cessation of requirements.* A foreign savings and loan holding company will remain subject to the requirements § 252.264 of this subpart unless and until total assets as reported on its applicable regulatory report are less than $10 billion for each of the four most recent consecutive calendar quarters.

(3) *Measurement date.* For purposes of this paragraph, total assets are measured on the last day of the quarter used in calculation of the average.

(d) *U.S. intermediate holding companies.* (1) *U.S. intermediate holding companies with total consolidated assets of $50 billion or more.* A U.S. intermediate holding company with total consolidated assets of $50 billion or more is subject to the requirements of § 252.262(a) of this subpart.

(2) *Other U.S. intermediate holding companies.* A U.S. intermediate holding company that has total consolidated assets of more than $10 billion but less than $50 billion, is subject to the requirements of § 252.262(b) of this subpart.

(3) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on the average of the total consolidated assets:

(i) For the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y-9C, or

(ii) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-9C, or

(iii) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards.

(4) *Cessation of requirements.* A U.S. intermediate holding company will remain subject to:

(i) The requirements of § 252.262(a) of this subpart unless and until total consolidated assets as reported on its FR Y-9C are less than $50 billion for each of the four most recent consecutive calendar quarters; and

(ii) The requirements of § 252.262(b) of this subpart unless and until total consolidated assets as reported on its FR Y-9C are less than $10 billion for each of the four most recent consecutive calendar quarters or the company becomes subject to § 252.262(a) of this subpart.

(5) *Measurement date.* For purposes of this paragraph, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(e) *Initial applicability.* (1) *Foreign banking organizations.* A foreign banking organization or foreign savings and loan holding company that is subject to this subpart as of July 1, 2014, under paragraph (a), (b), or (c) of this section must comply with the

requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that is subject to this subpart as of July 1, 2015, under paragraph (d) of this section, must comply with the requirements of § 252.262 of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(f) *Ongoing applicability.* (1) *Foreign banking organizations*. A foreign banking organization or foreign savings and loan holding company that becomes subject to the requirements of this subpart after July 1, 2014, under paragraph (a), (b), or (c) of this section must comply with the requirements of this subpart beginning in the October of the calendar year after it becomes subject to the requirements of this subpart, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* A U.S. intermediate holding company that becomes subject to the requirements of this subpart after July 1, 2015, under paragraph (d) of this section must comply with the requirements of § 252.262 of this subpart beginning in October of the calendar year after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.262 Stress test requirements for intermediate holding companies.

(a) *Large U.S. intermediate holding companies.* A U.S. intermediate holding company with total consolidated assets $50 billion or more must comply with the requirements of subparts F and G of this part to the same extent and in the same manner as if it were bank holding company with total consolidated assets of $50 billion or more.

(b) *Other U.S. intermediate holding companies*. A U.S. intermediate holding company with total consolidated assets of more than $10 billion but less than $50 billion must comply with the requirements of subpart H of this part to the same extent and in the same manner as if it were a bank holding company with total consolidated assets of more than $10 billion but less than $50 billion, as determined under that subpart.

§ 252.263 Stress test requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *In general.* Unless otherwise determined in writing by the Board, a foreign banking organization with combined U.S. assets of $50 billion or more that has a U.S. branch and U.S. agency network is subject to the requirements of paragraph (c) of this section, unless:

(1) The foreign banking organization is subject to a consolidated capital stress testing regime by its home country supervisor that includes:

(i) An annual supervisory capital stress test conducted by the foreign banking organization's home country supervisor or an annual evaluation and review by the foreign banking organization's home country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization; and

(ii) Requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization.

(2) The foreign banking organization conducts such stress tests and meets the minimum standards set by its home country supervisor with respect to the stress tests;

(3) The foreign banking organization provides information required under paragraph (b) of this section, as applicable; and

(4) The foreign banking organization demonstrates to the Board that it has adequate capital to withstand stressed conditions if, on a net basis, its U.S. branch and agency network provides funding to its foreign banking organization's head office and its non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year.

