FEDERAL RESERVE SYSTEM

12 CFR Part 252

Regulation YY; Docket No. 1438

RIN 7100-AD-86

Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations

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

ACTION: Final rule; request for public comment on Paperwork Reduction Act burden estimates only.

SUMMARY: The Board is adopting amendments to Regulation YY (12 CFR part 252) to implement certain of the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress-test requirements, and a 15-to-1 debt-to-equity limit for companies that the Financial Stability Oversight Council (Council) has determined pose a grave threat to financial stability. The amendments also establish risk-committee requirements and capital stress-testing requirements for certain bank holding companies and foreign banking organizations with total consolidated assets of $10 billion or more. The rule does not impose enhanced prudential standards on nonbank financial companies designated by the Council for supervision by the Board.

DATES: Effective date: June 1, 2014. Comments must be submitted on the Paperwork Reduction Act burden estimates only by [INSERT 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the Paperwork Reduction Act burden estimates only, 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.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Senior Associate Director, (202) 452-2263, Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475-6316, Jordan Bleicher, Supervisory Financial Analyst, (202) 973-6123, Division of Banking

Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452-2277, or Christine E. Graham, Counsel, (202) 452-3005, Legal Division.

Risk-based and Leverage Capital Requirements: Anna Lee Hewko, Deputy Associate Director, (202) 530-6260, or Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475-6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452-2036, or April C. Snyder, Senior Counsel, (202) 452-3099, Legal Division.

Liquidity Requirements: David Emmel, Manager, (202) 603-9017, Division of Banking Supervision and Regulation; or April C. Snyder, Senior Counsel, (202) 452-3099, or Dafina Stewart, Senior Attorney, (202) 452-3876, Legal Division.

Risk Management and Risk Committee Requirements: David E. Palmer, Senior Supervisory Financial Analyst, (202) 452-2904, Division of Banking Supervision and Regulation; or Jeremy C. Kress, Attorney, (202) 872-7589, Legal Division.

Stress-test requirements: Tim Clark, Senior Associate Director, (202) 452-5264, Lisa Ryu, Deputy Associate Director, (202) 263-4833, or Joseph Cox, Financial Analyst, (202) 452-3216, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452-2036, or Christine E. Graham, Counsel, (202) 452-3005, Legal Division.

Debt-to-Equity Limits: Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475-6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452-2036, or David W. Alexander, Senior Attorney, (202) 452-2877, Legal Division.

U.S. Intermediate Holding Company Requirement for Foreign Banking Organizations: Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475-6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452-

2036, April C. Snyder, Senior Counsel, (202) 452-3099, Christine E. Graham, Counsel, (202) 452-3005, or David W. Alexander, Senior Attorney, (202) 452-2877, Legal Division.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. The Dodd-Frank Act Mandate

B. Background of the Proposals and Overview of the Final Rule

II. Final Rule and Major Changes from the Proposals

A. Description of the Final Rule

B. Major Changes from the Proposals

1. Threshold for Forming a U.S. Intermediate Holding Company

2. Implementation Timing for Foreign Banking Organizations

3. Nonbank Financial Companies Supervised by the Board

4. Other Changes

C. Application to Savings and Loan Holding Companies Engaged in Substantial Banking Activities

III. Enhanced Prudential Standards for Bank Holding Companies

A. Enhanced Risk-based and Leverage Capital Requirements, Capital Planning and Stress Testing

1. Capital Planning and Stress Testing

2. Risk-based Capital and Leverage Requirements

B. Risk Management and Risk Committee Requirements

1. Responsibilities of the Risk Committee

2. Risk Committee Requirements

3. Risk Committee For Bank Holding Companies with Total Consolidated Assets of More than $10 Billion and Less than $50 Billion

3. Additional Enhanced Risk-management Standards for Bank Holding Companies with Total Consolidated Assets of $50 billion or More

C. Liquidity Requirements for Bank Holding Companies

1. General

2. Framework for Managing Liquidity Risk

3. Independent Review

4. Cash-flow Projections

5. Contingency Funding Plan

6. Liquidity Risk Limits

7. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

8. Liquidity Stress Testing

9. Liquidity Buffer

10. Short-term Debt Limits

D. Debt-to-equity Limits for Bank Holding Companies

IV. Enhanced Prudential Standards for Foreign Banking Organizations

A. Background

1. Considerations in Developing the Proposal

2. The Financial Stability Mandate of the Dodd-Frank Act

3. Summary of the Proposal

4. Targeted Adjustments to Foreign Bank Regulation

B. U.S. Intermediate Holding Company Requirement

1. Adopting the U.S. Intermediate Holding Company Requirement as an Additional Prudential Standard

2. Restructuring Costs

3. *Scope of the Application of the U.S. Intermediate Holding Company Requirement*

4. *Method for Calculating the Asset Threshold*

5. *Formation of the U.S. Intermediate Holding Company*

6. *Virtual U.S. Intermediate Holding Company*

7. *Application of the Enhanced Prudential Standards to a Bank Holding Company that is a Subsidiary of a Foreign Banking Organization*

C. Capital Requirements

1. *Risk-based and Leverage Capital Requirements Applicable to U.S. Intermediate Holding Companies*

2. *Capital Planning Requirements*

3. *Parent Capital Requirements*

D. Risk Management Requirements for Foreign Banking Organizations

1. *Risk Committee Requirements for Foreign Banking Organizations with $10 billion or More in Total Consolidated Assets but less than $50 Billion in Combined U.S. Assets*

2. *Risk-management and Risk Committee Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.*

E. Liquidity Requirements for Foreign Banking Organizations

1. *General Comments*

2. *Framework for Managing Liquidity Risk*

3. *Independent Review*

4. *Cash-flow Projections*

5. *Contingency Funding Plan*

6. *Liquidity Risk Limits*

7. *Collateral, Legal Entity and Intraday Liquidity Risk Monitoring*

8. *Liquidity Stress Testing*

9. Liquidity Buffer

10. 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

11. Short-term Debt Limits

F. Stress-test Requirements for Foreign Banking Organizations

1. U.S. Intermediate Holding Companies

2. Stress-test Requirements for Branches and Agencies of Foreign Banks with Combined U.S. Assets of $50 Billion or More

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

4. Additional Information Required from a Foreign Banking Organization with U.S. Branches and Agencies that are in an Aggregate Net Due From Position

5. Supplemental Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More that do not Comply with Stress-testing Requirements

6. Stress-test Requirements for Foreign Banking Organizations with Total Consolidated Assets of More than $50 Billion but Combined U.S. Assets of Less than $50 Billion

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

G. Debt-to-equity Limits for Foreign Banking Organizations

V. Administrative Law Matters

A. Regulatory Flexibility Act

B. Paperwork Reduction Act

C. Plain Language

I. Introduction

A. The Dodd-Frank Act Mandate

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or the Act)[1] directs the Board of Governors of the Federal Reserve System (Board) to establish prudential standards for bank holding companies with total consolidated assets of $50 billion or more and for nonbank financial companies that the Financial Stability Oversight Council (Council) has determined will be supervised by the Board (nonbank financial companies supervised by the Board) in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities of, large, interconnected financial institutions. The Dodd-Frank Act requires the enhanced prudential standards established by the Board under section 165 of the Act to be more stringent than those standards applicable to other bank holding companies and to nonbank financial companies that do not present similar risks to U.S. financial stability.[2] The standards must also increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Board must take into account the difference among bank holding companies and nonbank financial companies based on the same factors.[3] Generally, the Board has authority under section 165 of the Act to tailor the application of the standards, including differentiating among companies subject to section 165 on an individual basis or by category. In applying section 165 to foreign banking organizations, the Dodd-Frank Act also directs the Board to give

---

[1] Public Law 111-203, 124 Stat 1376 (2010).

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

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

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.[4]

The prudential standards must include enhanced risk-based and leverage capital requirements, liquidity requirements, 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 the financial stability of the United States. Section 165 also permits the Board to establish other prudential standards in addition to the mandatory standards, including three enumerated standards—a contingent capital requirement, enhanced public disclosures, and short-term debt limits—and any "other prudential standards" that the Board determines are "appropriate."

B. Background of the Proposals and Overview of the Final Rule

The Board invited comment on two separate proposals to implement the enhanced prudential standards included in this final rule. On January 5, 2012, the Board invited comment on proposed rules to implement the provisions of sections 165 and 166 of the Dodd-Frank Act for bank holding companies with total consolidated assets of $50 billion or more and for nonbank financial firms supervised by the Board (domestic proposal).[5] On December 28, 2012, the Board invited 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 (foreign

[4] 12 U.S.C. 5365(a)(2).

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

proposal,[6] and, together with the domestic proposal, the proposals). Consistent with the Dodd-Frank Act mandate, and in furtherance of financial stability, the proposals contained similar enhanced risk-based and leverage capital 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 the financial stability of the United States. The foreign proposal also included a U.S. intermediate holding company requirement for a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets, other than those held by a U.S. branch or agency or U.S. subsidiary held under section 2(h)(2) of the Bank Holding Company Act[7] (U.S. non-branch assets), of $10 billion or more.

The Board received over 100 public comments on the domestic proposal, and over 60 public comments on the foreign proposal, from U.S. and foreign firms, public officials (including members of Congress), public interest groups, private individuals, and other interested parties. While many commenters expressed support for the broad goals of the proposed rules, some commenters criticized specific aspects of the proposals. As discussed in this preamble, the final rule makes adjustments to the proposed rules that respond to commenters' concerns. Major changes from the proposals are discussed below in section II.B of this preamble.

---

[6] 77 FR 76628 (December 28, 2012).

[7] See 12 U.S.C. 1841(h)(2).

II. Final Rule and Major Changes from the Proposals

A. Description of the Final Rule

The final rule implements elements of both the domestic and foreign proposals. For a bank holding company with total consolidated assets of $50 billion or more, it incorporates as an enhanced prudential standard the previously-issued capital planning and stress testing requirements and imposes enhanced liquidity requirements, enhanced risk-management requirements, and the debt-to-equity limit for those companies that the Council has determined pose a grave threat to the financial stability of the United States. It also establishes risk-committee requirements for a publicly traded bank holding company with total consolidated assets of $10 billion or more. For a foreign banking organization with total consolidated assets of $50 billion or more, the final rule implements enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management requirements, stress testing requirements, and the debt-to-equity limit for those companies that the Council has determined pose a grave threat to the financial stability of the United States. In addition, it requires foreign banking organizations with U.S. non-branch assets, as defined in the final rule, of $50 billion or more to form a U.S. intermediate holding company and imposes enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management requirements, and stress-testing requirements on the U.S. intermediate holding company. The final rule also establishes a risk-committee requirement for publicly traded foreign banking organizations with total consolidated assets of $10 billion or more and implements stress-testing requirements for foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

The prudential standards established for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board (covered companies) must be more stringent than the standards and requirements applicable to bank holding companies and nonbank financial companies that do not present similar risks to the financial stability of the United States.[8]

The Board is developing an integrated set of prudential standards for covered companies through a series of rulemakings, including the resolution plan rule, the capital plan rule, the stress test rules, and this final rule. As discussed further in this preamble, the Board will continue to develop these standards through future rules and orders. The integrated set of standards will result in a more stringent regulatory regime to mitigate risks to U.S. financial stability, and include measures that increase the resiliency of covered companies and reduce the impact on U.S. financial stability were these firms to fail. These rules are applicable only to covered companies, and do not apply to smaller firms that present less risk to U.S. financial stability.

As explained more fully throughout the preamble, the final rules result in enhanced supervision and regulation of covered companies that is more stringent based on the systemic footprint and risk characteristics of the company than the provisions applicable to firms that are not covered companies and that take into account differences among covered companies based on these factors.[9]

For instance, bank holding companies and U.S. intermediate holding companies of foreign banking organizations are subject to the capital plan rule, which requires a company to

---

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

[9] See 12 U.S.C. 5365(b)(3).

project its regulatory capital ratios under stressed conditions and demonstrate the ability to meet the Board's minimum regulatory capital requirements. These minimum regulatory capital requirements include leverage and risk-based capital requirements. By requiring firms to demonstrate the ability to meet these capital requirements under stressed conditions, the capital plan rule subjects a company to more stringent standards as the leverage, off-balance sheet exposures, and interconnectedness of a covered company increase. For example, with respect to leverage, the Board's minimum leverage capital requirements require a U.S. company subject to the requirements to hold capital based on its total consolidated assets.[10] The more on-balance sheet assets that a company holds, the more capital the company must hold to comply with the minimum leverage capital requirement. Companies that have $250 billion or more in total consolidated assets or $10 billion or more in total foreign exposure based on year-end financial reports will become subject to a supplementary leverage ratio, which requires the companies to hold leverage capital for both their on- and off-balance sheet assets.[11] For a company subject to the supplementary leverage ratio, the more on- and off-balance sheet assets that the company holds, the more capital the company must hold to comply with the minimum leverage capital requirement.[12] The Board's risk-based capital rules require a company subject to the rules to deduct an investment in an unconsolidated financial institution above certain thresholds.[13] The

---

[10] See 12 CFR 217.10(a)(4); 12 CFR part 208, Appendix B; 12 CFR part 225, Appendix D.

[11] 12 CFR 217.10(a)(5).

[12] More generally, the Board's capital rules require all companies subject to the rules to hold risk-based capital based on their off-balance sheet exposures. The more off-balance sheet exposures that a company holds, the more risk-based capital the company must hold. See 12 CFR 217.33; 12 CFR 217, subpart E; 12 CFR part 208, Appendix A, section III.D.; 12 CFR part 225, Appendix A, section III.D.

[13] 12 CFR 217.22(c)(4)-(5).

more investments in such unconsolidated financial institutions that a company has above these thresholds, the more deductions that a company must take from its regulatory capital.

Covered bank holding companies and foreign banking organizations are subject to the enhanced liquidity standards included in this final rule, which will result in a more stringent set of standards as the liquidity risk of a company's liabilities increases. For instance, the enhanced liquidity standards require covered bank holding companies and foreign banking organizations to maintain a liquidity buffer sufficient to cover net cash outflows based on a 30-day stress test. In general, the more a company relies on short-term funding, the larger the required buffer will be.

The set of enhanced prudential standards for bank holding companies and foreign banking organizations increases in stringency based on the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company. For example, the resolution plan rule applies a tailored resolution plan regime for smaller, less complex bank holding companies and foreign banking organizations that is materially less stringent than what is required of larger organizations. Similarly, the Board has tailored the application of and its supervisory expectations regarding stress testing and capital planning based on the size and complexity of covered companies. For instance, the Board applies the global market shock to the trading and private equity positions of the largest bank holding companies subject to the market risk requirements, and requires bank holding companies with substantial trading and custodial operations to include a counterparty default scenario component in their stress tests.[14] In addition, the capital, liquidity, risk-management, and stress testing requirements applicable to

---

[14] See, e.g., Comprehensive Capital Analysis and Review 2014: Summary Instructions and Guidance (November 1, 2013), available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131101a2.pdf.

foreign banking organizations with combined U.S. assets of less than $50 billion are substantially reduced as compared to the requirements applicable to foreign banking organizations with a larger U.S. presence.

The Dodd-Frank Act requires the Board to consider the importance of the company as a source of credit for households, businesses, and state governments, source of liquidity for the U.S. financial system, and source of credit for low-income, minority, or underserved communities. As a whole, the standards increase the resiliency of bank holding companies and foreign banking organizations, which enables them to continue serving as financial intermediaries for the U.S. financial system and sources of credit to households, businesses, state governments, and low-income, minority, or underserved communities during times of stress.

The enhanced prudential standards for bank holding companies and foreign banking organizations take into account the extent to which the company is subject to existing regulatory scrutiny. As explained more below, for bank holding companies, the final rule applies enhanced prudential standards at the consolidated bank holding company, and does not directly apply any standards to functionally regulated subsidiaries. In recognition of the home-country supervisory regime applicable to foreign banking organizations, the final rule relies on the home country capital and stress testing regimes applicable to the foreign banking organization. However, to the extent that a foreign banking organization's home country capital or stress test standards do not meet the standards set forth in the final rule, the Board will impose requirements, conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization.

The Board has designed the final rule to reduce the potential that small changes in the characteristics of the company would result in sharp, discontinuous changes in the standards.

The enhanced prudential standards regime generally mitigates the potential for sharp, discontinuous changes by generally measuring the threshold for applicability of the enhanced prudential standards over a four-quarter period and providing for transition periods prior to application of the standards.

The final rule also takes account of differences among covered companies based on whether a company owns an insured depository institution and adapts the required standards as appropriate in light of any predominant line of business of such a company. Bank holding companies, by definition, control an insured depository institution, and engage in banking as a predominant line of business. Foreign banking organizations have a banking presence in the United States through either control of an insured depository institution or through U.S. branches or agencies. Foreign banking organizations that have branches and agencies are treated as if they were bank holding companies for purposes of the Bank Holding Company Act and the Dodd-Frank Act. By statute, both uninsured and insured U.S. branches and agencies of foreign banks may receive Federal Reserve advances on the same terms and conditions that apply to domestic insured state member banks. The risks to financial stability presented by foreign banking organizations with U.S. branches and agencies generally are not dependent on whether the foreign banking organization has a U.S. insured depository institution. In many cases, insured depository institution subsidiaries of foreign banks form a small percentage of their U.S. assets.

The stress-test requirements included in the domestic proposal for bank holding companies or nonbank financial companies supervised by the Board were finalized separately in

2012.[15] Furthermore, the Board continues to develop the single counterparty credit limits and early remediation requirements for bank holding companies and foreign banking organizations. With respect to single counterparty credit limits, the Basel Committee on Banking Supervision (Basel Committee)[16] is developing a similar large exposure regime that would apply to all global banks. The Board is participating in the Basel Committee's initiative and intends to take into account this effort in implementing the single counterparty credit limits under the Dodd-Frank Act. The Board also intends to take into account information gained through its quantitative impact study on the effects of the limit and comments received on the domestic and foreign proposals. With respect to early remediation requirements, the Board continues to review the comments.

Finally, the Board has determined not to impose enhanced prudential standards on nonbank financial companies supervised by the Board through this final rule. The Board intends separately to issue orders or rules imposing such standards on each nonbank financial company designated by the Council for Board supervision, as further described below.

The Board has consulted with all Council members and member agencies, including those that primarily supervise a functionally regulated subsidiary or depository institution subsidiary of a bank holding company or foreign banking organization subject to the proposals

---

[15] 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 for U.S. nonbank financial companies supervised by the Board. 77 FR 62378 (October 12, 2012).

[16] The Basel Committee is a committee of banking supervisory authorities, which was established by the central bank governors of the G-10 countries in 1975. More information regarding the Basel Committee and its membership is available at: http://www.bis.org/bcbs/about.htm. Documents issued by the Basel Committee are available through the Bank for International Settlements website available at: http:// www.bis.org.

by providing periodic updates to agencies represented on the Council and their staff on the development of the final enhanced prudential standards.[17] The final rule reflects comments provided to the Board as a part of this consultation process. The Council has not made any formal recommendations under section 115 of the Dodd-Frank Act to date.