(b) *Information requirements.* (1) *In general.* A foreign banking organization with total consolidated assets of $50 billion or more must report summary information to the Board by January 5 of each calendar year, unless extended by the Board, about its stress testing activities and results, including the following quantitative and qualitative information:

(i) A description of the types of risks included in the stress test;

(ii) A description of the conditions or scenarios used in the stress test;

(iii) A summary description of the methodologies used in the stress test;

(iv) Estimates of:

(A) Aggregate losses;

(B) Pre-provision net revenue;

(C) Total loan loss provisions;

(D) Net income before taxes; and

(E) Pro forma regulatory capital ratios required to be computed by the home country supervisor of the foreign banking organization and any other relevant capital ratios; and

(v) An explanation of the most significant causes for the changes in regulatory capital ratios.

(2) *Additional information required for foreign banking organizations in a net due from position*. If, on a net basis, its U.S. branch and agency network provides funding to its foreign banking organization's head office and its non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking must report the following information to the Board by the following January 5 of each calendar year, unless extended by the Board:

(i) A detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, total loan loss provisions, and changes in capital positions over the planning horizon;

(ii) Estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by sub-portfolio; and

(iii) Any additional information that the Board requests in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions and thereby continue to support its combined U.S. operations.

(c) *Imposition of additional standards for capital stress tests*. A foreign banking organization that does not meet each of the requirements in paragraph (a)(1)-(4) of this section is subject to the following requirements:

(1) *Asset maintenance requirement*. The U.S. branch and agency network must maintain on a daily basis eligible assets in an amount not less than 108 percent of the preceding quarter's average value of the liabilities of the branch and agency network;

(2) *Stress test requirement*. The foreign banking organization must separately or as part of an enterprise-wide stress test conduct an annual stress test of its U.S. subsidiaries not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company) to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization must report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph (b)(1) of this section or as otherwise specified by the Board.

(3) *Intragroup funding restrictions or liquidity requirements for U.S. operations*. The U.S. branch and agency network of the foreign banking organization and any U.S. subsidiary of the foreign banking organization that is not a subsidiary of a U.S. intermediate holding company may be required to maintain a liquidity buffer or be subject to intragroup funding restrictions as determined by the Board.

(d) *Notice and response.* If the Board determines to impose one or more standards under paragraph (c)(3) of this section, the Board will notify the company no later than 30 days before it proposes to apply additional standard(s). The notification will include a description of the additional standard(s) and the basis for imposing the additional standard(s). Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement that the company comply with the additional standard(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

§ 252.264 Stress test requirements for foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

(a) *In general*. Unless otherwise determined in writing by the Board, a foreign banking organization with total consolidated assets of more than $10 billion that has combined U.S. assets of less than $50 billion and a foreign savings and loan holding company with average total consolidated assets of more than $10 billion will be subject to the standards in paragraph (b) of this section, as applicable, unless:

(1) The company is subject to a stress testing regime by its home country supervisor that includes:

(i) An annual supervisory capital stress test conducted by the company's home country supervisor or an annual evaluation and review by the home country supervisor of an internal capital adequacy stress test conducted by the company; and

(ii) Requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization; and

(2) The company conducts such stress tests and meets the minimum standards set by its home country supervisor with respect to the stress tests.

(b) *Additional standards.* A foreign banking organization or a foreign savings and loan holding company that does not meet each of the requirements in paragraph (a)(1)-(2) of this section is subject to the following requirements, as applicable:

(1) *Asset maintenance requirement.* A U.S. branch and agency network, if any, of the foreign banking organization must maintain on a daily basis eligible assets in an amount not less than 105 percent of the preceding quarter's average value of the branch and agency network's liabilities.

(2) *Stress test requirement*. A foreign banking organization or a foreign savings and loan holding company must separately, or as part of an enterprise-wide stress test, conduct an annual stress test of its U.S. subsidiaries not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company) to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions. The foreign banking organization or foreign savings and loan holding company must report a summary of the results of the stress test to the Board on an annual basis that includes the information required under paragraph § 252.263(b)(1) of this subpart.

Subpart Q - Debt-to-Equity Limits for Certain Covered Foreign Banking Organization

§ 252.270 Definitions.

Debt to equity ratio means the ratio of total liabilities to total equity capital less goodwill.

Debt and *equity* have the same meaning as "total liabilities" and "total equity capital," respectively, as reported by a U.S. intermediate holding company or U.S. subsidiary on the FR Y-9C, or other reporting form prescribed by the Board.

Eligible assets and *liabilities of a U.S. branch and agency network* have the same meaning as in subpart P of this part.

§ 252.271 Debt-to-equity ratio limitation.

(a) *Notice and maximum debt-to-equity ratio requirement*. Beginning no later than 180 days after receiving written notice from the Council or from the Board on behalf of the Council that the Council has made a determination, pursuant to section 165(j) of the Dodd-Frank Act, that the foreign banking organization poses a grave threat to the

financial stability of the United States and that the imposition of a debt to equity requirement is necessary to mitigate such risk--

(1) The U.S. intermediate holding company and any U.S. subsidiary not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company), must achieve and maintain a debt to equity ratio of no more than 15-to-1; and

(2) The U.S. branch and agency network must achieve and maintain on a daily basis eligible assets in an amount not less than 108 percent of the preceding quarter's average value of the U.S. branch and agency network's liabilities.

(b) *Extension*. The Board may, upon request by an foreign banking organization for which the Council has made a determination pursuant to section 165(j) of the Dodd-Frank Act, extend the time period for compliance established under paragraph (a) of this section for up to two additional periods of 90 days each, if the Board determines that such company has made good faith efforts to comply with the debt to equity ratio requirement and that each extension would be in the public interest. Requests for an extension must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest.

(c) *Termination.* The requirements in paragraph (a) of this section cease to apply to a foreign banking organization as of the date it receives notice from the Council of a determination that the company no longer poses a grave threat to the financial stability of the United States and that imposition of the requirements in paragraph (a) of this section are no longer necessary.

Subpart R - Early Remediation Framework for Covered Foreign Banking Organizations

§ 252.280 Definitions.

For purposes of this subpart, the following definitions apply:

Capital distribution means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Board determines to be in substance a distribution of capital.

Eligible assets has the same meaning as in subpart P of this part.

Liabilities of U.S. branch and agency network has the same meaning as in subpart P of this part.

Net income means the net income as reported on line 14 of schedule HI of the U.S. intermediate holding company's FR Y-9C.

Planning horizon means the period of at least nine quarters, beginning on the first day of a stress test cycle under subpart F of this part (on October 1 of each calendar year) over which the stress testing projections extend.

Risk-weighted assets means, for the combined U.S. operations:

(a) Total risk-weighted assets of the U.S. intermediate holding company, as determined under the minimum risk-based capital requirements applicable to the U.S. intermediate holding company under subpart L of this part and as reported on the FR Y-9C, or

(b) If the foreign banking organization has not established a U.S. intermediate holding company, total risk-weighted assets of any U.S. subsidiary of the foreign banking

organization that is not a section 2(h)(2) company, as determined in accordance with the minimum risk-based capital requirements applicable to the foreign banking organization under subpart L of this part and as reported on the FR Y-7 or as otherwise required by the Board; and

(c) Total risk-weighted assets of a U.S. branch or U.S. agency, as determined under the minimum risk-based capital requirements applicable to the foreign banking organization under subpart L of this part and as reported on the FR Y-7 or as otherwise reported by the Board.

Severely adverse scenario has the same meaning as in subpart G of this part.

§ 252.281 Applicability.

(a) *Foreign banking organizations with combined U.S. assets of $50 billion or more*. A foreign banking organization with combined U.S. assets of $50 billion or more is subject to the requirements of §§ 252.282 through 252.284 of this subpart.

(1) *Combined U.S. assets*. For purposes of this subpart, combined U.S. assets is equal to the sum of:

(i) The average of the total assets of each U.S. branch and U.S. agency of the foreign banking organization:

(A) For the four most recent consecutive quarters as reported to the Board on the FFIEC 002, or

(B) If the foreign banking organization has not filed the FFIEC 002 for a U.S. branch or U.S. agency for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FFIEC 002, or

(C) If the foreign banking organization has not yet filed a FFIEC 002 for a U.S. branch or U.S. agency, as determined under applicable accounting standards.