B. Major Changes from the Proposals

1. Threshold for Forming a U.S. Intermediate Holding Company

The foreign proposal would have required a foreign banking organization with U.S. non-branch assets of $10 billion or more to establish a U.S. intermediate holding company. Many commenters argued that the proposed threshold was too low, asserting that the U.S. operations of entities with $10 billion of U.S. non-branch assets do not present risks to U.S. financial stability. These commenters suggested that a minimum of $50 billion in U.S. non-branch assets is a more appropriate threshold for the U.S. intermediate holding company requirement.[18] After considering these comments and the other statutory considerations in section 165 of the Dodd-Frank Act, the Board is raising the final rule's threshold for the U.S. intermediate holding company requirement from $10 billion to $50 billion of U.S. non-branch assets.

2. Implementation Timing for Foreign Banking Organizations

The proposed rule would have required a foreign banking organization with U.S. non-branch assets of $50 billion or more as of July 1, 2014, to establish a U.S. intermediate holding company by July 1, 2015, unless that time were extended by the Board in writing.[19] A foreign

---

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

[18] These comments are discussed more fully below in section IV.B.3 of this preamble.

[19] Under the proposal, total consolidated assets of a foreign banking organization were determined based on the information provided through the Board's regulatory reporting forms, as discussed further below.

banking organization with U.S. non-branch assets equal to or exceeding the asset threshold after July 1, 2014 would have been required to establish a U.S. intermediate holding company within 12 months after it met or exceeded the asset threshold, unless that time were accelerated or extended by the Board in writing. A number of commenters requested a longer transition period for the proposed requirements, citing the need to reorganize their U.S. operations and address attendant restructuring costs and tax costs, as well as the costs of compliance with other regulatory initiatives.[20]

In response to comments, the final rule would extend the initial compliance date for foreign banking organizations by one year to July 1, 2016.[21] The extended transition period would provide foreign banking organizations that exceed the asset threshold on the effective date of the rule with a reasonable transition period during which to prepare for the structural reorganization required by the final rule and for compliance with the enhanced prudential standards.

In order to ensure that foreign banking organizations are taking the necessary steps toward meeting the requirements of the final rule, the final rule requires a foreign banking

---

[20] These comments are discussed more fully below in section IV.B.2 of this preamble.

[21] The initial measurement date would be deferred from July 1, 2014 to July 1, 2015. Generally, the calculation will be based on the average of U.S. non-branch assets reported by the foreign banking organization on the FR Y-7Q for the four most recent quarters. If U.S. non-branch assets have not been reported on the FR Y-7Q for the full four most recent quarters, the calculation will be based on the average of the U.S. non-branch assets as reported on the FR Y-7Q for the most recent quarter or quarters. On July 1, 2016, the U.S. intermediate holding company would be required to hold the foreign banking organization's ownership interest in any U.S. bank holding company subsidiary, any depository institution subsidiary, and U.S. subsidiaries representing 90 percent of the foreign banking organization's assets not held under the bank holding company. The final rule would also provide a foreign banking organization until July 1, 2017, to transfer its ownership interest in any residual U.S. subsidiaries to the U.S. intermediate holding company.

organization that has U.S. non-branch assets of $50 billion or more as of June 30, 2014, to submit an implementation plan by January 1, 2015 outlining its proposed process to come into compliance with the rule's requirements.[22]

In addition, to address commenters' concerns about the cost of compliance with leverage capital requirements proposed for the U.S. intermediate holding company, the final rule generally delays application of leverage capital requirements to the U.S. intermediate holding company until January 1, 2018.

Finally, a foreign banking organization that has U.S. non-branch assets that equal or exceed $50 billion after July 1, 2015 has two years to come into compliance with the final rule, instead of 12 months under the proposal. These modifications to the transition period will enable a foreign banking organization to plan the transactions necessary to bring its U.S. subsidiaries under the U.S. intermediate holding company and mitigate costs.

3. *Nonbank Financial Companies Supervised by the Board*

The proposals would have provided that the standards applicable to bank holding companies and foreign banking organizations would serve as the baseline for enhanced prudential standards applicable to U.S. and foreign nonbank financial companies, respectively. Many commenters representing nonbank financial companies asserted that the proposed

---

[22] As described in section IV.B.5 of this preamble, the implementation plan is intended to facilitate compliance with the U.S. intermediate holding company requirement. The implementation plan must include: a list of the foreign banking organization's U.S. subsidiaries; a projected timeline for the transfer by the foreign banking organization of its ownership interest in those subsidiaries to the U.S. intermediate holding company; a timeline of all planned capital actions or strategies for capital accumulation that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements; quarterly pro forma financial statements for the U.S. intermediate holding company; and a plan for compliance with the liquidity and risk-management requirements in the final rule.

enhanced prudential standards were inappropriate for nonbank financial companies because of their business models and activities, as well as the existing regulatory regime applicable to certain nonbank financial companies. These commenters also expressed concern that the proposals as applied to nonbank financial companies supervised by the Board were too broad, and the proposals did not provide sufficient information for nonbank financial companies supervised by the Board to understand application of the proposed standards.

The Board recognizes that the companies designated by the Council may have a range of businesses, structures, and activities, that the types of risks to financial stability posed by nonbank financial companies will likely vary, and that the enhanced prudential standards applicable to bank holding companies and foreign banking organizations may not be appropriate, in whole or in part, for all nonbank financial companies. Accordingly, the Board is not applying enhanced prudential standards to nonbank financial companies supervised by the Board through this rulemaking. Instead, following designation of a nonbank financial company for supervision by the Board, the Board intends thoroughly to assess the business model, capital structure, and risk profile of the designated company to determine how the proposed enhanced prudential standards should apply, and if appropriate, would tailor application of the standards by order or regulation to that nonbank financial company or to a category of nonbank financial companies. In applying the standards to a nonbank financial company, the Board will take into account differences among nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets of $50 billion or more. For those nonbank financial companies that are similar in activities and risk profile to bank holding companies, the Board expects to apply enhanced prudential standards that are similar to those that apply to bank holding companies. For those that differ from bank holding companies in their activities,

balance sheet structure, risk profile, and functional regulation, the Board expects to apply more tailored standards. The Board will ensure that nonbank financial companies receive notice and opportunity to comment prior to determination of their enhanced prudential standards.

4. Other Changes

In the final rule, the Board also restructured the rule text of the domestic and foreign proposals to organize the text by type of company—domestic or foreign—and by the size of the company. The purpose of the reorganization is to improve the usability of the text by grouping requirements applicable to a company based on these criteria in one subpart.

To facilitate this reorganization, the Board has moved the previously-adopted stress testing requirements to the appropriate subparts, but has not made any changes to these rules. Following the reorganization, the company-run stress test requirements for domestic bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion and for domestic savings and loan holding companies and state member banks with total consolidated assets of more than $10 billion are contained in subpart B, the supervisory stress tests for bank holding companies with total consolidated assets of $50 billion or more are contained in subpart E, and the company-run stress tests for bank holding companies of this size are contained in subpart F.

Table 1, below, sets forth the requirements in the final rule that apply to bank holding companies and Table 2 sets forth the requirements in the final rule that apply to foreign banking organizations, each depending on size.

TABLE 1: REQUIREMENTS FOR U.S. BANK HOLDING COMPANIES

Size	**Requirements**	**Subpart**
Total consolidated assets of more than $10 billion but less than $50 billion	Company-run stress tests	Subpart B
Total consolidated assets equal to or greater than $10 billion but less than $50 billion (if publicly-traded)	Risk committee	Subpart C
Total consolidated assets of $50 billion or more	Risk-based and leverage capital Risk management Risk committee Liquidity risk-management, stress-testing, and buffers Supervisory stress tests Company-run stress tests Debt-to-equity limits (upon grave threat determination)	Subpart D Subpart E Subpart F Subpart U

TABLE 2: REQUIREMENTS FOR FOREIGN BANKING ORGANIZATIONS

Size	**Requirements**	**Subpart**
Total consolidated assets of more than $10 billion but less than $50 billion	Company-run stress tests	Subpart L
Total consolidated assets equal to or greater than $10 billion but less than $50 billion (if publicly-traded)	Risk committee	Subpart M
Total consolidated assets of $50 billion or more, but combined U.S. assets of less than $50 billion	Risk-based and leverage capital Risk management Risk committee Liquidity Capital stress testing Debt to equity limits (upon	Subpart N Subpart U

	grave threat determination)	
Total consolidated assets of $50 billion or more, and combined U.S. assets of $50 billion or more	Risk-based and leverage capital Risk management Risk committee Liquidity risk management, liquidity stress testing, and buffer Capital stress testing	Subpart O
	U.S. intermediate holding company requirement (if the foreign banking organization has U.S. non-branch assets of $50 billion or more)	Subpart O
	Debt-to-equity limits (upon grave threat determination)	Subpart U

If an institution increases in asset size, it will become subject to the subpart applicable to institutions of that size. On the date it becomes subject to the substantive requirements of a new subpart, it will cease to be subject to requirements of the subpart for smaller institutions.

C. Application to Savings and Loan Holding Companies Engaged in Substantial Banking Activities

With the exception of company-run stress-tests, the domestic proposal did not propose to apply the enhanced prudential standards to savings and loan holding companies.[23] The domestic proposal indicated that the Board intends to issue a separate proposal for notice and comment initially to apply the enhanced prudential standards and early remediation requirements to all savings and loan holding companies with substantial banking activities—for example, any savings and loan holding company that: (i) has total consolidated assets of $50 billion or more;

[23] In October 2012, the Board adopted a final rule implementing company-run stress testing requirements for savings and loan holding companies with total consolidated assets greater than $10 billion. See 77 FR 62396 (October 12, 2012).

and (ii)(A) controls savings association subsidiaries that comprise 25 percent or more of such savings and loan holding company's total consolidated assets; or (B) controls one or more savings associations with total consolidated assets of $50 billion or more. The preamble to the domestic proposal indicated that the Board also may determine to apply the enhanced prudential standards to any savings and loan holding company, if appropriate to ensure the safety and soundness of such company, on a case-by-case basis.

Commenters argued that the Home Owners' Loan Act does not provide the Board with authority to apply enhanced prudential standards and early remediation requirements to savings and loan holding companies, and doing so would contradict Congress's intent to apply only the section 165 requirements regarding company-run stress-test requirements to savings and loan holding companies. However, the Board, as the appropriate federal banking agency of savings and loan holding companies, has authority under the Home Owners' Loan Act to apply prudential standards to savings and loan holding companies to help to ensure their safety and soundness.[24] The Board recently established risk-based and leverage capital requirements for certain savings and loan holding companies and has set forth supervisory expectations regarding, among other things, liquidity risk management and enterprise-wide risk management.[25] As discussed in the domestic proposal, the Board may apply additional prudential requirements to certain savings and loan holding companies that are similar to the enhanced prudential standards

---

[24] See 12 U.S.C. 1467a(g) (authorizing the Board to issue such regulations and orders as the Board deems necessary or appropriate to administer and carry out the purposes of section 10 of the Home Owners' Loan Act).

[25] See, e.g.,78 FR 62018 (October 11, 2013); Supervision and Regulation Letter 11-11 (July 21, 2011), available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1111.htm.

if it determines that such standards are consistent with the safety and soundness of such companies.

III. Enhanced Prudential Standards for Bank Holding Companies

A. Enhanced Risk-based and Leverage Capital Requirements, Capital Planning and Stress Testing

1. Capital Planning and Stress Testing

The final rule, consistent with the proposal, incorporates two existing standards: the previously-issued capital-planning and stress-testing requirements for bank holding companies with total consolidated assets of $50 billion or more.[26] The Board has long held the view that a bank holding company generally should hold capital that is commensurate with its risk profile and activities, so that the firm can meet its obligations to creditors and other counterparties, as well as continue to serve as a financial intermediary through periods of financial and economic stress.[27] A bank holding company should have internal processes for assessing its capital adequacy that reflect a full understanding of its risks and ensure that it holds capital corresponding to those risks to maintain overall capital adequacy.[28]

---

[26] 12 CFR 225.8. See 76 FR 74631 (December 1, 2011). The capital plan rule currently applies to all U.S. bank holding companies with $50 billion or more in total consolidated assets, except for those bank holding companies that have relied on Supervision & Regulation Letter 01-01 (January 5, 2001), available at: http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.

[27] See Supervision and Regulation Letter 12-17 (December 12, 2012), available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm; 12 CFR Part 217; 12 CFR 225.8; Supervision and Regulation Letter 99-18 (July 1, 1999), available at: http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.

[28] See e.g., Supervision and Regulation Letter 09-4 (March 27, 2009); available at: http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm; 12 CFR 225.8.

In 2011, the Board adopted the capital plan rule (capital plan rule), which imposed enhanced risk-based and leverage capital requirements on a bank holding company with $50 billion or more in total consolidated assets. The rule requires such a bank holding company to submit an annual capital plan to the Federal Reserve in which it demonstrates its 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. Such plan must also include a discussion of the bank holding company's sources and uses of capital reflecting the risk profile of the firm over the planning horizon. Since the adoption of the capital plan rule, the Board's Comprehensive Capital Analysis and Review associated with capital plans submitted by those bank holding companies has become an important and regular part of the Federal Reserve's capital adequacy assessment of the largest bank holding companies.

In 2012, the Board, in coordination with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), adopted stress testing rules under section 165(i)(1) of the Dodd-Frank Act for large bank holding companies and nonbank financial companies supervised by the Board. These rules establish a framework for the Board to conduct annual supervisory stress tests to evaluate whether these companies have the capital necessary to absorb losses as a result of adverse economic conditions and require these companies to conduct semi-annual company-run stress tests.[29]

In addition, the Board adopted company-run stress test requirements under section 165(i)(2) of the Dodd-Frank Act for bank holding companies with more than $10 billion but less

---

[29] 77 FR 62378 (Oct. 12, 2012) (codified at 12 CFR part 252, subparts F and G). Under the final rule, these rules are being re-codified without change to 12 CFR part 252, subparts E and F.

than $50 billion in total consolidated assets and savings and loan holding companies and state member banks with more than $10 billion in total consolidated assets.[30] The FDIC and OCC adopted similar rules for the insured depository institutions that they supervise.[31]

In September 2013, the Board issued an interim final rule that clarified how bank holding companies should incorporate recent revisions to the Board's regulatory capital rules into their capital plan and the stress tests.[32]

2. Risk-based Capital and Leverage Requirements

In July 2013, the Board issued a final rule implementing regulatory capital reforms reflecting agreements reached by the Basel Committee in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" (Basel III)[33] and certain changes required by the Dodd-Frank Act (revised capital framework).[34] The revised capital framework introduced a new minimum common equity tier 1 capital ratio of 4.5 percent, raised the minimum tier 1 ratio from 4 percent to 6 percent, required all banking organizations to meet a 4

---

[30] See 77 FR 62396 (October 12, 2012).

[31] 77 FR 61238 (October 9, 2012); 77 FR 62417 (October 15, 2012).

[32] See 78 FR 59779 (September 30, 2013).

[33] Basel III was published in December 2010 and revised in June 2011. See Basel Committee, Basel III: A global framework for more resilient banks and banking systems (December 2010), available at: http://www.bis.org/publ/bcbs189.pdf.

[34] See 78 FR 62018 (October 11, 2013). The revised capital framework also reorganized the Board's capital adequacy guidelines into a harmonized, codified set of rules, located at 12 CFR Part 217. The requirements of 12 CFR Part 217 came into effect on January 1, 2014, for bank holding companies subject to the advanced approaches risk-based capital rule, and as of January 1, 2015 for all other bank holding companies. The predecessor capital adequacy guidelines 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).

percent minimum leverage ratio, implemented stricter eligibility criteria for regulatory capital instruments, and introduced a standardized methodology for calculating risk-weighted assets. In addition, it required bank holding companies with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposures of at least $10 billion (advanced approaches banking organizations) to meet a supplementary leverage ratio of 3 percent based on the international leverage standard agreed to by the Basel Committee.

To further enhance capital standards for the largest companies that pose the most systemic risk, in July 2013, the Board sought public comment on a proposal that, in part, would require a U.S. top-tier bank holding company with more than $700 billion in total consolidated assets or $10 trillion in assets under custody to maintain a buffer of at least 2 percent above the minimum supplementary leverage capital requirement of 3 percent in order to avoid restrictions on capital distributions and discretionary bonus payments to executive officers.[35] The Board is currently reviewing comments on that proposal. The Board also expects to seek comment on additional enhancements to the risk-based capital rules for large bank holding companies in the future, including through a proposal for a quantitative risk-based capital surcharge in the United States based on the Basel Committee's approach and implementation timeframe.

B. Risk Management and Risk Committee Requirements

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish enhanced risk-management requirements for bank holding companies with total consolidated assets of

---

[35] 78 FR 51101 (August 20, 2013). The proposal applies to "a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y-9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y-15)." Id.

$50 billion or more.[36] In addition, section 165(h) of the Dodd-Frank Act directs the Board to issue regulations requiring publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees.[37] Section 165(h) requires the risk committee to be responsible for the oversight of the enterprise-wide risk-management practices of the company, to have a certain number of independent directors as members as the Board determines is appropriate, and to include at least one risk-management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

To address the risk-management weaknesses observed during the financial crisis, the proposed rule would have established risk-management standards for bank holding companies with total consolidated assets of $50 billion or more that would have required oversight of enterprise-wide risk management by a stand-alone risk committee; reinforced the independence of a firm's risk-management function; and required employment of a chief risk officer with appropriate expertise and stature. In addition, the proposal would have required each publicly traded bank holding company with total consolidated assets equal to or greater than $10 billion but less than $50 billion to establish an enterprise-wide risk committee of its board of directors. The proposal would not have applied to bank holding companies that have assets of less than $10 billion.

The Board is adopting many aspects of the proposed rule, with revisions to certain elements of the proposed rule in response to commenters, as described further below in this section. The Board emphasizes that the risk committee and overall risk-management requirements outlined in the final rule supplement the Board's existing risk-management

---

[36] 12 U.S.C. 5365(b)(1)(A).

[37] 12 U.S.C. 5365(h).

guidance and supervisory expectations.[38] All banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk.

1. Responsibilities of the Risk Committee

Under the proposal, a company's risk committee would generally have been required to document, review, and approve the enterprise-wide risk-management practices of the company. The risk committee would have overseen the operation, on an enterprise-wide basis, of an appropriate risk-management framework that is commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposal specified that the risk-management framework must include: risk limitations appropriate to each business line of the company; appropriate policies and procedures relating to risk management governance, risk-management practices, and risk control infrastructure; processes and systems for identifying and reporting risks, including emerging risks; monitoring of compliance with the company's risk limit structure and policies and procedures relating to risk management governance, practices, and risk controls; effective and timely implementation of corrective actions; 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 the company's compensation structure. The enterprise-wide

---

[38] See Supervision and Regulation Letter SR 08-8 (October 16, 2008), available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0808.htm; Supervision and Regulation Letter SR 08-9 (October 16, 2008), available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0809.htm

; Supervision and Regulation Letter SR 12-17 (December 17, 2012), available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.

focus would have required the company's risk committee to take into account both its U.S. and foreign operations as part of its risk-management oversight.