(ii) If a U.S. intermediate holding company has been established, the average of the total consolidated assets of the U.S. intermediate holding company:

(A) For the four most recent consecutive quarters, as reported to the Board on the U.S. intermediate holding company's FR Y-9C, or

(B) If the U.S. intermediate holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-9C, or

(C) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards; and

(iii) If a U.S. intermediate holding company has not been established, the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company):

(A) For the four most recent consecutive quarters, as reported to the Board on the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q); or

(B) If the foreign banking organization has not yet filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y-7Q; or

(C) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *U.S. intercompany transactions*. The company may reduce its combined U.S. assets calculated under this paragraph by the amount corresponding to balances and

transactions between the U.S. subsidiary or U.S. branch or U.S. agency and any other top-tier U.S. subsidiary or U.S. branch or U.S. agency to the extent such items are not already eliminated in consolidation.

(3) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements §§ 252.282 through 252.284 of this subpart unless and until the sum of the total assets of each U.S. branch and U.S. agency as reported on the FFIEC 002 and the total consolidated assets of each U.S. subsidiary as reported on the FR Y-9C or FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date*. For purposes of paragraphs (a)(1) and (a)(3) of this section, total assets and total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *Foreign banking organizations with combined U.S. assets of less than $50 billion*. A foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion is subject to the requirements of §§ 252.282, 252.283, and 252.285 of this subpart.

(1) *Total consolidated assets*. For purposes of this paragraph, total consolidated assets are determined based on the average of the total assets:

(i) For the four most recent consecutive quarters as reported by the foreign banking organization on its Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q); or

(ii) If the foreign banking organization has not filed the FR Y-7Q for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on FR Y-7Q; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) *Combined U.S. assets*. For purposes of this paragraph, combined U.S. assets are determined in accordance with paragraph (a)(1) of this section.

(3) *Cessation of requirements*. A foreign banking organization will remain subject to the requirements of §§ 252.282, 252.283, and 252.285 of this subpart unless and until total assets as reported on its FR Y-7Q are less than $50 billion for each of the four most recent consecutive calendar quarters.

(4) *Measurement date*. For purposes of paragraph (b) of this section, total assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability*. A foreign banking organization that is subject to this subpart as of July 1, 2014, under paragraph (a) or (b) of this section, must comply with the requirements of this subpart beginning on July 1, 2015, unless that time is extended by the Board in writing.

(d) *Ongoing applicability*. A foreign banking organization that becomes subject to this subpart after July 1, 2014, under paragraphs (a) or (b) of this section, must comply with the requirements of this subpart beginning 12 months after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

§ 252.282 Remediation triggering events.

(a) *Capital and leverage*. (1) *Level 1 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation (heightened supervisory review) if the Board determines that the foreign banking organization's capital position is not commensurate with the level and nature of the risks to which it is exposed in the United States, and

(A) Any risk-based capital ratio of the foreign banking organization exceeds the minimum applicable risk-based capital requirements for the foreign banking organization under subpart L of this part by [200-250] basis points or more; and

(B) Any leverage ratio of the foreign banking organization exceeds the minimum applicable leverage requirements for the foreign banking organization under subpart L of this part by [75-125] basis points or more.

(ii) *U.S. intermediate holding company.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation (heightened supervisory review) if the Board determines that the U.S. intermediate holding company of the foreign banking organization is not in compliance with rules regarding capital plans under section 252.212(b) or that the U.S. intermediate holding company's capital position is not commensurate with the level and nature of the risks to which it is exposed, and:

(A) Any risk-based capital ratio of the U.S. intermediate holding company exceeds the minimum applicable risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part by [200-250] basis points or more; and

(B) Any leverage ratio of the U.S. intermediate holding company exceeds the minimum applicable leverage requirements for the U.S. intermediate holding company under subpart L of this part by [75-125] basis points or more.

(2) *Level 2 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation (initial remediation) if:

(A) Any risk-based capital ratio of the foreign banking organization is less than [200-250] basis points above the minimum applicable risk-based capital requirements for the foreign banking organization under subpart L of this part; or

(B) Any leverage ratio of the foreign banking organization is less than [75-125] basis points above the minimum applicable leverage requirements for the foreign banking organization under subpart L of this part.

(ii) *U.S. intermediate holding companies.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation (initial remediation) if:

(A) Any risk-based capital ratio of the U.S. intermediate holding company is less than [200-250] basis points above the minimum applicable risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part; or

(B) Any leverage ratio of the U.S. intermediate holding company is less than [75-125] basis points above the minimum applicable leverage requirements for the U.S. intermediate holding company under subpart L of this part.

(3) *Level 3 remediation triggering events.* (i) *Foreign banking organizations.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation (recovery) if:

(A) For two complete consecutive quarters:

(1) Any risk-based capital ratio of the foreign banking organization is less than [200-250] basis points above the minimum applicable risk-based capital requirements for the foreign banking organization under subpart L of this part;

(2) Any leverage ratio of the foreign banking organization is less than [75-125] basis points above the minimum applicable leverage requirements for the foreign banking organization under subpart L of this part; or

(B)(1) Any risk-based capital ratio of the foreign banking organization is below the applicable minimum risk-based capital requirements for the foreign banking organization under subpart L of this part; or

(2) Any leverage ratio of the foreign banking organization is below the applicable minimum leverage requirements for the foreign banking organization under subpart L of this part.

(ii) *U.S. intermediate holding companies*. The combined U.S. operations of a foreign banking organization are subject to level 3 remediation (recovery) if:

(A) For two complete consecutive quarters:

(*1*) Any risk-based capital ratio of the U.S. intermediate holding company is less than [200-250] basis points above the applicable minimum risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part;

(*2*) Any leverage ratio of the U.S. intermediate holding company is less than [75-125] basis points above the minimum applicable leverage requirements for the U.S. intermediate holding company under subpart L of this part; or

(B)(*1*) Any risk-based capital ratio of the U.S. intermediate holding company is below the applicable minimum risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part; or

(*2*) Any leverage ratio of the U.S. intermediate holding company is below the applicable minimum leverage requirements for the U.S. intermediate holding company under subpart L of this part.

(4) *Level 4 remediation triggering events*. (i) *Foreign banking organizations*. The combined U.S. operations of a foreign banking organization are subject to level 4 remediation (resolution assessment) if:

(A) Any risk-based capital ratio of the foreign banking organization is [100-250] basis points or more below the applicable minimum risk-based capital requirements for the foreign banking organization under subpart L of this part; or

(B) Any leverage ratio of the foreign banking organization is [50-150] basis points or more below the applicable minimum leverage requirements for the foreign banking organization under subpart L of this part.

(ii) *U.S. intermediate holding companies*. The combined U.S. operations of a foreign banking organization are subject to level 4 remediation (resolution assessment) if:

(A) Any risk-based capital ratio of the U.S. intermediate holding company is [100-250] basis points or more below the applicable minimum risk-based capital requirements for the U.S. intermediate holding company under subpart L of this part; or

(B) Any leverage ratio of the U.S. intermediate holding company is [50-150] basis points or more below the applicable minimum leverage requirements for the U.S. intermediate holding company under subpart L of this part.

(b) *Stress Tests.* (1) *Level 1 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation if the foreign banking organization or its U.S. intermediate holding company is not in compliance with rules regarding stress tests pursuant to subpart P of this part.

(2) *Level 2 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 2 remediation if the results of a supervisory stress test of its U.S. intermediate holding company conducted under subpart P of this part reflect a tier 1 common ratio of less than 5.0 percent under the severely adverse scenario during any quarter of the planning horizon.

(3) *Level 3 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation if the results of a supervisory stress test of its U.S. intermediate holding company conducted under subpart P of this part reflect a tier 1 common ratio of less than 3.0 percent under the severely adverse scenario during any quarter of the planning horizon.