Many commenters asserted that the proposed rule would inappropriately assign managerial and operational responsibilities to the risk committee. These commenters generally recommended that the Board clarify that a risk committee is not responsible for the day-to-day operations of the company. In particular, some commenters asserted that the proposed requirement that the risk committee "document, review, and approve the enterprise-wide risk-management practices of the company" would not be consistent with the proper scope of a committee of the board of directors because it would require the board to assume responsibilities typically performed by management. These commenters recommended that the role of the risk committee be limited to reviewing and approving overall risk-management policies.

In light of commenters' concerns, the Board has revised the requirements in the final rule to clarify the role of the risk committee. A company's risk committee, acting in its oversight role, should fully understand the company's enterprise-wide risk-management policies and framework and have a general understanding of the risk management practices of the company. Accordingly, the final rule requires the risk committee to approve and periodically review the enterprise-wide risk-management policies of the company, rather than its risk-management practices. The Board believes that the requirement that the risk committee "approve and periodically review" the company's enterprise-wide risk-management policies is more closely aligned with the board of directors' oversight role over risk management. Furthermore, the Board has not included in the final rule the requirement that the risk management framework overseen by the risk committee include specific risk limitations for each business line of the company.

The other elements of the enterprise-wide risk management framework under the proposal, however, represent the key components of an institution's risk-management function, and are generally consistent with the board of directors' overall responsibilities for risk management. Accordingly, other than as described above, the final rule adopts the elements of the enterprise-wide risk-management framework generally as proposed. As finalized, a company's risk management framework must be commensurate with the company's structure, risk profile, complexity, activities, and size, and must include policies and procedures establishing risk-management governance, risk-management practices, and risk control infrastructure for the company's global operations and processes and systems for implementing and monitoring compliance with such policies and procedures.[39]

One commenter asserted that effective risk oversight requires the attention of a company's full board of directors, rather than its risk committee. The commenter recommended that a company's full board of directors approve and oversee its risk-management policies. The Board agrees that directors should be aware of the risk-management policies of the company, and the Board expects that the risk committee will report significant risk-management matters to the full board of directors. The Board observes, however, that boards of directors routinely delegate oversight responsibilities for particular aspects of a company's operations to committees in order to more efficiently allocate responsibility among the directors. In addition, this

---

[39] The processes and systems must include those for identifying and reporting risks and risk-management deficiencies, including with respect to emerging risks and ensuring effective and timely implementation of corrective actions to address risk management deficiencies for the company's global operations; processes and systems for specifying managerial and employee responsibility for risk management, for ensuring the independence of the risk management function; and processes and systems to integrate management and associated controls with management goals and the company's compensation structure for the company's global operations.

delegation is consistent with the requirements of the Dodd-Frank Act. Accordingly, the final rule maintains the proposed requirement that the risk committee oversee enterprise-wide risk management.

One commenter recommended that the Board require companies to engage in a regular process of "constructive dialogue" among the board of directors, business lines, and risk management personnel. The Board believes that robust dialogue among these key stakeholders is important for effective risk management, and believes that the proposed and final rule already requires such communication in specific instances, for instance, by requiring a bank holding company's risk-management framework to include processes and systems for identifying and reporting risks and risk management deficiencies. Accordingly, the Board is not adding a separate requirement for "constructive dialogue."

In addition, various liquidity risk-management responsibilities are assigned to the board of directors or risk committee, as discussed in section III.C.2. These liquidity risk-management responsibilities are components of the risk-management framework described in this section.

2. Risk Committee Requirements

a. Independent Director

Consistent with section 165(h)(3)(B) of the Dodd-Frank Act, the proposed rule would have required the risk committee of a publicly traded[40] bank holding company with total consolidated assets of $10 billion or more to have one independent director that was the chair of the risk committee. The proposal would have defined an independent director as a director who:

---

[40] The proposal provided that a company is publicly traded if it is traded on any exchange registered with the Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) or on any non-U.S.-based securities exchange that meets certain criteria.

(i) is not an officer or employee of the company and had not been an officer or employee of the company during the previous three years; (ii) is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and (iii) is an independent director under Item 407 of the Securities and Exchange Commission's (SEC) Regulation S-K, 17 CFR 229.407(a), or would qualify as an independent director under the listing standards of a national securities exchange (as demonstrated to the satisfaction of the Board) in the event that the company does not have an outstanding class of securities traded on a national securities exchange. For companies that are not publicly traded in the United States, the Board indicated that it would make determinations about director independence on a case-by-case basis, and would consider compensation paid to the director or director's family by the company and material business relationships between the director and the company, among other things. The Board specifically sought comment on whether, and under what circumstances, the Board should require more than one independent director on the risk committee.

Some commenters supported the independent director requirement, although they generally opposed an increase in the number of independent directors required because, in their view, participation by management and other non-independent directors could enhance the deliberations of the risk committee. Two commenters, however, urged the Board to increase the number of independent directors required on the risk committee to ensure that members of the risk committee have a diversity of experiences. The Board is finalizing the requirement to have one independent director that chairs the risk committee as proposed. The Board believes that a bank holding company should determine the appropriate proportion of independent directors on

the risk committee based on its size, scope, and complexity, provided that it meets the minimum requirement of one independent director. The Board believes that active involvement of independent directors can be vital to robust oversight of risk management and encourages companies to consider including additional independent directors as members of their risk committees. The Board further notes that involvement of directors affiliated with the company on the risk committee may complement the involvement of independent directors.

b. Risk-management Experience

Under the proposal, at least one member of a bank holding company's risk committee would have been required to have risk-management expertise that was commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposal defined risk-management expertise as an understanding of risk management principles and practices with respect to bank holding companies or depository institutions; the ability to assess the general application of such principles and practices; and experience developing and applying risk-management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations or, if applicable, nonbank financial companies. This requirement was intended to ensure that the company's risk committee has at least one member with the background and experience necessary to evaluate the company's risk-management policies and practices.

Several commenters criticized the proposed definition of risk-management expertise as being too stringent and suggested that the proposal would result in a shortage of qualified candidates to serve on risk committees. For instance, some commenters argued that the rule should recognize that risk-management experience could be acquired in fields other than banking. Other commenters argued that the definition of risk-management expertise was too

limiting and asserted that it was not realistic to require a director to fulfill all of the proposed requirements. Other commenters suggested that the Board adopt a definition of risk-management expertise that is similar to the SEC's definition of audit committee financial expert, which generally focuses on "an individual's understanding of relevant principles, the ability to assess the application of such principles, and experience that is commensurate with the breadth and complexity of issues to be raised, among other factors."[41] Some commenters raised concerns that some of the Board's statements in the preamble to the proposed rule suggested that more than one member of the risk committee would be required to have risk-management expertise.

In light of these comments, the final rule revises the proposed "risk management expert" requirement for the risk committee in two ways. First, for a publicly traded bank holding company with total consolidated assets equal to or greater than $10 billion but less than $50 billion, an individual's risk-management experience in a nonbanking or nonfinancial field may fulfill the requirements of the final rule. For instance, relevant experience could include risk-management experience acquired through executive-level service at a large nonfinancial company with a high risk profile and above-average complexity. For a bank holding company with total consolidated assets of $50 billion or more, the final rule requires that an individual have experience in identifying, assessing, and managing risk exposures of large, complex financial firms. For this purpose, a financial firm could include a bank, a securities broker-dealer, or an insurance company, provided that the experience is relevant to the particular risks facing the company. For all bank holding companies, the Board expects that the individual's experience in risk management would be commensurate with the bank holding company's

---

[41] 17 CFR 228.407(d)(5)(ii)

structure, risk profile, complexity, activities, and size, and the bank holding company should be able to demonstrate that an individual's experience is relevant to the particular risks facing the company.

Second, in response to commenters asserting that the proposed definition of "risk management expertise" was too limiting, the final rule would require that a risk committee have a member with experience in "identifying, assessing, and managing risk exposures" of large, complex firms.[42] While the proposed definition of risk-management expertise generally set forth the types of experience that the Board would expect a risk-management expert to have, in some circumstances, a person may have an appropriate level of risk-management expertise without direct experience in each area cited in the proposed rule.

The final rule requires that only one member of the committee have experience in identifying, assessing, and managing risk exposures of large, complex firms. However, the Board would expect all risk committee members generally to have an understanding of risk management principles and practices relevant to the company. The appropriate level of risk-management expertise for a company's risk committee can vary depending on the risks posed by the company to the stability of the U.S. financial system. Accordingly, the risk committee of a company that poses more systemic risk should have more risk committee members with commensurately greater understandings of risk management principles and practices.

Two commenters urged the Board to include a requirement that members of the risk committee receive continuing education and training specifically related to risk management. Although the Board supports ongoing risk management education and training for risk

---

[42] As noted above, in the case of a bank holding company with total consolidated assets of $50 billion or more, the experience must be with respect to financial firms.

committee members, the Board is not including this requirement in the final rule because it does not believe that the benefits of such education and training would justify the burden of imposing such a requirement for all bank holding companies of this size.

c. Corporate Governance

The Board also proposed to establish certain corporate governance requirements for risk committees. Specifically, under the proposal, a company's risk committee would have been required to have a formal, written charter that is approved by the company's board of directors. The Board is finalizing this requirement as proposed. In addition, the proposal would have required that a risk committee meet regularly and as needed. To provide more specificity, and because quarterly meetings of board committees are standard in the financial industry, the final rule requires that a risk committee meet at least quarterly and otherwise as needed.

The proposal also would have required that a risk committee fully document and maintain records of its proceedings, including risk management decisions. One commenter opposed the requirement that a risk committee document its "risk management decisions." The commenter asserted that management, rather than a board of directors, makes decisions on risk management practices and procedures. As discussed further below, the Board has clarified in the final rule that the risk committee is responsible for the oversight of risk-management policies, rather than for its risk-management practices. The Board believes that it is important for a risk committee to document its decisions relating to risk-management policies and, accordingly, the Board is finalizing this aspect of the requirement as proposed.

3. Risk Committee for Bank Holding Companies with Total Consolidated Assets of More than $10 Billion and Less than $50 Billion

A few commenters expressed concern about the effect of the proposed rule on smaller bank holding companies, including publicly traded bank holding companies with total consolidated assets of less than $50 billion. One commenter recommended that for bank holding companies with less than $50 billion in total consolidated assets, the Board allow for flexibility with respect to board member qualifications, risk-committee structure, and the reporting structure for risk management executives. Another commenter asserted that the risk committee requirement for bank holding companies with total consolidated assets of less than $50 billion is an unreasonable and unnecessary burden on community banks. A commenter also expressed concern that the more stringent risk-management standards in the proposal might be applied to bank holding companies with less than $10 billion in total consolidated assets.

Section 165(h) requires publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees. The final rule implements this statutory requirement. The Board observes that larger and more complex companies should have more robust risk-management practices and frameworks than smaller, less complex companies. As a company grows or increases in complexity, the company's risk committee should ensure that its risk-management practices and framework adapt to changes in the company's operations and the inherent level of risk posed by the company to the U.S. financial system. The Board believes that the risk committee structure and responsibilities in the final rule are therefore appropriate for publicly traded bank holding companies with at least $10 billion but less than $50 billion in total consolidated assets, as they address corporate governance issues common among bank holding companies of various sizes. However, as explained above, the Board does

not expect board members of bank holding companies with total consolidated assets of less than $50 billion to have risk-management expertise comparable to that of board members of larger bank holding companies. Furthermore, the Board notes that the final rule does not apply the risk-committee requirements to bank holding companies with less than $10 billion in assets or to those that are not publicly traded and have assets of less than $50 billion.

Another commenter expressed concern that the standards in the proposal for the qualifications, responsibilities, and role of a chief risk officer described below could be applied to a smaller company through supervisory examinations. The final rule, consistent with the proposal, would impose a chief risk officer requirement only on bank holding companies with total consolidated assets of $50 billion or more.

4. Additional Enhanced Risk-management Standards for Bank Holding Companies with Total Consolidated Assets of $50 Billion or More

In accordance with section 165(b)(1)(A)(iii) of the Dodd-Frank Act, the proposed rule would have established certain overall risk-management standards for bank holding companies with total consolidated assets of $50 billion or more. These enhanced prudential standards are in addition to the risk committee requirements discussed above.

a. Additional Risk Committee Requirements

Under the proposed rule, risk committees of bank holding companies with total consolidated assets of $50 billion or more would have been required to meet certain requirements in addition to those provided in the proposal for bank holding companies with total consolidated assets equal to or greater than $10 billion but less than $50 billion because of the risk posed to financial stability by these firms. For instance, the proposal would have required that such a banking organization's risk committee not be housed within another committee or be part of a

joint committee, report directly to the bank holding company's board of directors, and receive and review regular reports from the bank holding company's chief risk officer.

Several commenters objected to the proposed stand-alone risk committee requirement. These commenters generally asserted that a banking organization should be given flexibility to determine how to structure its risk committee based on the company's business strategy and risk profile. Some commenters requested that the final rule permit the use of joint risk committees by a banking organization and its subsidiaries. A few commenters asserted that it is common practice for a risk committee at a holding company also to serve as the risk committee for its subsidiaries and that this practice can improve the understanding, monitoring, and evaluation of risks throughout the organization. One commenter recommended that the final rule allow a banking organization to combine its risk and finance committees in order to ensure strong oversight of capital, liquidity, and stress testing. Similarly, a few commenters asserted that the final rule should permit a board of directors to allocate risk-management oversight responsibilities to various committees, and not solely to the risk committee.

Appropriate oversight by the board of directors of the risks undertaken by complex banking organizations requires significant knowledge, experience, and time. Therefore, it is important for a bank holding company with total consolidated assets of $50 billion or more to have a separate committee of its board of directors devoted to risk-management oversight. The Board notes that this is also consistent with industry practice, as large, complex banking organizations commonly have a risk committee of the board of directors that is distinct from other committees of the board. The risk committee may have members that are on other board committees, and other board committees, such as audit or finance, may have some involvement in establishing a banking organization's risk management framework. However, a stand-alone

risk committee, rather than a joint risk/audit or risk/finance committee, enables appropriate board-level attention to risk management. The final rule therefore retains the requirement for a separate risk committee, and clarifies that the risk committee may not be part of a joint committee. This requirement would prevent the risk committee from having other substantive responsibilities at the bank holding company. The rule does not prevent a parent company's risk committee from serving as the risk committee for one or more of its subsidiaries as long as the requirements of the rule are otherwise satisfied.

As noted above, the proposal would have required a bank holding company's risk committee to report directly to the company's board of directors. In addition, the proposed rule would have directed a banking organization's risk committee to receive and review regular reports from the chief risk officer. These requirements were intended to ensure the proper flow of information regarding risk management within a banking organization. One commenter recommended that the Board specify the procedures to be followed when risk levels rise at an institution. The Board believes that a bank holding company should be able to establish procedures appropriate to its operations, provided that the chief risk officer reports material risk issues to the board of directors or the risk committee. The final rule clarifies that "regular reports" must be provided not less than quarterly.

b. Chief Risk Officer

i. Appointment and Qualifications

Under the proposal, each bank holding company with total consolidated assets of $50 billion or more would have been required to appoint a chief risk officer to implement appropriate enterprise-wide risk-management practices for the company. The chief risk officer would have been required to have risk-management expertise commensurate with the bank

holding company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.

A few commenters opposed the proposed requirement that a bank holding company with total consolidated assets of $50 billion or more appoint a designated chief risk officer. The commenters asserted that the appointment of a specific risk management position should be left to the discretion of a company. Considering the complexity and size of the operations of a bank holding company of this size, the Board believes that it is important for the bank holding company to have a designated executive in charge of implementing and maintaining the risk management framework and practices approved by the risk committee. Accordingly, the final rule requires each bank holding company with total consolidated assets of $50 billion or more to appoint a chief risk officer.

Several commenters opposed the risk-management expertise requirements in the proposal. Some commenters asserted that management and the board of directors should be able to determine what combination of skill, experience, and education is appropriate for the chief risk officer given the company's culture, business strategy, and risk profile. Other commenters opined that the risk-management field is still developing educational and expertise standards and urged the Board not to adopt specific educational or professional requirements for the chief risk officer. One commenter asked for clarification as to whether the standards for chief risk officer qualification would be applied prospectively or retroactively to existing chief risk officers.

The Board believes that although a company generally should have flexibility to determine the particular qualifications it desires in a chief risk officer, because of the risks posed by bank holding companies with total assets of $50 billion or more, a chief risk officer should satisfy certain minimum standards. Accordingly, and similar to the risk-committee requirements,

the final rule would revise the "risk management expertise" requirement to focus on an individual's experience in identifying, assessing, and managing exposures of large, complex financial firms rather than on his or her subjective ability to understand risk management principles and practices and assess the general application of such principles and practices. The Board believes that focusing on an individual's risk-management experience and demonstrated ability to apply that expertise to risk management provides a more reliable and objective method for bank holding companies and supervisors to assess an individual's fitness to serve as a chief risk officer.

The minimum standards for a company's chief risk officer of the final rule are similar to the risk-management experience requirement for the risk committee of a bank holding company with total consolidated assets of $50 billion or more, as discussed above. In every case, the Board expects that a bank holding company should be able to demonstrate that its chief risk officer's experience is relevant to the particular risks facing the company and commensurate with the bank holding company's structure, risk profile, complexity, activities, and size. All of the requirements for a chief risk officer, including the risk-management experience requirement, will become effective on January 1, 2015, for bank holding companies. At that time, bank holding companies with total consolidated assets of $50 billion or more will be required to employ a chief risk officer who meets the requirements of the final rule, regardless of how the banking organization managed risk prior to the effective date of the final rule.

ii. Responsibilities

Under the proposal, the chief risk officer would have had direct oversight over: establishment of risk limits and monitoring compliance with such limits; implementation and ongoing compliance with appropriate policies and procedures relating to risk management

governance, practices, and risk controls; developing and implementing appropriate processes and systems for identifying and reporting risks, including emerging risks; managing risk exposures and risk controls; monitoring and testing risk controls; reporting risk management issues and emerging risks; and ensuring that risk management issues are effectively resolved in a timely manner.

Several commenters criticized the responsibilities of the chief risk officer under the proposed rule. Some commenters opposed the requirement that the chief risk officer "directly" oversee risk-management functions because the chief risk officer works with, and through, individual business units that have a primary role in managing risks in their businesses. Another commenter asserted that the list of responsibilities included matters not appropriately assigned to risk managers, such as the development of processes and systems for identifying and reporting risks, which the commenter asserted are often performed by information technology groups. Another commenter argued that the responsibilities of the chief risk officer should be more general and comprehensive.

The Board agrees that the chief risk officer may execute his or her responsibilities by working with, or through, others in the organization. The final rule does not include the proposed requirement that the chief risk officer have "direct" oversight over the enumerated responsibilities or perform the functions that carry out those responsibilities. Notwithstanding involvement of other departments within the organization in the execution of the processes enumerated above, the Board believes that each responsibility described in the proposed rule is primarily a risk-management function and, therefore, is appropriately assigned to the chief risk officer as the officer of the company responsible for ensuring those risk management

responsibilities are carried out. The Board is finalizing these requirements generally as proposed.

The final enhanced liquidity risk managements standards set forth certain responsibilities of senior management, as discussed in section III.C.2 of this preamble. A company may assign the responsibilities assigned to senior management to its chief risk officer, as this officer would be considered a member of the senior management of a company.

iii. Reporting Lines

The proposal would have required a chief risk officer to report directly to the risk committee and the bank holding company's chief executive officer. Several commenters opposed the proposed requirement that a chief risk officer report directly both to the risk committee and the chief executive officer of the company. Some commenters asserted that the chief risk officer should report only to the chief executive officer and not to the risk committee because reporting to the board could interfere with the chief risk officer's ability to influence senior management. Other commenters asserted that the chief risk officer should report only to the risk committee because this would allow direct access to an independent director without managerial influence. Finally, several commenters urged the Board not to specify a reporting structure in the final rule to preserve flexibility for each bank holding company with total consolidated assets of $50 billion or more to structure its reporting requirements as it deems appropriate.

The Board believes that dual reporting by the chief risk officer to both the risk committee and the chief executive officer will help the board of directors to oversee the risk-management function and may help disseminate information relevant to risk management throughout the organization. Furthermore, guidance issued by the Basel Committee and the Financial Stability

Board (FSB) supports dual reporting by the chief risk officer to the risk committee and the chief executive officer.[43] Thus, the Board is finalizing the chief risk officer reporting requirements as proposed.

iv. Compensation

The proposal also would have required the compensation of a bank holding company's chief risk officer to be structured to provide for an objective assessment of the risks taken by the company. One commenter opposed the compensation requirement, asserting that the proposed pay structure would not allow for discretion in crafting a compensation model and that compensation committees are best suited to approve decisions regarding executive pay programs.

The Board observes that the proposed requirement would not prevent a company from using discretion in adopting a compensation structure for its chief risk officer, whether through its compensation committee or otherwise, as long as the structure of the chief risk officer's compensation provides for an objective assessment of risks. Accordingly, the Board is adopting the substance of this requirement as proposed. In addition, the Board notes that this requirement supplements existing Board guidance on incentive compensation, which provides, among other things, that compensation for employees in risk management and control functions should avoid

---

[43] See Basel Committee, "Principles for enhancing corporate governance," (October 2010), available at: http://www.bis.org/publ/bcbs176.pdf ("While the chief risk officer may report to the chief executive officer or other senior management, the chief risk officer should also report and have direct access to the board and its risk committee without impediment."). See also FSB, "Thematic Review on Risk Governance," (February 2013), available at: http://www.financialstabilityboard.org/publications/r_130212.pdf (The chief risk officer should have "a direct reporting line to the chief executive officer" and "a direct reporting line to the board and/or risk committee.").

conflicts of interest and that incentive compensation received by these employees should not be based substantially on the financial performance of the business units that they review.[44]

C. Liquidity Requirements for Bank Holding Companies

1. General

Section 165(b) of the Dodd-Frank Act directs the Board to adopt enhanced liquidity requirements for bank holding companies with total consolidated assets of $50 billion or more.[45] The domestic proposal would have required that a bank holding company establish a framework for the management of liquidity risk, conduct monthly liquidity stress tests, and maintain a buffer of highly liquid assets to cover cash-flow needs under stressed conditions.

The requirements in the proposed and final rule build on the Board's overall supervisory framework for liquidity adequacy and liquidity risk management. This framework includes supervisory guidance set forth in the Board's Supervision and Regulation (SR) letter 10-6, Interagency Policy Statement on Funding and Liquidity Risk Management issued in March 2010 (Interagency Liquidity Risk Policy Statement), which was based substantially on the Basel Committee's "Principles for Sound Liquidity Risk Management and Supervision" (Basel Committee principles for liquidity risk management).[46] The final rule is designed to provide a regulatory framework for ensuring that bank holding companies with total consolidated assets of

---

[44] Guidance on Sound Incentive Compensation Policies, 75 FR 36395 (June 25, 2010).

[45] 12 U.S.C. 5365(b)(1)(A)(ii).

[46] Principles for Sound Liquidity Risk Management and Supervision (September 2008), available at: http://www.bis.org/publ/bcbs144.htm. See also Supervision and Regulation Letter 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.pdf; 75 FR 13656 (March 22, 2010). Bank holding companies that are not subject to the final rule are also expected to have adequate liquidity resources and engage in sound liquidity risk management consistent with the Interagency Liquidity Risk Policy Statement.

$50 billion or more establish and maintain robust liquidity risk management practices, perform internal stress tests for determining the adequacy of their liquidity resources, and maintain a buffer of highly liquid assets in the United States to cover cash flow needs under stress. In addition, the Board intends to use the supervisory process to supplement the final rule through horizontal reviews of the internal stress-testing methods, liquidity risk management, and liquidity adequacy of the largest, most complex bank holding companies.

Many commenters were generally supportive of the proposed liquidity rules and expressed the view that the liquidity requirements were an appropriate step for improving liquidity risk monitoring and management. One commenter noted that the tools in the proposed rule (particularly the cash-flow projections, liquidity stress testing, liquidity buffer, and contingency funding planning) are consistent with liquidity management practices as they have evolved since the financial crisis. Other commenters, however, expressed concern that the proposed rules were too limiting and requested that the risk management and stress testing requirements include additional flexibility for smaller bank holding companies. These commenters argued that formulaic quantitative and specific risk management requirements should apply only to bank holding companies with the greatest systemic footprints, and, further, that criteria such as an institution's business model would be a better gauge of systemic importance than asset size.

The Board observes that, in general, the proposed requirements build on existing guidance that sets forth supervisory expectations for liquidity risk management at institutions of all sizes. Additionally, the proposed requirements were designed to provide bank holding companies with significant flexibility as to the structure of the liquidity risk management process, so that a bank holding company can manage its liquidity risk consistent with its overall

risk profile and business model. However, the prescriptive elements of the proposed requirements represent the minimum standards that the Board believes should be incorporated into the liquidity risk-management practices of all bank holding companies with total consolidated assets of $50 billion or more.

The Board therefore is adopting the proposed requirements with some modifications, as described below. In many cases, the final rule directs a company to implement the standards taking into account its capital structure, risk profile, complexity, activities, and size, reflecting the Board's view that the standards are sufficiently flexible to be used by bank holding companies with varying sizes, business models, and activities.

Several commenters opined that they preferred the proposal's internal-models-based approach to stress testing to the standardized approach required by the international liquidity standards published by the Basel Committee in December 2010 and revised in January 2013, including the liquidity coverage ratio (Basel III LCR).[47] While the Board believes that a regulatory framework for overall liquidity risk management—including internal stress testing—is important as part of enhanced liquidity standards, the Board also believes that a standardized, minimum liquidity risk requirement is an important component of a comprehensive liquidity risk framework for large, complex institutions. Accordingly, the Board participated in the international agreement on liquidity standards and sought comment on a proposed liquidity

---

[47] Basel III: International framework for liquidity risk measurement, standards and monitoring (December 2010), available at: http://www.bis.org/publ/bcbs188.pdf; Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (January 2013), available at: http://www.bis.org/publ/bcbs238.htm.

coverage ratio based on the Basel III LCR (proposed U.S. LCR) in October 2013.[48] Consistent with the Basel III LCR, the proposed U.S. LCR would require internationally active banking organizations and nonbank financial companies supervised by the Board to hold an amount of high-quality liquid assets sufficient to meet expected net cash outflows under a supervisory stress scenario over a 30-day time horizon.[49] The proposed U.S. LCR would also apply a less stringent, modified liquidity coverage ratio to bank holding companies with total consolidated assets between $50 billion and $250 billion that do not meet the thresholds for an internationally active banking organization.[50]

The proposed U.S. LCR and the enhanced liquidity requirements included in this rule were designed to complement one another. Whereas the final rule's internal liquidity stress-test requirements provide a view of an individual firm under multiple scenarios, and include assumptions tailored to the specific products and risk profile of the company, the standardized measure of liquidity adequacy that would be provided by the proposed U.S. LCR would facilitate a transparent assessment of firms' liquidity positions under a standard stress scenario and facilitate comparison across firms. Both requirements would enhance the liquidity position of bank holding companies while requiring robust liquidity risk management practices.

---

[48] See Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring, 78 FR 71818 (November 29, 2013).

[49] Id. The proposed U.S. LCR would apply to all bank holding companies, certain savings and loan holding companies, and depository institutions with more than $250 billion in total assets or more than $10 billion in on-balance sheet foreign exposure, and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. The proposed U.S. LCR would also apply to nonbank financial companies supervised by the Board that do not have significant insurance operations and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets.

[50] Id. For instance, the modified liquidity coverage ratio standard is based on a 21-calendar day stress scenario rather than a 30-calendar day stress scenario.

2. Framework for Managing Liquidity Risk

a. Board of Directors

The domestic proposal would have required the board of directors of a bank holding company with total consolidated assets of $50 billion or more to oversee the company's liquidity risk management processes, and to review and approve the liquidity risk management strategies, policies, and procedures established by senior management. As part of these responsibilities, the board of directors would have been required to establish the bank holding company's liquidity risk tolerance at least annually. The proposal defined liquidity risk tolerance as the acceptable level of liquidity risk that a company may assume in connection with its operating strategies. The preamble to the proposed rule explained that the liquidity risk tolerance should reflect the board of directors' assessment of tradeoffs between the costs and benefits of liquidity, and should be articulated in a way that all levels of management can clearly understand and properly apply the articulated approach to all aspects of liquidity risk management throughout the organization.

The proposed rule would have required the board of directors to review information provided by senior management at least semi-annually to determine whether the company is managed in accordance with the established liquidity risk tolerance. The proposal also would have required the board of directors to review and approve the bank holding company's

contingency funding plan[51] at least annually and whenever the company materially revises the plan.

Some commenters asserted that the governance requirements for the board of directors in the proposal should be more flexible. Commenters also criticized the proposed rule for assigning what they described as operational responsibilities to the board of directors and the risk committee, and argued that those responsibilities were more appropriate for senior management. While some commenters believed that the board of directors should have responsibility for approving liquidity risk policies, others stated that the proposed responsibilities would interfere with directors' oversight duties, perhaps shifting their focus from areas presenting more significant risks than liquidity risk. Similarly, other commenters requested flexibility to reflect their varying business models, or to allow companies to respond to changing business conditions. One commenter suggested that the Board make directors and chief executive officers personally responsible for liquidity risk management and require them to attest to the soundness of liquidity risk estimates.

The Board believes that the board of directors should have responsibility for oversight of liquidity risk management because the directors have ultimate responsibility for the direction of the entire company, but that certain risk management responsibilities are appropriately assigned to senior management. Accordingly, in response to comments, the Board has adjusted the requirements of the final rule.

---

[51] The contingency funding plan is the company's compilation of policies, procedures, and action plans for managing liquidity stress events, as described more fully in section III.C.5 of this preamble.

The final rule requires the board of directors to approve the company's liquidity risk tolerance at least annually, receive, and review information from senior management at least semi-annually to determine whether the bank holding company is operating in accordance with its established liquidity risk tolerance, and to approve and periodically review the liquidity risk management strategies, policies, and procedures established by senior management. Unlike the proposal, however, it assigns responsibility for reviewing and approving the contingency funding plan to the risk committee, as further discussed below. In addition, the text of the final rule locates the obligations of the board of directors in a separate paragraph from the responsibilities of the risk committee to clarify these responsibilities.

The final rule does not assign personal responsibility to directors and chief executive officers for liquidity risk management or require them to attest to the soundness of liquidity risk estimates. The Board typically does not apply personal liability to directors and chief executive officers and believes that assigning responsibility to the board of directors is sufficient for achieving the Board's safety and soundness goals.

b. Risk Committee

The proposal would have required the risk committee or a designated subcommittee of the risk committee to review and approve the liquidity costs, benefits, and risk of each significant new business line and each significant new product before the company implements the business line or offers the product. It would have required the risk committee to consider whether the liquidity risk of the new strategy or product under both current and stressed conditions would be within the established liquidity risk tolerance. In addition, the risk committee or designated subcommittee would have been required at least annually to review and approve significant business lines and products to determine whether the liquidity risk of each aligns with the

company's liquidity risk tolerance. The proposal would also have required the risk committee or a designated subcommittee thereof to review the cash flow projections, approve liquidity risk limits, and review and approve elements relating to liquidity stress tests at least quarterly, periodically to review the independent validation of the liquidity stress tests produced under the rule,[52] and to establish procedures governing the content of senior management reports on the liquidity risk profile of the company and other information provided regarding compliance with the rule.

Commenters asserted that the requirements for the risk committee inappropriately dictated the frequency of reviews of various liquidity reports and limits and asserted that the requirements inappropriately included operational responsibilities. As an alternative, one commenter stated that the risk committee should be required only to review material stress-testing practices, methodologies, and assumptions, with discretion as to the level of review. Another commenter requested that the Board clarify "significant" in reference to the risk committee's obligations regarding significant business lines and products.

In response to these comments, the Board has modified the requirement to require senior management, rather than the risk committee, to review and approve new products and business lines and evaluate liquidity costs, benefits, and risks related to each new business line and product that could have a significant effect on the company's liquidity risk profile and to annually review the liquidity risk of each significant business line and product.[53] Similarly, in response to the concern that the proposed quarterly reviews would be operational duties

---

[52] The independent validation and liquidity stress testing requirements are described more fully in section III.C.3 and 8 of this preamble.

[53] The Board is clarifying that a "significant" business line or product is one that could have a significant effect on the company's liquidity risk profile.

inappropriate for the risk committee, the final rule requires senior management, and not the risk committee, to perform these reviews.

In addition, as described above, the final rule requires the risk committee or a designated subcommittee thereof,[54] rather than the board of directors, to review and approve the contingency funding plan at least annually and whenever the company materially revises the plan. The Board believes that this change is appropriate given that the risk committee is responsible for understanding the liquidity risks associated with different business lines and products and is composed of a subset of directors with the appropriate level of risk-management expertise to conduct an in-depth review of the contingency funding plan. While the directors of the board should understand and periodically review the contingency funding plan, the risk committee and senior management have close proximity to the operational-level details included in the contingency funding plan and can evaluate and modify the contingency funding plan as needed.

c. Senior Management

The proposed rule would have established responsibilities for the senior management of a bank holding company with total consolidated assets of $50 billion or more, including requirements to establish and implement liquidity risk management strategies, policies, and procedures and to oversee the development and implementation of liquidity risk measurement, monitoring and reporting systems, cash-flow projections, liquidity stress testing and associated buffers, specific limits, and the contingency funding plan. The proposed rule also would have required senior management to report regularly to the risk committee, or designated

---

[54] For purposes of the rule's liquidity risk management requirements, a designated subcommittee of the risk committee must be composed of members of the board of directors.

subcommittee thereof, on the liquidity risk profile of the company and provide other information, as necessary, to the board of directors or risk committee. The Board noted in the preamble to the proposed rule that it would expect management to report as frequently as conditions warrant, but no less frequently than quarterly. The Board is finalizing these requirements substantially as proposed.

As explained above, the proposed rule required the risk committee to review and approve the liquidity risk management strategies, policies, and procedures established by senior management, and the Board has reassigned certain responsibilities from the risk committee to senior management in response to comments. Specifically, the final rule requires senior management to review and approve new products and business lines and evaluate liquidity costs, benefits, and risks related to each new business line and product that could have a significant effect on the company's liquidity risk profile and to annually review the liquidity risk of each significant business line and product. It requires senior management to establish the liquidity risk limits specified in the final rule (as discussed in section III.C.6 of this preamble), and to review the company's compliance with those limits at least quarterly. In addition, it requires senior management to review the cash flow projections required by the final rule at least quarterly (as discussed in section III.C.4 of this preamble) and to review and approve certain aspects of the liquidity stress testing framework (as discussed in sections III.C.8 and 9 of this preamble) at specified intervals. Senior management must conduct more frequent reviews than those required in the final rule if the financial condition of the company or market conditions indicate that the liquidity risk tolerance, business strategies and products, or contingency funding plan of the company should be reviewed or modified.

In the Board's view, this change is appropriate given that senior management has the appropriate level of seniority and expertise to conduct these reviews. Senior management maintains proximity to the operational-level details that comprise such reports and limit structures. In addition, senior management is required to update the risk committee or the board of directors on a regular basis, and is thereby in a position to raise issues to the risk committee or board of director's attention, as appropriate. The Board notes that a company may assign the responsibilities assigned to senior management described above to its chief risk officer, as this officer would be considered a member of the senior management of a company.

3. Independent Review

Under the proposed rule, a bank holding company with total consolidated assets of $50 billion or more would have been required to establish and maintain a review function to evaluate its liquidity risk management that was independent of management functions that execute funding. The Board is finalizing the substance of these requirements as proposed. The Board believes that an independent review function is a critical element of a sound liquidity risk management governance program. As such, the independent review function is required to review and evaluate the adequacy and effectiveness of the bank holding company's liquidity risk management processes regularly, but no less frequently than annually. It is also required to assess whether the company's liquidity risk management function complies with applicable laws, regulations, supervisory guidance, and sound business practices. To the extent permitted by applicable law, the independent review function must also report material liquidity risk management issues in writing to the board of directors or the risk committee for corrective action.

An appropriate internal review conducted by the independent review function should address all relevant elements of the liquidity risk management processes, 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, and evaluate the liquidity risk management processes, document their review, and recommend solutions for any identified weaknesses.

One commenter requested that the Board clarify whether the independent review function is required to be independent of the liquidity risk management function. The Board is clarifying that the independent review function is not required to be independent of the liquidity risk management function. However, in the final rule, consistent with the proposal, the independent review function must be independent of management functions that execute funding (e.g., the treasury function).

As discussed in section III.C.8 of this preamble, the Board has revised the proposed requirement that liquidity stress test processes and assumptions be independently validated to require that the liquidity stress test processes and assumptions be subject to independent review, subject to review by the chief risk officer. This is reflected in the final rule text.

4. Cash-flow Projections

The proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to produce comprehensive projections that project short-term and long-term cash flows from assets, liabilities, and off-balance sheet exposures. The required projections would have included 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 have an impact on liquidity over appropriate time

periods. The proposal would have required firms to identify and quantify discrete and cumulative cash-flow mismatches over these time periods. The proposed rule also would have required firms to produce analyses that incorporated reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in projected cash flows and reflected the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposal would have also required the company adequately to document its cash flow methodology and assumptions and conduct short-term cash-flow projections daily and long-term cash flows on a monthly basis.

Commenters suggested that instead of requiring a specific type of cash-flow projection, the final rule should allow each company to formulate liquidity and funding projections in a manner most appropriate for its business model. As an example, commenters asserted that the prescribed method did not accurately measure the liquidity risk for bank holding companies with large broker-dealer subsidiaries. Commenters asserted that it was unnecessary to produce frequent cash-flow projections when companies have ample liquidity, and therefore the requirement should be graduated to reflect different market or firm-specific circumstances. Other commenters generally criticized the proposed time horizons as inflexible and unnecessary. One commenter asked the Board to confirm that it does not expect firms to develop cash-flow projections over horizons longer than one year.

The Board believes that standardized cash-flow projections performed over a range of time horizons, updated daily for short-term projections and monthly for long-term projections, are appropriate for all bank holding companies with total consolidated assets of $50 billion or more to capture shifts in liquidity vulnerabilities over time. The Board believes that the proposal provided sufficient flexibility for bank holding companies subject to the rule to adapt the cash-

flow projection requirements to their particular circumstances, such as if they have significant broker-dealer activities. The final rule clarifies that cash-flow projections must provide sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the bank holding company, including, where appropriate, analyses by business line, currency, or legal entity, and must be performed, at a minimum, over short and long-term time horizons. Accordingly, the Board is finalizing the rule substantially as proposed.