(c) *Risk management*. (1) *Level 1 remediation triggering events*. The combined U.S. operations of a foreign banking organization are subject to level 1 remediation if the Board determines that any part of the combined U.S. operations has manifested signs of weakness in meeting the enhanced risk management and risk committee requirements under Subpart O of this part.

(2) *Level 2 remediation triggering events*. The combined U.S. operations of a foreign banking organization are subject to level 2 remediation if the Board determines that any part of the combined U.S. operations has demonstrated multiple deficiencies in

meeting the enhanced risk management or risk committee requirements under subpart O of this part.

(3) *Level 3 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation if the Board determines that any part of the combined U.S. operations is in substantial noncompliance with the enhanced risk management and risk committee requirements under subpart O of this part.

(d) *Liquidity.* (1) *Level 1 remediation triggering event.* The combined U.S. operations of a foreign banking organization are subject to level 1 remediation if the Board determines that any part of the combined U.S. operations has manifested signs of weakness in meeting the enhanced liquidity risk management requirements under subpart M of this part.

(2) *Level 2 remediation triggering event*. The combined U.S. operations of a foreign banking organization are subject to level 2 remediation if the Board determines that any part of the combined U.S. operations has demonstrated multiple deficiencies in meeting the enhanced liquidity risk management requirements under subpart M of this part.

(3) *Level 3 remediation triggering events.* The combined U.S. operations of a foreign banking organization are subject to level 3 remediation if the Board determines that any part of the combined U.S. operations is in substantial noncompliance with the enhanced liquidity risk management requirements under subpart M of this part.

(e) *Market indicators.* (1) *Publication.* The Board will publish for comment annually, or less frequently as appropriate, a list of market indicators based on publicly

available market data, market indicator thresholds, and breach periods that will be used to indicate when the market views a firm to be in financial distress.

(2) *Period of application.* Those market indicators will be referenced for purposes of applying this subparagraph during the twelve-month period beginning at the end of the first full calendar quarter after publication by the Board of the final market indicators, market indicator thresholds, and breach periods.

(3) *Level 1 remediation.* The combined U.S. operations of a foreign banking organization will be subject to level 1 remediation upon receipt of a notice indicating that the Board has found that, with respect to the foreign banking organization or U.S. intermediate holding company, any market indicator has exceeded the market indicator threshold for the breach period.

(f) *Measurement and timing of remediation action events.* (1) *Capital.* For the purposes of this subpart, the capital of a foreign banking organization or U.S. intermediate holding company is deemed to have been calculated as of the most recent of the following:

(i) The date on which the FR Y-9C for the U.S. intermediate holding company or the FR Y-7 for the foreign banking organization is due;

(ii) The as-of date of any calculations of capital by the foreign banking organization or U.S. intermediate holding company submitted to the Board, pursuant to a Board request to the foreign banking organization or U.S. intermediate holding company to calculate its ratios; or

(iii) A final inspection report is delivered to the U.S. intermediate holding company that includes capital ratios calculated more recently than the most recent FR Y-9C submitted by the U.S. intermediate holding company to the Board.

(2) *Stress tests*. For purposes of this paragraph, the ratios calculated under the **s**upervisory stress test apply as of the date the Board reports the supervisory stress test results to the U.S. intermediate holding company pursuant to subpart P of this part.

§ 252.283 Notice and remedies.

(a) *Notice to foreign banking organization of remediation action event.* If the Board determines that a remediation triggering event set forth in § 252.282 of this subpart has occurred with respect to a foreign banking organization, the Board will notify the foreign banking organization of the event and the remediation actions under §§ 252.284 or 252.285 of this subpart applicable to the foreign banking organization as a result of the event. The applicable remediation actions will apply from the date such notice is issued.

(b) *Notification of change in status.* A foreign banking organization must provide notice to the Board within 5 business days of the date it determines that one or more triggering events set forth in § 252.282 of this subpart has occurred, identifying the nature of the triggering event or change in circumstances.

(c) *Termination of remediation action.* A foreign banking organization subject to one or more remediation actions under this subpart will remain subject to the remediation action until the Board provides written notice to the foreign banking organization that its financial condition or risk management no longer warrants application of the requirement.