While the final rule implements a minimum standard for frequency of projections, more frequent cash-flow reports may be appropriate for companies with more complex risk profiles or for all companies during times of stress. Similarly, while the final rule does not require cash-flow projections over time horizons longer than one year, it may be appropriate for companies to produce cash-flow projections for longer time periods, for instance to account for long-term debt maturities, if circumstances warrant.

5. Contingency Funding Plan

As part of a robust regulatory framework to promote comprehensive liquidity risk management, the proposal would have required a bank holding company to establish and maintain a contingency funding plan. As described in the proposal, a contingency funding plan is a compilation of policies, procedures, and action plans for managing liquidity stress events that, together, provide a plan for responding to a liquidity crisis. Under the proposed rule, the contingency funding plan would have been required to be commensurate with the company's capital structure, risk profile, complexity, activities, size and established liquidity risk tolerance. The proposal also would have required the contingency funding plan to be updated annually or more often if necessary. Under the proposed rule, the contingency funding plan would have included two components: a quantitative assessment and an event-management process. The

proposed rule also would have required the contingency funding plan to include procedures for monitoring risk.

In the quantitative assessment, a bank holding company would have been required to identify stress events that have a significant impact on the company's liquidity, assess the level and nature of the impact on the bank holding company's liquidity of such stress events, and assess available funding sources and needs during identified liquidity stress events. Liquidity stress events could include a deterioration in asset quality, a widening of credit default swap spreads, or other events that call into question the company's ability to meet its obligations. The required analysis would have included all material on- and off-balance sheet cash flows and their related effects and would have required a firm to incorporate information generated by liquidity stress testing to determine liquidity needs and funding sources. The proposed rule would also have required a bank holding company to identify alternative funding sources that may be accessed during identified liquidity stress events. The preamble to the proposed rule observed that since some of these alternative funding sources will rarely be used in the normal course of business, a bank holding company should conduct advance planning and periodic testing (as further discussed below) to make sure that the funding sources are available when needed, and put into place administrative procedures and agreements. The preamble to the proposed rule also noted that discount window credit may be incorporated into contingency funding plans as a potential source of funds in a manner consistent with the terms provided by the Federal Reserve Banks, and that contingency funding plans that incorporate borrowing from the discount window should specify the actions that the company will take to replace discount window borrowing with more permanent funding, including the proposed time frame for these actions.

The proposal would have required the contingency funding plan to include an event-management process that set forth procedures for managing liquidity during identified liquidity stress events. The proposed rule would have also required the contingency funding plan to include procedures for monitoring emerging liquidity stress events and for identifying early warning indicators of emerging liquidity stress events that are tailored to a bank holding company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The preamble to the proposed rule noted that such early warning indicators may include, but are not limited to, negative publicity concerning an asset class owned by the bank holding company, potential deterioration in the bank holding company's financial condition, widening debt or credit default swap spreads, and increased concerns over the funding of off-balance-sheet items.

Finally, the proposed rule would have required a bank holding company periodically to test the components of the contingency funding plan to assess its reliability during liquidity stress events, including trial runs of the operational elements of the contingency funding plan to ensure that they work as intended during a liquidity stress event. The preamble to the proposed rule noted that the tests should include operational simulations to test communications, coordination, and decision-making involving relevant managers, including managers at relevant legal entities within the corporate structure, as well as methods the bank holding company intends to use to access alternate funding.

Some commenters supported the domestic proposal's approach to contingency funding planning, finding it sufficiently flexible to accommodate firms' liquidity risk management practices. Other commenters, however, criticized the proposed requirement that contingency funding plans incorporate the quantitative results of liquidity stress tests and be updated

annually. Instead, these commenters asserted that the Board should allow management to have a contingency funding plan that outlines qualitative strategies to address a variety of scenarios that may be generically implemented in the face of an actual crisis, rather than require management mechanically to update every aspect of the contingency funding plan at set intervals. Commenters also expressed concern that requiring an institution to book transactions as a means of testing the plan could be detrimental to the financial institution overall. Instead, they asserted that bank holding companies should be able to adequately test components of the contingency funding plan through "war room" simulations.

The Board is clarifying that it does not expect every aspect of the contingency funding plan to be modified at set intervals. For example, many of the qualitative items in a contingency funding plan, such as the event-management process, reporting requirements, contact lists, scenario descriptions, and general stress testing assumptions will not change at every review period. At the same time, the Board continues to believe that an appropriate time interval for reviewing and updating (as necessary) key aspects of the contingency funding plan is important to the maintenance of an effective and relevant contingency funding plan. Because a firm's balance sheet changes over time, the analysis must be refreshed at regular intervals to ensure its ongoing relevance. Additionally, while the qualitative aspects of a contingency funding plan are important, quantitative analysis is necessary to achieve a higher level of effectiveness in identifying the size, scope, and timing of potential liquidity needs and liquidity resources that are available to meet those needs. The contingency funding plan must be updated whenever changes to market and idiosyncratic conditions would have a material impact on the plan.

Regarding testing, the Board is clarifying in connection with the final rule that, in some cases, effective implementation of the contingency funding plan for a bank holding company

should include, in part, periodic liquidation of assets, including portions of the bank holding company's liquidity buffer, which can be through outright sale or repo of buffer assets. In the Board's experience, many aspects of the contingency plan can actually be tested with trades executed, and with advance notification to counterparties that a simulation is taking place, without sending a distress signal to the marketplace, and such exercises are critical in demonstrating treasury control over assets and an ability to convert the assets into cash to be used to offset outflows. However, testing the contingency funding plan does not necessarily require the booking of transactions for each contingency funding option. Rather, the focus of the contingency funding plan testing requirements is on the operational aspects of such sources, which can often be tested via "table top" or "war room" type exercises.

One commenter requested that the Board clarify whether a bank holding company may include advances from Federal Home Loan Banks (FHLBs) in its contingency funding plan. The Board is clarifying that lines of credit, such as FHLB advances, may be included as sources of funds in contingency funding plans; however, firms should consider the characteristics of such funding and how the counterparties may behave in times of stress. For example, counterparties may require more collateral with greater haircuts in a time of stress, and accordingly this possibility should also be considered when including these potential sources of liquidity in a company's contingency funding plan.

Discount window credit may be incorporated into contingency funding plans as a potential source of funds for a bank holding company 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.

The Board is also modifying the event-management process requirement to provide that a bank holding company must identify the circumstances in which it will implement its contingency funding plan. These circumstances must include a failure to meet any minimum liquidity requirement established by the Board, which may include a final version of the proposed U.S. LCR, if adopted by the Board. Accordingly, the Board believes it is important that a company include a failure to meet any minimum requirement the Board may impose in the future in its considerations of when to implement its contingency funding plan. With the exception of these modifications, the Board is adopting the substance of the proposed contingency funding planning requirements without change.

6. Liquidity Risk Limits

To enhance management of liquidity risk, the proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to establish and maintain limits on potential sources of liquidity risk, including three specified sources of liquidity risk: concentrations of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers; the amount of liabilities that mature within various time horizons; and off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.[55]

---

[55] Such exposures may be contractual or non-contractual exposures, and include unfunded loan commitments, lines of credit supporting asset sales or securitizations, collateral requirements for derivative transactions, and a letter of credit supporting a variable demand note.

Several commenters suggested that the specific limits in the proposal were too constraining, and requested that the Board incorporate increased flexibility into the limits. The Board believes that the specific types of limits enumerated are critical components of the liquidity risk management framework, as they address concentration, time horizons, and off-balance sheet exposures, each of which is an element of liquidity risk management that may prove critical during a crisis. The Board notes, further, that the final rule requires each bank holding company to establish limits appropriate to its size, complexity, capital structure, risk profile, and activities, among other things. The final rule therefore requires a bank holding company to address these types of liquidity risk, but does not establish a particular limit for any given company. The Board believes, therefore, that the final rule provides sufficient flexibility for each bank holding company to establish appropriately individualized limits, and is finalizing this aspect of the proposal without change.

7. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

The proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to monitor liquidity risk related to collateral positions, liquidity risks across the enterprise, and intraday liquidity positions. Under the proposal, a company would have been required to establish and maintain procedures for monitoring assets it has pledged as collateral for an obligation or position, and assets that are available to be pledged. To promote effective monitoring across a banking organization, the proposed rule would have required a company 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. As stated in the proposal, the company should maintain sufficient liquidity in

light of possible obstacles to cash movements between specific legal entities or between separately regulated entities are recognized in normal times and during liquidity stress events.

The proposed rule would have required a bank holding company to establish and maintain procedures for monitoring its intraday liquidity risk exposure. To ensure that liquidity risk is appropriately monitored, the Board explained in the preamble to the proposed rule that it expects a bank holding company to provide for integrated oversight of intraday exposures within the operational risk and liquidity risk functions. The Board also observed that it expects the procedures for monitoring and managing intraday liquidity positions to reflect, in stringency and complexity, the scope of operations of the company.

Commenters expressed concern about the monitoring standards, stating that they were inflexible and burdensome. For example, commenters asserted that each company should be able to decide which intraday metrics should be tracked. In addition, some commenters asserted that smaller institutions might struggle to meet the monitoring requirements related to the intraday liquidity position. However, some commenters opined that larger institutions, such as institutions involved with payments processing, should be held to a higher standard.

Intraday liquidity monitoring is an important component of the liquidity risk management process for a bank holding company engaged in significant payment, settlement, and clearing activities. Given the interdependencies that exist among payment systems, a bank holding company with more than $50 billion in total consolidated assets that is unable to meet critical payments has the potential to lead to systemic disruptions that can prevent the smooth functioning of payments systems and money markets. Furthermore, the Board believes that the monitoring requirements are appropriate for all bank holding companies with total consolidated assets of $50 billion or more. To the extent that such a bank holding company has higher

intraday risk, the final rule would require more monitoring. As a result, the Board is finalizing the substance of the monitoring standards as proposed.

8. Liquidity Stress Testing

a. Overview

Under the proposal, bank holding companies with total consolidated assets of $50 billion or more would have been required to perform regular stress tests on cash-flow projections by identifying liquidity stress scenarios based on the company's full set of activities, exposures and risks, both on- and off-balance sheet, and by taking into account non-contractual sources of risks, such as reputational risks. The proposed rule would have then required an assessment of the effects of those scenarios on the company's cash flow and liquidity. Under the proposed rule, the bank holding company would have used the results of the stress tests to determine the size of its liquidity buffer, and would have incorporated information generated by stress testing into the quantitative component of the contingency funding plan. Although many commenters were generally supportive of the goals of the liquidity stress testing in the domestic proposal, some expressed specific concerns about the proposed requirements, as discussed below.

b. Scope and Frequency

The proposed rule would have required a bank holding company to conduct liquidity stress tests at least monthly, as well as to maintain the capacity for "ad hoc" stress tests to address unexpected circumstances. Several commenters argued that the proposed frequency of liquidity stress testing was excessive and suggested that stress testing should be conducted semiannually and supplemented by monitoring of the liquidity position of the firm through management of established metrics. One commenter stated that stress testing should be required less frequently for smaller organizations than for larger ones.

The Board believes that frequent liquidity stress testing is an essential part of a robust liquidity stress test regime. Regular stress testing is particularly important for effective evaluation of liquidity resources and risk management because of the dynamic nature of a firm's liquid assets, inflows, and outflows. Frequent evaluations of the firm's position against a scenario where regular sources of liquidity could rapidly vanish or be curtailed are essential to understanding the firm's readiness for an unanticipated liquidity stress event. The Board therefore believes that the requirement for monthly stress testing is appropriate and is finalizing this requirement as proposed. The Board observes that this requirement is consistent with current supervisory expectations that bank holding companies conduct liquidity stress tests regularly.[56] In addition, the Board believes that most bank holding companies subject to the rule already conduct liquidity stress tests at the frequency required by the rule. The Board further observes that the final rule, like the proposal, provides flexibility within the stress-testing framework for stress testing to be tailored based on a firm's size, complexity, and operations. This tailoring may require analyses by business line or legal entity, as well as stress scenarios that use more time horizons than the minimum required by the final rule.

c. Liquidity Stress Testing Scenario Requirements

The proposal would have required a bank holding company with total consolidated assets of $50 billion or more to incorporate in its stress tests a minimum of three stress scenarios that could significantly impact the company's liquidity. These would have included scenarios to account for adverse market conditions, an idiosyncratic stress event, and combined market and idiosyncratic stresses. The stress scenarios would have also been required to address the

---

[56] See the Interagency Liquidity Risk Policy Statement, supra note 46.

potential for market disruptions and the actions of other market participants experiencing simultaneous stress. The proposal would also have required a bank holding company's stress tests to include a minimum of four periods over which the relevant stressed projections extend: overnight, 30-day, 90-day, and one-year time horizons, and additional time horizons as appropriate. Furthermore, as explained in the proposal, stress testing should be sufficiently dynamic that it would be able to incorporate a variety of changes in the bank holding company's internal position and external circumstances, including risks that may arise over time from idiosyncratic events, macroeconomic and financial market developments, or a combination thereof.[57] Therefore, additional scenarios, based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, should be used as needed to ensure that all of the significant aspects of liquidity risks to the company have been modeled.

The proposed rule would have required a bank holding company's liquidity stress testing comprehensively to address its activities, exposures, and risks, including off-balance sheet exposures. The preamble to the proposal indicated that stress testing should address non-contractual sources of risk, such as reputational risk, and risk arising from the covered company's use of sponsored vehicles that issue debt instruments periodically to the markets, such as asset-backed commercial paper and similar conduits.

Many commenters supported these proposed liquidity stress testing requirements because they were flexible and permitted bank holding companies to develop their own liability run-off factors and other assumptions. One commenter objected to the Board's statement in the proposal that a bank holding company should incorporate liquidity risks arising from sponsored vehicles

---

[57] 77 FR 594, 607.

in its liquidity stress tests, asserting that sponsored vehicles have a broad diversity of risk. The Board has adopted the substance of the proposed liquidity stress testing requirements as proposed, and has adjusted certain aspects of the regulatory language to clarify the minimum requirements set forth in the rule. With respect to sponsored vehicles, the Board reiterates that bank holding companies should include sponsored vehicles and similar conduits in their stress tests, as these vehicles received unanticipated support from some banking institutions in the recent financial crisis, and similar liquidity risks may arise in the future.

Under the proposal, a bank holding company would have been required to discount the fair value of an asset that is used as a cash-flow source to offset projected funding needs in order to reflect any credit risk and market volatility of the asset, and to have diversified sources of funding throughout each stress test planning horizon. The final rule maintains these requirements, but in light of comments received on the proposed liquidity buffer discussed below, excludes cash and securities issued by the United States, a U.S. government agency,[58] or a U.S. government-sponsored enterprise,[59] from the diversification requirement. However, a bank holding company should ensure that concentrations in all assets, including those excluded from the rule's diversification requirement, are appropriate in light of the risk profile of the bank holding company and market conditions.

---

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

[59] A U.S. government-sponsored enterprise 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 United States.

Similarly, bank holding companies are expected to make conservative assumptions about the types of cash-flow sources that would be available over a 30-day stress period. The final rule clarifies that a line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days, but not for purposes of a stress test with a planning horizon of 30 days or less. In addition, net cash outflows may include some cash inflows, but these should be generally limited to contractual maturities within the 30 days.

In addition to the stress-testing requirements described above, the proposed rule would have established requirements for oversight and control functions, including an independent validation function; and requirements for management information systems sufficient to enable the bank holding company effectively and reliably to collect, sort, and aggregate data and other information. Several commenters requested clarification of what is meant by the requirement that the stress-testing process and its assumptions be validated, including clarification that the validation function can be an internal function. In response to these comments and in light of the potential operational burden of validation, the Board has revised the requirement in the final rule to require instead that a bank holding company appropriately incorporate conservative assumptions in developing its stress test scenarios and the other elements of the stress test process and that these assumptions take into consideration the company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors, and the assumptions must be approved by the chief risk officer and subject to independent review as described in section III.C.3 of this preamble.

In addition to the changes described above, the final rule includes technical, non-substantive revisions that clarify the liquidity stress testing requirements.

9. Liquidity Buffer

The proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to hold highly liquid assets (known as a buffer) sufficient to meet liquidity needs as identified by the internal stress test. The proposal would have required the liquidity buffer to be composed of unencumbered highly liquid assets sufficient to meet projected net cash outflows for 30 days over the range of liquidity stress scenarios used in the internal stress testing.

A commenter argued that requiring companies to comply with a 30-day buffer requirement may induce companies to create stress scenarios without the appropriate level of severity. In its supervisory reviews, the Board will review the companies' scenarios to ensure that they are sufficiently severe to expose key funding vulnerabilities, and the Board intends to reinforce these expectations. The final rule provides that the liquidity buffer must be sufficient to meet the projected net stressed cash flow need over the 30-day planning horizon of a liquidity stress test under each of an adverse market condition scenario, an idiosyncratic stress event scenario, and a combined market and idiosyncratic stresses scenario.

a. Criteria for highly liquid assets

The proposed definition of highly liquid assets included cash and securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored enterprise, because these securities have remained liquid even during prolonged periods of severe liquidity stress. In addition, recognizing that other assets could also be highly liquid, the proposed definition included a provision that would allow a bank holding company to include other types of assets in the buffer if the bank holding company demonstrated to the satisfaction of the Board that those assets: (i) have low credit and market risk; (ii) are traded in an active

secondary two-way market that has observable market prices, committed market makers, a large number of market participants, and a high trading volume; and (iii) are types of assets that investors historically have purchased in periods of financial market distress during which liquidity has been impaired.

Several commenters asserted that the criteria for highly liquid assets were too limited, and requested further guidance on the full range of assets that might qualify. These commenters also requested that correlation statistics, performance comparisons to benchmark securities or indices, and portfolio diversification benefits be considered among eligibility criteria. The commenters asked the Board to revise the definition of highly liquid assets specifically to enumerate a broader scope of assets, such as foreign sovereign obligations and obligations issued by multi-lateral development and central banks; claims against central banks of acceptable sovereign issuers; gold; FHLB borrowing capacity; committed lines of credit; inventory positions (including equities) maintained by the broker-dealer operations of a bank holding company, if any; municipal securities; shares of money market mutual funds holding U.S. government securities; and collateral accepted by the discount window. One commenter suggested that the Board establish a mechanism whereby the Board would regularly notify firms of other approved highly liquid asset categories. By contrast, one commenter asserted that the proposal was too permissive, and that bank holding companies should only be allowed to include cash and short-term U.S. government securities in their buffer.

Liquidity characteristics of assets may vary under different types of stress scenarios. The proposed definition of highly liquid asset provided companies discretion to determine whether an asset would be liquid under a particular scenario. The Board also believes that restricting the assets available for liquidity coverage to cash and securities issued or guaranteed by the United

States, a U.S. government agency, or a U.S. government-sponsored enterprise is unnecessarily limited, and could have negative effects on market liquidity generally. As a result, consistent with the proposal, the final rule defines highly liquid assets to include cash, securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise, and any other asset that a bank holding company demonstrates to the satisfaction of the Board meets defined characteristics of liquidity.