§ 252.284 Remediation actions for U.S. operations of foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *Level 1 remediation (heightened supervisory review).* (1) Under level 1 remediation, the Board will conduct a targeted supervisory review of the combined U.S. operations of a foreign banking organization with combined U.S. assets of $50 billion or more, to evaluate whether the combined U.S. operations are experiencing financial distress or material risk management weaknesses, including with respect to exposures that the combined operations have to the foreign banking organization, such that further decline of the combined U.S. operations is probable.

(2) If, upon completion of the review, the Board determines that the combined U.S. operations of a foreign banking organization are experiencing financial distress or material risk management weaknesses such that further decline of the combined U.S. operations is probable, the Board may determine to subject the foreign banking organization to initial remediation (level 2 remediation).

(b) *Level 2 remediation (initial remediation).* (1) The U.S. intermediate holding company of a foreign banking organization with combined U.S. assets of $50 billion or more that is subject to level 2 remediation may not make capital distributions during any calendar quarter in an amount that exceeds 50 percent of the average of the U.S. intermediate holding company's net income in the preceding two calendar quarters.

(2) The U.S. branch and agency network of a foreign banking organization subject to level 2 remediation:

(i) Must not provide funding on a net basis to its foreign banking organization's head office and its non-U.S. affiliates, calculated on a daily basis; and

(ii) Must maintain in accounts in the United States highly liquid assets in an amount sufficient to cover the 30-day net stressed cash flow need calculated under § 252.227 of this part; provided that this requirement would cease to apply were the foreign banking organization to become subject to level 3 remediation.

(3) The combined U.S. operations of a foreign banking organization subject to level 2 remediation may not:

(i) Permit its average daily combined U.S. assets during any calendar quarter to exceed its average daily combined U.S. assets during the preceding calendar quarter by more than 5 percent;

(ii) Permit its average daily combined U.S. assets during any calendar year to exceed its average daily combined U.S. assets during the preceding calendar year by more than 5 percent;

(iii) Permit its average daily risk-weighted assets during any calendar quarter to exceed its average daily risk-weighted assets during the preceding calendar quarter by more than 5 percent; or

(iv) Permit its average daily risk-weighted assets during any calendar year to exceed its average daily risk-weighted assets during the preceding calendar year by more than 5 percent.

(4) A foreign banking organization subject to level 2 remediation:

(i) May not directly or indirectly acquire any controlling interest in any U.S. company (including an insured depository institution), establish or acquire any U.S. branch, U.S. agency, or representative office in the United States, or engage in any new line of business in the United States, without the prior approval of the Board; and

(ii) Must enter into a non-public memorandum of understanding or other enforcement action acceptable to the Board to improve its financial and managerial condition in the United States.

(5) The Board may, in its discretion, impose additional limitations or conditions on the conduct or activities of the combined U.S. operations of a foreign banking organization subject to level 2 remediation that the Board finds to be appropriate and consistent with the purposes of Title I of the Dodd-Frank Act.

(c) *Level 3 remediation (recovery).* (1) A foreign banking organization with combined U.S. assets of $50 billion or more that is subject to level 3 remediation and its U.S. intermediate holding company must enter into a written agreement or other formal enforcement action with the Board that specifies that the U.S. intermediate holding company must take appropriate actions to restore its capital to or above the applicable minimum risk-based and leverage requirements under subpart L of this part and take such other remedial actions as prescribed by the Board. If the company fails to satisfy the requirements of such a written agreement, the company may be required to divest assets identified by the Board as contributing to the financial decline or posing substantial risk of contributing to further financial decline of the company.

(2) The U.S. intermediate holding company and any other U.S. subsidiary of the foreign banking organization may not make capital distributions.

(3) The combined U.S. operations of a foreign banking organization subject to level 3 remediation may not:

(i) Permit its average daily combined U.S. assets during any calendar quarter to exceed its average daily combined U.S. assets during the preceding calendar quarter;

(ii) Permit its average daily combined U.S. assets during any calendar year to exceed its average daily combined U.S. assets during the preceding calendar year;

(iii) Permit its average daily risk-weighted assets during any calendar quarter to exceed its average daily risk-weighted assets during the preceding calendar quarter; or

(iv) Permit its average daily risk-weighted assets during any calendar year to exceed its average daily risk-weighted assets during the preceding calendar year.