Assets that are high-quality liquid assets under the proposed U.S. LCR (which include equities included in the S&P 500 index or comparable indices and investment grade corporate bonds) would be liquid under most scenarios; however, the bank holding company would be required to make the demonstration to the Board required by the final rule, meet the diversification requirement discussed below, and ensure that the inclusion of these assets in the buffer would be appropriate taking into consideration the liquidity risk profile of the company. A bank holding company is required to assign appropriate haircuts to all highly liquid assets, including assets that qualify as high-quality liquid assets under the proposed U.S. LCR: those haircuts may be different from the haircuts assigned in the proposed U.S. LCR.

Some commenters expressed concern that the specified criteria for highly liquid assets would result in institutions holding a narrow band of asset classes, including concentrations in sovereign debt, and opined that limiting the criteria could lead to increased financial stability risks. As explained above, the Board believes the specified criteria for the buffer are not overly constraining and allow for a diverse set of assets to be included in the liquidity buffer. The Board believes that, in some cases, sovereign debt issued by foreign countries will meet the criteria for highly liquid assets, and the criteria should not result in undue concentrations in those asset classes. In addition, the diversification requirement (as discussed in more detail below) is

included in the final rule specifically to address the problem of inappropriate asset concentration in the buffer generally. Additionally, supervisors will scrutinize any concentrations in assets held to meet the buffer requirement as they evaluate overall whether the composition of a company's buffer is appropriately tailored to its specific liquidity risks.

Several commenters requested clarification on how to account for reverse repo transactions, particularly those secured by highly liquid assets, in the buffer and how the tenor of the agreement would play a role in the availability of the asset in a company's highly liquid asset calculation under the proposed rule. The Board clarifies that if firms are able to rehypothecate collateral they hold that has been pledged to them to secure a loan (but have not done so), they may count that collateral as a highly liquid asset with appropriate haircuts. Appropriate haircuts and measurements of inflows and outflows would depend on the specific terms of the reverse repo transaction. Inflows related to secured loans can be considered in the measurement of net cash need, but the firm should also consider the stress scenario and reputational factors to determine if they would continue to renew and make new loans.

b. Requirement that Assets be Unencumbered

In order to ensure that liquid assets held by a bank holding company to meet liquidity needs under stress would be freely available for sale or pledge at all times in order to generate funds for the company, the proposal required that highly liquid assets in the liquidity buffer be unencumbered. The proposed definition of unencumbered, with respect to an asset, was that (i) the asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien; (ii) the asset is free of legal, contractual, or other restrictions on the ability of the company to sell or transfer; and (iii) the asset is not designated as a hedge on a trading position.

A number of commenters criticized the definition of "unencumbered" in the proposed rule. Some commenters expressed concern that the proposed definition excluded assets that are technically encumbered but, as they can be freed from encumbrance at any point, are typically treated as unencumbered by bank holding companies for liquidity management purposes. As examples of such "technically" encumbered assets, the commenters mentioned: (i) assets pledged to central banks; (ii) assets pledged to a clearing counterparty in excess of the amounts required for clearing; and (iii) assets subject to ordinary course "banker's liens" that apply to exposures held in depository accounts or custody accounts.

Other commenters expressed concern that the definition of unencumbered assets in the proposed rule assumes that a firm must actually sell an asset in order to generate liquidity from it, asserting that this is inconsistent with the economic reality of liquidity risk management. In particular, these commenters asserted that assets that hedge trading positions should not be treated as encumbered, as companies can still monetize the asset. They argued that, whether the asset is a trading position or a hedge on a trading position, a company would still be able to generate liquidity from the asset through repurchase agreements or central bank facilities. The commenters recommended that the definition of "unencumbered" assets include assets that are comingled with or used as hedges on trading positions or pledged to clearing houses, and asserted that a requirement that assets be segregated in order to qualify as unencumbered would add operational complexity and cost to the practice of liquidity risk management, without a commensurate benefit. Finally, one commenter suggested that highly liquid assets pledged to an FHLB pursuant to a blanket lien that the FHLB does not require as collateral for outstanding advances and other extensions of credit should be deemed unencumbered, as these assets could be released for use elsewhere without diminishing the level of outstanding advances.

The Board is modifying the proposed definition of "unencumbered" in the final rule to allow assets that are used as a hedge position to meet the definition, as long as they otherwise meet the other criteria in the definition. The Board believes this change is appropriate to reduce the potential operational burden cited by commenters in identifying and isolating such assets. Further, the Board does not believe that this change would substantially impede the ability of bank holding companies, under most stressed situations, to generate liquidity from these assets as needed. Generally, under the final rule, an asset would be unencumbered if the company is able to demonstrate that it has the ability to monetize the asset and that the proceeds could be made available to the liquidity management function of the company without conflicting with a business risk or management strategy of the company. The Board also believes that assets that are pledged to a central bank or a U.S. government-sponsored enterprise, including FHLBs (if the asset is not securing credit that has been extended and remains outstanding), may be considered as unencumbered. This provision is added to the final rule's definition of unencumbered.

However, the Board believes it is generally not appropriate for a bank holding company to include assets pledged to a counterparty for provisional needs as unencumbered highly liquid assets. In response to commenters' questions regarding assets pledged to a clearing counterparty in excess of the amounts required for clearing and assets subject to "banker's liens," the Board believes these assets must be considered encumbered in most scenarios, as their encumbrance is an ongoing requirement for conducting business with such counterparties, potentially complicating the use of these assets to offset potential outflows in times of stress.

As further support to ensure that highly liquid assets in the buffer are available for a bank holding company's liquidity needs, the bank holding company should periodically monetize a

representative portion of its highly liquid assets, through repo or outright sale, in order to test its access to the market and the effectiveness of its processes for monetization. In addition, the Board would expect the quantity of assets included in the liquidity buffer to vary by the stress scenario type. For example, in computing the liquidity buffer under a scenario in which a banking organization may expect to be forced to post additional collateral (such as a scenario involving idiosyncratic financial deterioration), a bank holding company that has pledged securities in excess of contractual requirements would count a lower portion (or none at all) of the excess pledged assets in its buffer.

c. Discounting and Diversification of Assets in the Liquidity Buffer

As discussed above, in computing the amount of an asset included in the liquidity buffer, the bank holding company must discount the fair value of the asset to reflect any credit risk and market volatility of the asset. Several commenters asked for more clarification on computing the discounts that would be applied to assets included in the buffer. Such discounts should vary depending upon the type and severity of the scenario and should reflect a wide range of risks that could limit a company's ability to liquidate the asset, including discounts associated with currency conversions. The final rule does not dictate the discount percentages that would apply to asset classes in the final rule because the stress tests are based on firm-specific assumptions and a variety of securities, and the appropriate discount percentage may vary based upon the institution to which the stress is applied.

In addition, the proposal provided that the pool of unencumbered highly liquid assets included in the liquidity buffer must be sufficiently diversified by instrument type, counterparty, geographic market, and other liquidity risk identifiers. One commenter suggested that U.S. and foreign sovereign securities be excluded from these diversification requirements. The final rule

clarifies that the diversification requirement which applies to most buffer assets does not apply to U.S. Treasuries and U.S. agency securities because of their demonstrated liquid nature under stressed conditions.

In judging the amount of a particular asset class that will be included in its liquidity buffer, a bank holding company should consider all the liquidity risks of the asset class. For instance, the Board observes that currency matching of projected cash inflows and outflows is an important aspect of liquidity risk that a bank holding company should account for in its stress tests and that the risks associated with currency mismatches should be incorporated in a company's liquidity buffer.

d. Use of the Buffer

The proposal did not provide guidance on the circumstances under which a banking organization would be able to use the assets in its liquidity buffer. Commenters requested clarification and provided suggestions relating to the usability of the buffer. One commenter requested that the Board clarify in the rule that, during times of stress, companies may use the liquidity buffer, temporarily falling below the minimum requirement without any adverse outcomes.

While a banking organization generally would be required to maintain an amount of liquid assets in order to meet its 30-day stress projections, there are circumstances under which permitting the banking organization to use these assets would be beneficial for the safety and soundness of the firm and potentially for financial stability. Therefore, the Board anticipates that any supervisory decisions in response to a reduction of a banking organization's liquidity buffer will take into consideration the particular circumstances surrounding the reduction. If a banking organization is experiencing idiosyncratic or systemic stress and is otherwise practicing good

liquidity risk management, the Board expects that supervisors would observe the company closely as it uses its liquid resources and work with the company to determine how to rebuild these resources once the stress has passed, through a plan or similar process. However, a supervisory or enforcement action may be appropriate when a company's buffer is reduced substantially, or falls below its stressed liquidity needs as identified by the stress test, because of operational issues or inadequate liquidity risk management. Under these circumstances, as with other regulatory violations, a bank holding company may be required to enter into a written agreement if it does not meet the proposed minimum requirement within an appropriate period of time. As discussed further below, a bank holding company is required to develop a contingency funding plan in which it must identify liquidity stress events and design an event management process that sets out its procedures for managing liquidity during identified liquidity stress events. These procedures must anticipate reductions and subsequent replenishment of highly liquid assets.

10. Short-term Debt Limits

In the preamble to the proposed rule, the Board noted that the Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt, and requested comment on whether it should establish short-term debt limits in the future. Several respondents were in favor of implementing additional limits on short-term funding. One proponent suggested such limits would help render a bank's funding structure more stable in times of market disruption, asserting that there are shortcomings related to over-reliance on stress testing. Another commenter suggested that a short-term debt limit could work in conjunction

with the proposed U.S. LCR, a net stable funding ratio requirement (NSFR),[60] and single counterparty credit limits to mitigate the risk of a disruption in repo markets. However, several commenters asserted that short-term debt limits were inappropriate. Some commenters asserted that a limit on short-term debt would not enhance prudent liquidity risk management, and argued that short-term debt levels should be overseen by prudential supervision on a bank-by-bank basis. One commenter argued that the appropriate level of short-term debt maintained by a company depends upon the mix of its assets and liabilities, and that limits on short-term debt are best addressed as part of limit-setting around liquidity stress testing. Although the Board is not adopting a short-term debt limit requirement in connection with the final rule, the Board is continuing to study and evaluate the benefits to systemic stability from imposing limits on short-term debt.

D. Debt-to-equity Limits for Bank Holding Companies

Section 165(j) of the Dodd-Frank Act provides that the Board must require a bank holding company to maintain a debt-to-equity ratio of no more than 15-to-1 if the Council determines 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 or foreign banking organization poses to the financial stability of the United States.[61]

---

[60] While the Basel III LCR is focused on measuring liquidity resilience over a short-term period of severe stress, the NSFR is designed to promote resilience over a one-year time horizon by creating additional incentives for banking organizations and other financial companies that would be subject to the standard to fund their activities with stable sources and encouraging a sustainable maturity structure of assets and liabilities. Currently, the NSFR is in an international observation period, and global implementation is scheduled for 2018. See Basel Committee principles for liquidity risk management, supra note 46.

[61] The Dodd-Frank 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

The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).

The domestic proposal defined key terms used in the statute and established a process for applying the debt-to-equity ratio. Under the proposal, "debt" and "equity" would have had the same meaning as "total liabilities" and "total equity capital" respectively, as calculated in an identified company's reports of financial condition. The 15-to-1 debt-to-equity ratio would have been calculated as the ratio of total liabilities to total equity capital minus goodwill. A bank holding company for which the Council has made the grave threat determination would receive written notice from the Council, or from the Board on behalf of the Council, of the Council's determination. Within 180 calendar days from the date of receipt of the notice, the bank holding company would have been required to come into compliance with the 15-to-1 debt-to-equity ratio requirement. The proposal would have permitted 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 would have been required in writing not less than 30 days prior to the expiration of the existing time period for compliance, and the proposal would have required the company to 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 have reviewed the request in light of the relevant

---

factors that the Council deems appropriate. These factors include, among other things, the extent of the leverage of the company, the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company, and the importance of the company as a source of credit for U.S. households, businesses, and State and local governments and as a source of liquidity for the U.S. financial system. The statute expressly exempts any federal home loan bank from the debt-to-equity ratio requirement. See 12 U.S.C. 5366(j)(1).

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 the proposed rule 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.

Some commenters requested that the Board clarify the language of "pose a grave threat to the financial stability of the United States," arguing that the statutory meaning is vague. However, the Board's rule establishes the process after the Council makes the "grave threat" determination. Because the Council makes the determination of whether a company "poses a grave threat to the financial stability of the United States," the Council is the appropriate party to provide clarity on the grave threat standard.

Some commenters argued that the substitution of "total liabilities" for the statutory term "debt" would be inappropriate, especially as applied to insurance companies. According to commenters, under statutory accounting principles, insurers account for future liabilities arising from underwritten insurance policies and hold reserves in anticipation of those future liabilities, which are treated as liabilities under accounting rules. Other commenters contended that the measure was duplicative and unnecessary of other measures of leverage, and, as applied to insurance companies, should exclude separate accounts. Another commenter suggested that the measure should focus on activities, arguing that insurance companies measure leverage differently from banks when evaluating the impact of debt issuance on capital adequacy and on financial condition.

There are several common methods of calculating a debt-to-equity ratio, including taking the measure of total liabilities to total equity. The Board chose to define "debt" on the basis of "total liabilities" as included a company's report of financial condition as set forth on the Board's Form FR Y-9C because the measure of "total liabilities" is well understood, objective, transparent, and readily available across all bank holding companies. The alternatives suggested by commenters, which would require the Board to identify categories of liabilities that would be included as "debt" or to trace liabilities to certain activities of an institution, would result in a non-transparent system that may result in arbitrary distinctions between certain types of liabilities. In addition, in response to concerns about the debt-to-equity ratio as a duplicative measure, the Board notes that these ratios measure leverage as a ratio of assets to equity rather than debt to equity. With regard to the application of the measure to insurance companies, as further described above, the final rule does not apply the standards to nonbank financial companies supervised by the Board, and the Board will consider such comments in connection with the application of these standards to nonbank financial companies supervised by the Board.

Some commenters suggested that the Board define "equity" as "tangible common equity," rather than "total equity capital." Commenters argued that tangible common equity would be understood and able to absorb losses in times of financial stress, whereas "total equity capital" would include components such as unrealized gains on securities available for sale and accumulated net gains on cash-flow hedges that are unlikely to be available to absorb losses in times of financial stress. To maintain balance with the broad definition of "debt" as "total liabilities," the final rule maintains the definition of "equity" as "total equity capital." While the Board agrees with commenters that "tangible common equity" is more able to absorb losses in times of stress, the Board notes that a bank holding company subject to this determination will

remain subject to the common equity tier 1 capital ratio and capital conservation buffers, which are based on a definition of "common equity tier 1" that is more stringent than "tangible common equity." Accordingly, a bank holding company subject to this determination will be required to maintain loss-absorbing capital independent of the debt-to-equity ratio.

Commenters also provided views on the proposed time period in which a company would have been required to comply with the debt-to-equity ratio. Some commenters argued that a shorter period, such as 120 days, would be warranted if a company posed a grave threat to U.S. financial stability. In contrast, another commenter suggested that the Board preserve flexibility to grant additional extensions where more rapid efforts to achieve full compliance may cause a "fire sale" of assets. The Board is adopting the requirements as proposed because the combination of the initial 180-day period with the two potential 90-day extension periods balances the certainty of a fixed timetable for a company to come into compliance with regulatory flexibility if additional time is appropriate. Like the proposed rule, the final 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. The company would, however, be expected to come into compliance with the ratio in a manner that is consistent with the company's safe and sound operation and the 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 Board has amended the final rule for bank holding companies to reflect the procedures for requesting an extension of time in the text of the regulation, making it consistent with the rule for foreign banking organizations.

IV. Enhanced Prudential Standards for Foreign Banking Organizations

A. Background

1. Considerations in Developing the Proposal

The Board is responsible for the overall supervision and regulation of the U.S. operations of all foreign banking organizations.[62] 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.[63] Under the Board's historic framework for foreign banking organizations, supervisors have monitored the individual legal entities of the U.S. operations of these companies, and the Federal Reserve has aggregated 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. In addition, the Federal Reserve has relied on the home country supervisor to supervise a foreign banking organization on a global basis consistent with international standards, and has relied on the foreign banking organization to support its U.S. operations under both normal and stressed conditions.

---

[62] 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).

[63] For example, the 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 OCC, the 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.

As discussed in the proposal, 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. affiliates by the mid-2000s.[64] In 2008, U.S. branches and agencies provided more than $600 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.[65] 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.

---

[64] 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.

[65] 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: http://www.federalreserve.gov/pubs/ifdp/2011/1014/ifdp1014.htm.

In addition to funding vulnerabilities, the U.S. operations of foreign banking organizations became increasingly concentrated, interconnected, and complex after the mid-1990s. By 2007, the top ten foreign banking organizations accounted for over 60 percent of foreign banking organizations' U.S. assets, up from 40 percent in 1995.[66] Moreover, U.S. broker-dealer assets of large foreign banking organizations as a share of their U.S. assets grew rapidly after the mid-1990s.[67] In 2012, five of the top-ten U.S. broker-dealers were owned by foreign banking organizations. 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.[68]

2. The Financial Stability Mandate of the Dodd-Frank Act

In response to the financial crisis, Congress enacted the Dodd-Frank Act, which included multiple measures to promote the financial stability of the United States.[69] Section 165 of the Dodd-Frank Act directs the Board to establish enhanced prudential standards in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure or ongoing activities of U.S. and foreign banking organizations that have total consolidated assets of $50 billion or more. The enhanced prudential standards for foreign banking organizations must include risk-based and leverage capital, liquidity, stress test, and risk management and risk committee requirements, resolution plan and credit exposure report

---

[66] *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).

[67] *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).

[68] *See* Form FFIEC 002.

[69] S. Rep. No. 111-176, p. 2 (April 15, 2010).

requirements, concentration limits, and a debt-to-equity limit for companies that pose a grave threat to the financial stability of the United States. Section 165 also authorizes the Board to establish a contingent capital requirement, enhanced public disclosures, short-term debt limits, and "other prudential standards" that the Board determines are "appropriate."

In applying section 165 to a foreign-based bank holding company, the Dodd-Frank Act 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.[70] Section 165 also directs the Board to take into account differences among nonbank financial companies, bank holding companies, and foreign banking organizations based on a number of factors.[71]

3. Summary of the Proposal

In December 2012, the Board sought comment on the foreign proposal. The proposal presented a set of targeted 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 in section 165 of the Dodd-Frank Act.[72] In the proposal, the Board sought to implement section 165 in a manner that enhanced the Board's current regulatory framework

---

[70] 12 U.S.C. 5365(b)(2). Section 165(b)(2) of the Dodd-Frank Act refers to "foreign-based bank holding company." Section 102 of the Dodd-Frank Act defines "bank holding company" for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act (12 U.S.C. 3106(a)).

[71] These factors are described in section I.A of this preamble.

[72] The proposal also addressed early remediation requirements in Dodd-Frank Act section 166. As noted above, the Board is not adopting a final rule relating to section 166 at this time.

for foreign banking organizations in order to mitigate the risks posed to U.S. financial stability by the U.S. activities of foreign banking organizations. These proposed changes were designed to facilitate consistent regulation and supervision of the U.S. operations of large foreign banking organizations. The proposed changes would have also bolstered the capital and liquidity positions of the U.S. operations of foreign banking organizations to improve their resiliency in adverse economic and financial conditions, and help them withstand deteriorations in asset-quality as well as funding shocks. Together, these changes were expected to increase the resiliency of the U.S. operations of foreign banking organizations during normal and stressed periods. A summary of the major components of the proposal is set forth below.

a. Structural requirements

Presently, foreign banking organizations operate through a variety of structures in the United States. This diversity in structure presented significant challenges to the Board's task of applying the standards mandated by the Dodd-Frank Act both consistently across the U.S. operations of foreign banking organizations, and in comparable ways to large U.S. bank holding companies and foreign banking organizations. The foreign proposal would have applied a structural enhanced prudential 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)[73] would have been required to form a U.S. intermediate holding company. The foreign banking organization would

[73] Under the proposal, U.S. non-branch assets would have been calculated 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 have been 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.

have been required to hold its interest in 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, through the U.S. intermediate holding company.

As noted in the proposal, the U.S. intermediate holding company requirement would have provided 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 have provided 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. A foreign banking organization would have been permitted to continue to operate in the United States through branches and agencies subject to the enhanced prudential standards included in the proposal for U.S. branches and agencies of foreign banks.[74]

b. Capital requirements

Under the proposal, a U.S. intermediate holding company would have been subject to the same risk-based and leverage capital standards applicable to U.S. bank holding companies, regardless of whether it controlled a subsidiary depository institution. These standards include minimum risk-based and leverage capital requirements and applicable capital buffers. In addition, under the proposal, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would have been subject to the capital plan rule.[75] Furthermore, any

---

[74] The proposal would have referred to all U.S. branches and U.S. agencies of a foreign bank as the "U.S. branch and agency network." The final rule does not use the defined term "U.S. branch and agency network," and simply refers to "U.S. branches and U.S. agencies of a foreign bank.

[75] See 12 CFR 225.8.

foreign banking organization with total consolidated assets of $50 billion or more generally would have been required to meet home country risk-based and leverage capital standards at the consolidated level that are consistent with internationally-agreed risk-based capital and leverage standards published by the Basel Committee (Basel Capital Framework), including the risk-based capital and leverage requirements included in Basel III, on an ongoing basis.[76] Absent home-country standards consistent with the Basel Capital Framework, a foreign banking organization would have been required to demonstrate to the Board's satisfaction that it would have met Basel Capital Framework standards at the consolidated level were those standards applied.

The risk-based and leverage capital requirements were intended to strengthen the capital position of the U.S. operations of foreign banking organizations and provide a consolidated capital treatment for these operations. Aligning the capital requirements for U.S. intermediate holding companies formed by foreign banking organizations and U.S. bank holding companies is in line with long-standing international capital agreements, which provide flexibility to host jurisdictions to establish capital requirements on a national treatment basis for local subsidiaries of foreign banking organizations.

c. Risk management requirements

The proposal would have required 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

---

[76] See Basel III: A global framework for more resilient banks and banking systems (December 2010), available at: http://www.bis.org/publ/bcbs189.pdf. Consistency with the internationally-agreed standards would be measured in accordance with the transition period set forth in the Basel Capital Framework.

more, to certify that it maintains a U.S. risk committee. In addition, a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more would have been required to employ a U.S. chief risk officer and implement enhanced risk management requirements generally consistent with the requirements in the domestic proposal. However, the foreign proposal would have implemented these requirements in a manner that provided some flexibility for foreign banking organizations and recognized the complexity in applying risk-management standards to foreign banking organizations that maintain U.S. branches and agencies, as well as bank and nonbank subsidiaries.

d. Liquidity requirements

The proposal would have applied a set of enhanced liquidity standards to the U.S. operations of foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more that were comparable to those proposed for large U.S. bank holding companies in the domestic proposal. These standards include requirements to conduct monthly liquidity stress tests over a series of time intervals out to one year, and to hold a buffer of highly liquid assets to cover the first 30 days of stressed cash-flow needs. These standards were 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 if U.S. dollar funding channels became strained and short-term debt could not easily be rolled over.

Under the proposal, the liquidity buffer would have separately applied to the U.S. branches and agencies of a foreign bank 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 have required the U.S. intermediate holding company to maintain the entire 30-day buffer in the United States. In recognition that U.S. branches and agencies are not separate legal entities from

their parent foreign bank but can assume liquidity risk in the United States, the proposal would have required the U.S. branches and agencies of a foreign bank to maintain the first 14 days of their 30-day liquidity buffer in the United States and would have permitted the U.S. branches and agencies to meet the remainder of this requirement at the consolidated level.

e. Stress testing

The proposal would have implemented stress-test requirements for a U.S. intermediate holding company in a manner parallel to those applied to U.S. bank holding companies.[77] The parallel implementation would have helped to ensure that U.S. intermediate holding companies have sufficient capital in the United States to withstand a severely adverse stress scenario. In addition, a foreign banking organization with total consolidated assets of $50 billion or more that maintained U.S. branches and agencies would have been required to be subject to a consolidated capital stress testing regime that is broadly consistent with the stress-test requirements in the United States. If the foreign banking organization had combined U.S. assets of $50 billion or more, the proposal would have required it to provide information to the Board regarding the results of the consolidated stress tests.

The foreign proposal also included single counterparty credit limits and early remediation requirements. However, these standards are still under development and so are not discussed here.

4. Targeted Adjustments to Foreign Bank Regulation

a. Policy Considerations for the Proposal

---

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

As discussed above, the Federal Reserve traditionally has relied on the home-country supervisor to supervise a foreign banking organization on a global basis, consistent with international standards, which are intended to address the risks posed by the consolidated organization and to help achieve global competitive equity. The Federal Reserve has relied on the parent foreign banking organization to support its U.S. operations under both normal and stressed conditions.[78] The proposal would have adjusted this traditional approach by requiring a foreign banking organization to organize its U.S. subsidiaries under a single U.S. intermediate holding company and applying enhanced prudential standards to the U.S. intermediate holding company.

Some commenters supported the proposal as an enhancement of U.S. financial stability and expressed the view that the proposal would reduce reliance on a foreign banking organization to keep its U.S. entities solvent, particularly where both the home-country parent and the U.S. operations come under simultaneous stress. However, other commenters questioned the need for such adjustment and asserted that the Board already has adequate tools and information for supervising the U.S. operations of foreign banking organizations. Commenters asserted that the goals of the proposal could be achieved without, for example, the U.S. intermediate holding company requirement. For example, as an alternative to the proposal, some commenters suggested that the Board supplement its existing regulatory approach by requiring more information from home-country supervisors. Another commenter suggested that, instead of finalizing the proposed rules, the Board condition exemptions to regulatory requirements on

---

[78] 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).

the receipt of appropriate information and use its strength-of-support assessment process[79] as a framework for evaluating home-country regulation.

Congress directed the Board to adopt enhanced prudential standards for foreign banking organizations in order to mitigate risks to U.S. financial stability posed by foreign banking organizations. As discussed above, the concentration, complexity, and interconnectedness of the U.S. operations of foreign banking organizations present risks to U.S. financial stability that are not addressed by the traditional framework. The modifications to the Board's current supervisory approach suggested by commenters—such as providing the Federal Reserve with additional information, or building upon the existing strength-of-support framework—would not provide a consistent platform for regulating and supervising the U.S. operations of foreign banking organizations or facilitate the application of enhanced prudential standards to the U.S. non-branch operations of a foreign banking organization.

Many commenters suggested that the Board did not adequately tailor the enhanced prudential standards set forth in the proposal to the systemic risk posed by foreign banking organizations. According to these commenters, the proposal did not reflect consideration of either the meaningful differences among foreign banking organizations in their systemic risk characteristics or whether actual threats to U.S. financial stability would justify the requirement for a given foreign banking organization. One commenter expressed the view that only a very small subset of foreign banking organizations has the potential to present risks to U.S. financial stability. Others asserted that a global consolidated assets measure would overstate the U.S. systemic risk posed by many foreign banking organizations. Similarly, other commenters

---

[79] See, e.g., Supervision & Regulation Letter 00-14 (October 23, 2000).

observed that many foreign banking organizations do not rely on their U.S. branches as a net source of U.S. dollar funding for their non-U.S. operations.

The Dodd-Frank Act requires the Board to impose enhanced prudential standards on all foreign banking organizations with global consolidated assets of $50 billion or more, and contemplates that the Board will tailor the requirements depending on the risk presented to U.S. financial stability by these institutions. The Board believes that the measures included in the final rule are appropriate for managing the risks to U.S. financial stability that may be posed by such firms. The standards that the Board has developed are tailored such that a foreign banking organization with U.S. operations that pose less risk will generally make fewer changes to their U.S. operations to come into compliance with the new standards. For instance, the standards applicable to foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion are substantially less as compared to those applicable to foreign banking organizations with combined U.S. assets of $50 billion or more. In addition, as explained in more detail in section IV.B of this preamble, a foreign banking organization with less than $50 billion in U.S. non-branch assets will not be required to form a U.S. intermediate holding company. The liquidity requirements applicable to a foreign banking organization with combined U.S. operations of $50 billion or more are calibrated such that a foreign banking organization whose U.S. operations have maturity-matched cash inflows and outflows is unlikely to be substantially affected by these requirements. The risk-based capital rules applicable to U.S. intermediate holding companies also calibrate capital requirements to the level of risk posed by the assets and off-balance sheet exposures of the U.S. intermediate holding company, including the degree of interconnectivity. Foreign banking organizations that already

maintain sufficient risk-based or leverage capital at their U.S. operations will not have to reallocate to or raise capital for those operations.

The proposal also described recent modifications to the regulation of internationally active banks adopted or contemplated by other national authorities.[80] These modifications include increased local liquidity and capital requirements, limits on intragroup exposures of domestic banks to foreign subsidiaries, and requirements to prioritize or segregate home country retail operations. Commenters argued that it would be premature for the Board to modify its regulatory approach before these adjustments are complete. Commenters also argued that the Board should consider home-country legal or political developments that could potentially limit a foreign bank parent's ability to support its U.S. operations in the overall context of factors that would determine a foreign banking organization's practical ability to support its U.S. operations.

While the Board considered these modifications and legal and political developments as factors in its assessment of the likelihood that a foreign bank parent will be willing and able to support its U.S. operations in the future, the proposal and the final rule respond to a broader set of considerations that are intended to address the financial stability risks posed by the U.S. operations of foreign banking organizations. While the Board recognizes the important initiatives under development in other countries, the Board does not believe it is appropriate to await the outcomes of such initiatives before adopting enhanced prudential standards to address risks to U.S. financial stability. As discussed below, the Board will monitor supervisory approaches that are implemented throughout the world and may take further action in the future as appropriate.

---

[80] See 77 FR 76631 note 13.

Some commenters asserted that the proposal's narrative describing the period leading up to and during the financial crisis omitted the role that foreign banking organizations played in supporting financial stability, such as through acquisitions of failed bank and nonbank operations of U.S. financial companies. One commenter stated that foreign banking organizations undertook such acquisitions with an expectation that cross-border supervisory and regulatory standards would not be significantly disrupted.

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. The Board acknowledges that there have been significant developments, both in the United States and overseas, to strengthen capital positions since the crisis. However, these changes in the international regulatory landscape, and the likelihood of changes still to come, are not a substitute for enhancing regulation of the foreign banking organizations that have large U.S. operations and pose risks to U.S. financial stability.

While the Board acknowledges that some foreign banking organizations undertook cross-border acquisitions during the financial crisis, the crisis also highlighted weaknesses in the existing framework for supervising, regulating, and otherwise constraining the risks of major financial companies, including the U.S. operations of foreign banking organizations. The Board believes the requirements contained in the final rule are appropriate in light of the statutory directive to impose enhanced prudential standards on domestic and foreign firms that address these risks, and by the Board's mandate to minimize risks to U.S. financial stability.

Some commenters argued that the proposal would prevent foreign banking organizations from managing capital and liquidity on a centralized basis. These commenters asserted that the

proposal would inhibit diversification of risk and could reduce a foreign banking organization's flexibility to respond to stress in other parts of the organization on a continual basis. These commenters also indicated that they expected the proposed requirements to increase the need for foreign banking organizations to take advantage of "lender of last resort" government facilities, because banks that currently manage capital and liquidity on a centralized basis would lose the ability efficiently to move those resources to the branches or operations that need it the most.

While the proposed requirements could incrementally increase costs and reduce flexibility of internationally active banks that primarily manage their capital and liquidity on a centralized basis, they would increase the resiliency of the U.S. operations of a foreign banking organization, the ability of the U.S. operations to respond to stresses in the United States, and the stability of the U.S. financial system. A firm that relies significantly on centralized resources may not be able to provide support to all parts of its organization. The Board believes that the final rule reduces the need for a foreign banking organization to contribute additional capital and liquidity to its U.S. operations during times of home-country or other international stresses, thereby reducing the likelihood that a banking organization that comes under stress in multiple jurisdictions will be required to choose which of its operations to support. Finally, the Board notes that requiring foreign banking organizations to maintain financial resources in the jurisdictions in which they operate subsidiaries is consistent with existing Basel Committee agreements and international regulatory practice. U.S. banking organizations operate in overseas markets that apply local regulatory requirements to commercial and investment banking activities conducted in locally incorporated subsidiaries of foreign banks. In the Board's view, the final rule establishes a regulatory approach to foreign banking organizations that is similar in substance to that in other jurisdictions.

b. Taking into Account Home-country Standards

In applying section 165 to a foreign-based bank holding company, the Dodd-Frank Act directs the Board 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.[81] This direction requires the Board to consider the regulatory regimes applicable to foreign banking organizations abroad when designing the enhanced prudential standards for foreign banking organizations.

Commenters argued that the Board did not adequately take into account home country standards when developing the proposal. For instance, commenters urged the Board to rely on home country standards in applying the enhanced prudential standards, absent a material inconsistency that could be addressed through targeted U.S. regulation. Other commenters suggested that the Board incorporate a "substituted compliance" framework into the rule, which would defer to home-country standards where the home country has adopted standards similar to those included in the proposal.

The Board has taken into account home country standards as required by section 165 in the development of the proposed and final rules. In recognition of the home-country standards and the home-country supervisory regime applicable to foreign banks, the final rule continues to permit foreign banks to operate through branches and agencies in the United States on the basis of their home-country capital. Accordingly, the final rule does not apply risk-based or leverage capital standards or stress testing standards to U.S. branches and agencies of foreign banking organizations. In addition, the proposed and final risk management standards provide flexibility

---

[81] See supra note 70.

for foreign banking organizations to rely on home-country governance structures to implement certain elements of the final rule's risk-management requirements by generally permitting a foreign banking organization to establish its U.S. risk committee as a committee of its global board of directors.

While taking home country standards into account, the final rule recognizes that foreign jurisdictions do not calibrate or construct their home country standards to address U.S. exposures or the potential impact of those exposures on the U.S. financial system.[82] The consideration of the home country standards applicable to foreign banking organizations must be done in light of the general purpose of section 165, which is "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 these firms. The final rule, with the requirement that large foreign banking organizations establish a U.S. intermediate holding company and look to home country standards in operating branches in the United States, attempts to balance these two considerations.[83]

---

[82] Section 165(b)(2) requires the Board to give due regard to the principle of national treatment and equality of competitive opportunity. In addition, section 165(b)(3)(A) requires the Board to "take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies [with total consolidated assets of $50 billion or more], based on the factors described in section 113(a) and (b) of the Dodd-Frank Act," which include "the amount and nature of the United States financial assets of the company," "the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding," and "the extent and nature of the United States related off-balance-sheet exposures of the company." The proposed enhanced prudential standards were designed to ensure that financial resources required to be maintained in the United States would appropriately take into account the U.S. financial assets, liquidity, and off-balance-sheet exposures of, and the systemic risk posed by, the U.S. operations of foreign banking organizations, in accordance with the statutory factors.

[83] Where courts have reviewed agency interpretations of statutes which require an agency to "take into account" a number of factors, courts have given the agencies broad discretion to balance those factors. Courts require that the agency compile a record on which it based its decision, but generally defer to the expertise of the agency in determining how to apply the

Commenters argued that the Board is required to engage in an institution-specific analysis of comparable consolidated home-country standards because of the statute's use of the singular term "foreign financial company." Commenters further argued that that directive requires the Board to consider the home-country regime applicable to a foreign banking organization and the effect of that regime on the U.S. operations of the specific foreign banking organization.[84]

The Board observes that the statute permits it to promulgate standards by regulation and permits the Board to tailor standards by category of institution, suggesting that Congress did not require an institution-specific analysis in establishing the standards. Furthermore, the final rule applies an institution-specific analysis in evaluating comparable consolidated home-country standards in determining whether the home-country capital and stress test standards meet the requirements of the final rule, as discussed further in those sections of the preamble. With respect to all standards, the Board's supervisory approach will be tailored to the size and complexity of the company.

Other commenters argued that, because of parallel statutory language regarding home country standards, the Board's implementation of section 165 should parallel its implementation

---

factors and the relative weight given to each factor. See Lignite Energy v. EPA, 198 F.3d 930 (DC Cir. 1999); Weyerhaeuser v. EPA, 590 F.2d 1011 (DC Cir. 1978); National Wildlife Federation v. EPA, 286 F.3d 554 (DC Cir. 2002); Trans World Airlines, Inc. v. Civil Aeronautics Board, 637 F.2d 62 (2d Cir. 1980).

[84] Section 165(b)(2) provides: "In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board shall—(A) give due regard to the principle of national treatment and equality of competitive opportunity, and (B) take into account the extent to which the foreign 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."

of the Gramm-Leach-Bliley Act provision[85] regarding a foreign banking organization's ability to qualify as a financial holding company.[86] These provisions of the Gramm-Leach-Bliley Act do not reference home-country standards, and, furthermore, were not motivated by the financial stability concerns that motivated Title I of the Dodd-Frank Act. Therefore, in interpreting the standards the Board must apply to foreign banking organizations under section 165 of the Dodd-Frank Act, the Board does not believe that the Gramm-Leach-Bliley Act provisions are controlling.

c. National Treatment

The Dodd-Frank Act requires the Board to give due regard to national treatment and equality of competitive opportunity, which generally means that foreign banking organizations operating in the United States should be treated no less favorably than similarly-situated U.S. banking organizations and should generally be subject to the same restrictions and obligations in the United States as those that apply to the domestic operations of U.S. banking organizations.

While some commenters endorsed the proposal as facilitating equal treatment of large foreign banking organizations and domestic bank holding companies, other commenters suggested that particular elements of the proposal did not give adequate regard to the principle of

---

[85] Section 141 of Public Law 106-102, 113 stat. 1139 (1999) (providing that, in permitting a foreign banking organization to engage in expanded financial activities permissible for a bank holding company that is a financial holding company, "the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.")