(4) A foreign banking organization subject to level 3 remediation may not directly or indirectly acquire any controlling interest in any U.S. company (including an insured depository institution), establish or acquire any U.S. branch, U.S. agency, office, or other place of business in the United States, or engage in any new line of business in the United States, without the prior approval of the Board.

(5) A foreign banking organization subject to level 3 remediation and its U.S. intermediate holding company may not increase the compensation of, or pay any bonus to, an executive officer whose primary responsibility pertains to any part of the combined U.S. operations, or any member of the board of directors (or its equivalent) of the U.S. intermediate holding company.

(6) The U.S. intermediate holding company of a foreign banking organization subject to level 3 remediation may also be required by the Board to:

(i) Replace the U.S. intermediate holding company's board of directors;

(ii) Dismiss from office any executive officer whose primary responsibility pertains to any part of the combined U.S. operations or member of the U.S. intermediate holding company's board of directors who held office for more than 180 days

immediately prior to receipt of notice pursuant to § 252.283 of this subpart that the foreign banking organization is subject to level 3 remediation; or

(iii) Add qualified U.S. senior executive officers subject to approval by the Board.

(7) The U.S. branch and agency network of a foreign banking organization subject to level 3 remediation must not provide funding to the foreign banking organization's head office and its non-U.S. affiliates to the U.S. branch and agency network, calculated on a daily basis, and must maintain on a daily basis eligible assets in an amount not less than 108 percent of the preceding quarter's average value of the U.S. branch and agency network's liabilities.

(8) The Board may, in its discretion, impose additional limitations or conditions on the conduct or activities of the combined U.S. operations of a foreign banking organization subject to level 3 remediation that the Board finds to be appropriate and consistent with the purposes of Title I of the Dodd-Frank Act, including restrictions on transactions with affiliates.

(d) *Level 4 remediation (resolution assessment).* The Board will consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the combined U.S. operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch and agency network be terminated or that a U.S. subsidiary be resolved.

§ 252.285 Remediation actions for foreign banking organizations with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion.

(a) *Level 1 remediation (heightened supervisory review).* (1) Under level 1 remediation, the Board will determine whether to conduct a targeted supervisory review of the combined U.S. operations of a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion that takes into account the condition of the foreign banking organization on a consolidated basis, as appropriate, to evaluate whether the combined U.S. operations are experiencing financial distress or material risk management weaknesses such that further decline of the combined U.S. operations is probable.

(2) If, upon completion of the review, the Board determines that the combined U.S. operations are experiencing financial distress or material risk management weaknesses such that further decline of the combined U.S. operations is probable, the Board may subject the foreign banking organization to initial remediation (level 2 remediation) or other remedial actions as the Board determines appropriate.

(b) *Level 2 remediation (initial remediation).* The Board will determine, in its discretion, whether to impose any of the standards set forth in sections 252.284(b)(1)-(b)(5) of this subpart on any part of the combined U.S. operations of a foreign banking organization with total consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion that is subject to level 2 remediation.

(c) *Level 3 remediation (recovery).* The Board will determine, in its discretion, whether to impose any of the standards set forth in sections 252.284(c)(1)-(c)(8) of this subpart on any part of the U.S. operations of a foreign banking organization with total

consolidated assets of $50 billion or more and with combined U.S. assets of less than $50 billion that is subject to level 3 remediation.

(d) *Level 4 remediation (resolution assessment).* The Board will consider whether the combined U.S. operations of the foreign banking organization warrant termination or resolution based on the financial decline of the combined U.S. operations, the factors contained in section 203 of the Dodd-Frank Act as applicable, or any other relevant factor. If such a determination is made, the Board will take actions that include recommending to the appropriate financial regulatory agencies that an entity within the U.S. branch and agency network be terminated or that a U.S. subsidiary be resolved.

By order of the Board of Governors of the Federal Reserve System, December 14, 2012.

Robert deV. Frierson
Secretary of the Board.