[86] See 12 CFR 225.90 (requiring that a foreign banking organization be well capitalized and well managed and setting forth the standards to determine whether a foreign banking organization is well capitalized and well managed).

national treatment. For instance, many commenters argued that foreign banking organizations were disadvantaged by the fact that the enhanced prudential standards would apply to them on a sub-consolidated level (meaning, only to their U.S. operations), whereas the standards would apply to U.S. bank holding companies on a consolidated basis.

The principles of national treatment and equality of competitive opportunity were central considerations in the design of the enhanced prudential standards for foreign banking organizations. The standards applied to the U.S. operations of foreign banking organizations are broadly consistent with the standards applicable to U.S. bank holding companies. In particular, a U.S. firm that proposes to conduct both banking operations and nonbank financial operations must (with a few limited exceptions) form a bank holding company or savings and loan holding company subject to supervision and regulation by the Board. The U.S. intermediate holding company requirement subjects foreign banking organizations with large U.S. banking operations to comparable organizational and prudential standards. Foreign banking organizations operating in the United States generally are treated no less favorably, and are subject to similar restrictions and obligations, as similarly-situated U.S. banking organizations.

To the extent that there are differences in the application of the standards for U.S. bank holding companies and foreign banks, the differences generally reflect the structural differences between foreign banking organizations' operations in the United States and U.S. bank holding companies. For instance, because the final rule permits U.S. branches and agencies of foreign banks to continue to operate on the basis of the foreign bank's capital, the final rule does not impose capital or stress testing requirements on U.S. branches and agencies of foreign banks.

Commenters' concerns regarding national treatment with respect to particular enhanced prudential standards, and the Board's response to such concerns, are discussed further in the relevant section below describing each prudential standard.

d. International Regulatory Cooperation

Many commenters asserted that the proposal represented a retreat from the Board's past practice of international regulatory coordination and cooperation. These commenters stated that the Board's international commitments place a strong emphasis on cooperation, sharing of information, and coordination for internationally active banks. Many of these commenters urged the Board to follow the G-20's call for regulatory cooperation, and asserted that the Board should work within the international fora to address its concerns about systemic stability.[87] Several commenters requested that the Board conduct a quantitative impact study on the effect of the proposal or on particular aspects of the proposal before adopting a final rule. One commenter suggested that the Board should recommend steps that banking organizations and regulators could take to foster international cooperation and asserted that the Board should work through international agreements by, for example, obtaining pledges among regulators to maintain intra-group services and support, requiring home country consultation before host country supervisors may make managerial changes, and providing a sunset date for any provision of the final rule that is addressed by an international agreement in the future.

---

[87] For example, commenters cited "Declaration: Summit on Financial Markets and the World Economy" (Nov. 15, 2008), available at: http://www.g20.utoronto.ca/2008/2008declarationlll5.html; and "The G-20 Toronto Summit Declaration" (June 26-27, 2010), available at: http://www.g20.utoronto.ca/2010/to-communique.html.

The Board has long worked to foster cooperation among international regulators, and actively participates in international efforts to improve cooperation among supervisors around the world. As a general matter, these supervisors have responded to the lessons learned during the recent financial crisis by enhancing the supervisory and regulatory standards that apply to their banking organizations. The Board has been working closely with its international counterparts and through international fora, such as the Basel Committee and the FSB, to develop common approaches that strengthen financial stability as well as the regulation of financial organizations. While these efforts often lead to unified approaches, such as the Basel III capital and liquidity frameworks, in some cases countries move at different paces and develop supplemental solutions that are tailored to the legal framework, regulatory system, and industry structure in each jurisdiction. For example, the United States has required U.S. banking organizations to meet a minimum leverage ratio since the 1980s, and the United States has long had strict activity restrictions on companies that control banks.

The Board will continue to work with its international counterparts to strengthen the global financial system and financial stability. As regulatory and supervisory standards are implemented throughout the world, the Board and its international supervisory colleagues will gain further insight into which approaches are most effective in improving the resilience of banking organizations and in protecting financial stability, and the Board will take further action as appropriate.

While the Board considered commenters' proposals for various regulatory agreements, the Board is concerned that such proposals may not adequately address risks to U.S. financial stability. Localized stress on internationally active financial institutions may trigger divergent national interests and increase systemic instability. Commenters' concerns regarding regulatory

fragmentation also should be mitigated by the final rule's emphasis on the Basel Capital Framework, both in the United States and overseas. With respect to commenters' proposals for sunset dates, the Board intends to take further action as necessary depending on the outcomes of international regulatory agreements, but does not believe that a sunset provision in the final rule would be appropriate.

Several commenters focused on the potential effect of the proposal on cross-border resolution. One commenter approved of the proposal on the grounds that requiring a U.S. intermediate holding company for large foreign banking organizations would create a consolidated U.S. legal entity that can be spun off from a troubled parent or placed into receivership under Title II of the Dodd-Frank Act. However, most commenters asserted that the proposal would present impediments to effective cross-border resolution. Commenters argued that the Board was signaling that it lacks confidence in cross-border resolution, which could reduce other regulators' incentives to cooperate, both in advance of and during a crisis. The Board notes, however, that multiple jurisdictions apply prudential requirements to commercial and investment banking activities conducted in locally incorporated subsidiaries of foreign banks. In the Board's view, and as noted above, the final rule will result in a regulatory approach that is substantively similar to that which now exists in some other jurisdictions, and is therefore not inconsistent with coordinated resolution. Further, a U.S. intermediate holding company would facilitate an orderly cross-border resolution of a foreign banking organization with large U.S. subsidiaries by providing one top-tier U.S. holding company to interface with the parent foreign banking organization in a single-point-of-entry resolution conducted by its home country resolution authority (which is the preferred resolution strategy of many foreign banking organizations) or to serve as the focal point of a separate resolution of the U.S. operations of a

foreign banking organization in a multiple-point-of-entry resolution (which is the preferred resolution strategy of other foreign banking organizations).

Commenters also asserted that the Board had not shown that it adequately considered the risks to financial stability that could result from measures taken by other jurisdictions in response to the final rule. Most of these commenters asserted that the proposal could invite retaliatory measures from other jurisdictions, and argued that fragmented, nationalized financial regulation would make the United States less financially stable. The Board has considered the possibility that the proposal may affect the environment for U.S. banking organizations operating overseas. As noted above, U.S. banking organizations already operate in a number of overseas markets that apply local regulatory requirements to their local commercial banking and investment banking subsidiaries. In addition, the United Kingdom, which is host to substantial operations of U.S. banking organizations, applies local liquidity standards to commercial banking and broker-dealer subsidiaries of non-U.K. banks operating in their market that are similar to the requirements included in the Board's proposal. While most other jurisdictions have not imposed similar liquidity requirements on branches and agencies, the Board took into account the particular role of U.S. branches and agencies in funding markets, especially in U.S.-dollar denominated short-term wholesale funding markets, in its evaluation of measures for protecting U.S. financial stability, and has determined that the requirements imposed upon branches and agencies that operate in the United States are appropriate. With respect to requests for quantitative impact studies on the proposal as a whole or on aspects of the proposal in particular, as noted above, the Board and its international supervisory colleagues will gain further insight into which regulatory approaches are most effective in improving the resilience of banking organizations and in protecting financial stability over time, and the Board will take further action as appropriate.

Some commenters expressed concern that the proposal could jeopardize transatlantic trade agreement negotiations, or that the proposal was protectionist and antithetical to fair, free and open markets. The final rule, however, provides no barriers to entry or operation in the United States that contravene national treatment. The final rule imposes requirements on foreign banking organizations that are comparable to those required of U.S. organizations and are based in prudential regulation.

B. U.S. Intermediate Holding Company Requirement

Under the proposal, foreign banking organizations with total consolidated assets of $50 billion or more and U.S. non-branch assets of $10 billion or more[88] would have been required to form a U.S. intermediate holding company. The foreign banking organization would have been required to hold its interest in 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, through the U.S. intermediate holding company.

1. Adopting the U.S. Intermediate Holding Company Requirement as an Additional Prudential Standard

Some commenters questioned whether the Board could adopt the U.S. intermediate holding company requirement because it is not an enumerated standard in section 165. In support of their view, commenters argued that the U.S. intermediate holding company was a policy measure that would be appropriately established through the legislative, rather than the rulemaking, process. Commenters argued that the Board's authority to adopt "additional

---

[88] Under the proposal, U.S. non-branch assets would have been 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).

prudential standards" gives the Board flexibility to create targeted prudential requirements such as contingent capital and short-term debt requirements, and characterized the U.S. intermediate holding company requirement as a more significant change not within that authority. These commenters also contended that the fact that Congress had provided for the establishment of a U.S. intermediate holding company in other sections of the Dodd-Frank Act in different contexts suggested that Congress did not intend for a U.S. intermediate holding company to be used in establishing enhanced prudential standards under section 165.[89] Commenters also questioned whether the Board had adequately demonstrated that the proposed U.S. intermediate holding company standard was appropriate to address the financial stability concerns posed by the U.S. operations of foreign banking organizations.

Section 165 does not itself require that a foreign banking organization establish a U.S. intermediate holding company. However, section 165 permits the Board to establish any additional prudential standard for covered companies if the Board determines that the standard is appropriate. Section 165 does not define what it means for an additional prudential standard to be appropriate, although it would be consistent with the standards of legal interpretation to look to the purpose of the authority to impose the requirement. In this case, section 165 specifically explains that its purpose is 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 large, interconnected financial institutions.[90] The U.S. intermediate holding company requirement directly addresses the risks to the financial stability of the United States by increasing the resiliency of the U.S. operations of large foreign banking organizations. Foreign

---

[89] See sections 167(b) and 626 of the Dodd-Frank Act.

[90] Section 165(a)(1) of the Dodd-Frank Act; 12 U.S.C. 5365(a)(1).

banking organizations with U.S. non-branch assets of $50 billion or more are large, complex, and interconnected institutions, and generally have a U.S. risk profile similar to U.S. bank holding companies of total consolidated assets of $50 billion or more. The U.S. intermediate holding company requirement also provides for consistent application of capital, liquidity, and other prudential requirements across the non-branch U.S. operations of the foreign banking organization and a single nexus for risk management of those U.S. non-branch operations, facilitating application of the mandatory enhanced prudential standards, increasing the safety and soundness of and providing for consolidated supervision of these operations. Last, the U.S. intermediate holding company requirement facilitates a level playing field between foreign and U.S. banking organizations operating in the United States, in furtherance of national treatment and competitive equity. For these reasons, the Board believes that the U.S. intermediate holding company is an appropriate additional enhanced prudential standard under section 165, in furtherance of the statutory directive to prevent or mitigate risks to U.S. financial stability.

While commenters argued that the inclusion of an intermediate holding company requirement in other sections of the Dodd-Frank Act suggests that Congress did not intend for the Board to adopt the requirement in connection with Dodd-Frank Act section 165, the Board believes that the provisions that commenters cite serve to acknowledge the U.S. intermediate holding company as a tool to facilitate the supervision of financial activities of a company by requiring the company to move the activities into or under a single entity.[91] The U.S.

---

[91] Under section 167 of the Dodd-Frank Act, the Board may require a nonbank financial company that conducts commercial and financial activities to establish a U.S. intermediate holding company and conduct all or a portion of its financial activities in that intermediate holding company. 12 U.S.C. 5367. Similarly, under section 626 of the Dodd-Frank Act, the Board may require a grandfathered unitary savings and loan holding company that conducts

intermediate holding company requirement would assist in the supervision of financial activities of the U.S. intermediate holding company, while permitting subsidiaries held under section 2(h)(2) of the Bank Holding Company Act[92] to remain outside of the U.S. intermediate holding company.

In establishing the enhanced prudential standards under section 165, the statute requires the Board to consider a number of factors, including those relating to a foreign banking organization's complexity. This suggests that the Board could adopt additional prudential standards to address such complexity. The Board also is authorized by the Bank Holding Company Act, [93] the Federal Deposit Insurance Act,[94] and the International Banking Act[95] to ensure that bank holding companies and foreign banking organizations operating in the United States conduct their operations in a safe and sound manner. Consistent with all of these authorities, the provisions in the final rule will help the Board supervise foreign banking organizations for safety and soundness.

In addition to the requirements of the final rule, foreign banking organizations will continue to be subject to Board rules and guidance that are otherwise applicable. For instance, a foreign banking organization will be subject to all applicable requirements in the Bank Holding

---

commercial activities to establish and conduct all or a portion of its financial activities in or through a U.S. intermediate holding company, which shall be a savings and loan holding company. 12 U.S.C. 1467b.

[92] As further described below in section IV.B.5 of this preamble, the final rule also permits limited types of other subsidiaries to be held outside the U.S. intermediate holding company.

[93] 12 U.S.C. 1841 et seq.

[94] 12 U.S.C. 1818 et seq.

[95] 12 U.S.C. 3101 et seq.

Company Act, Regulation Y, and Regulation K.[96] In addition, U.S. intermediate holding companies that are bank holding companies will generally be subject to the rules and regulations applicable to a bank holding company (other than the enhanced prudential standards for bank holding companies set forth in this final rule or otherwise as specifically provided).

2. Restructuring Costs

Some commenters expressed concern that the costs of the corporate reorganization necessary to comply with the proposed U.S. intermediate holding company requirement would not be justified by the financial stability benefit of the requirement. Commenters argued that the initial costs of the proposal could be in the hundreds of millions of dollars, and one commenter estimated that the one-time cost of coming into compliance with the proposal could be $100 million to $250 million, with annual ongoing costs of $25-50 million (excluding tax costs). Commenters cited a variety of costs for restructuring their operations to transfer subsidiaries to the intermediate holding company, including obtaining valuation opinions and third-party consents, restructuring transaction-booking trade flows, reallocating assets, revising employment contracts, and novating contracts and guarantees. Commenters also cited the costs of creating additional management and governance structures and systems for calculating capital; modifying information technology systems; establishing new governance and funding mechanisms; and issuing equity instead of debt to capitalize the U.S. intermediate holding company. Other commenters focused on the range of processes, tools, and resources that would

---

[96] 12 U.S.C. 1841 et seq; 12 CFR Part 211; 12 CFR Part 225.

need to be deployed to manage stress-testing requirements. Commenters also observed that U.S. bank holding companies would not be subject to the costs of the reorganization.[97]

Commenters also expressed concern that the tax costs of restructuring the U.S. operations would be significant. The tax costs cited included foreign transfer taxes and other non-U.S. costs, as well as costs imposed by the U.S. tax authorities and various state taxes. One commenter requested that the Board discuss with tax authorities or other relevant authorities the application of a simple accounting and tax treatment for transferring subsidiaries to a U.S. intermediate holding company. Commenters also specifically cited the applicability of the U.S. tax consolidation rules and the effect of the European Commission's proposal for a financial transaction tax.

Commenters argued that these costs were exacerbated by the proposed one-year transition period, particularly in light of the costs associated with complying with other regulatory initiatives. Some commenters argued that the Board should provide a 2-year or 36-month transition period, and other commenters requested that the transition period be harmonized with the transition period for the agreements reached by the Basel Committee in Basel III or the adoption of other jurisdictions' comparable regulations.

The restructuring costs cited by commenters will in many cases depend on the existing complexity of a given foreign banking organization's U.S. operations. Some foreign banking

---

[97] Commenters also expressed concern that foreign banking organizations using the advanced approaches risk-based capital rules would be forced to develop U.S.-specific models for calculating risk-weighted assets, and urged the Board to permit foreign banking organizations to use methodologies approved by home-country supervisors. In the final rule, and as described further below, U.S. intermediate holding companies are not subject to the advanced approaches risk-based capital rules, regardless of whether they meet the thresholds for application of those rules.

organizations subject to the U.S. intermediate holding company requirement in the final rule may have complex operations that will require substantial reorganization to comply with the requirement. Other foreign banking organizations, however, may already hold the bulk of their assets under an existing holding company structure or in a small number of subsidiaries. Accordingly, the Board does not believe that all foreign banking organizations will incur substantial costs in reorganizing their U.S. operations. On the whole, the Board believes that the financial stability benefits of the U.S. intermediate holding company, as discussed above, outweigh the costs of the one-time reorganization.

In order to permit foreign banking organizations to conduct the necessary restructuring in an orderly way, the final rule extends the transition period for forming a U.S. intermediate holding company until July 1, 2016, for foreign banking organizations that meet or exceed the relevant asset threshold on July 1, 2015. Under the final rule, a foreign banking organization that meets or exceeds the threshold for formation of a U.S. intermediate holding company (U.S. non-branch assets of $50 billion) on July 1, 2015, is required to organize its U.S. operations such that most of its U.S. subsidiaries are held by the U.S. intermediate holding company by July 1, 2016. Such a foreign banking organization and its U.S. intermediate holding company must be in compliance with the enhanced prudential standards (other than the leverage ratio and the stress-testing requirements) on that date.

The final rule provides additional transition time for completing the structural reorganization for foreign banking organizations that must form a U.S. intermediate holding company by July 1, 2016. As commenters explained, many foreign banking organizations' operational structures arose through historical acquisitions that may be costly or complicated to reorganize. By July 1, 2016, the U.S. intermediate holding company must hold the foreign

banking organization's ownership interest in any U.S. bank holding company subsidiary and any depository institution subsidiary and in U.S. subsidiaries representing 90 percent of the foreign banking organization's assets not held by the bank holding company or depository institution. The final rule provides a foreign banking organization until July 1, 2017, to transfer its ownership interest in any residual U.S. subsidiaries to the U.S. intermediate holding company. This additional accommodation should mitigate some tax and restructuring costs for foreign banking organizations with numerous small nonbank subsidiaries, while ensuring that the majority of a foreign banking organization's U.S. non-branch assets are held by the U.S. intermediate holding company and are subject to enhanced prudential standards, consistent with safety and soundness and mitigation of systemic stability risks by July 1, 2016.

The Board also extended the compliance period for a foreign banking organization that meets or exceeds the threshold for formation of a U.S. intermediate holding company after July 1, 2015. Under the final rule, a foreign banking organization that meets or exceeds the asset threshold after July 1, 2015, would be required to establish a U.S. intermediate holding company beginning on the first day of the ninth quarter after it meets or exceeds the asset threshold, unless that time is accelerated or extended by the Board in writing. These extended transition periods should mitigate the tax and reorganization costs by providing affected foreign banking organizations additional time to plan and execute the required restructuring in the way that most comports with their tax-planning and internal organizational needs.

3. Scope of the Application of the U.S. Intermediate Holding Company Requirement

Commenters also proposed modifications to the application of the U.S. intermediate holding company requirement. For instance, some commenters argued that the Board should impose the U.S. intermediate holding company requirement based on a case-by-case assessment

of the immediate or actual risks posed by an individual foreign banking organization or its U.S. operations. In this context, several commenters suggested that foreign banking organizations owned by sovereign wealth funds should be exempt from the requirement to form a U.S. intermediate holding company. By contrast, some commenters argued that a case-by-case determination for a U.S. intermediate holding company would subject foreign banking organizations to too much uncertainty. Others suggested that the Board should create a waiver for or exempt from the U.S. intermediate holding company requirement any foreign banking organization that is able to demonstrate a comparable home country supervisory regime, that has U.S. subsidiaries deemed to be adequately capitalized or managed, or that poses no danger to systemic stability in the United States. Some commenters asserted that the Board should differentiate between the risks posed by foreign banking organizations and should apply stricter requirements to foreign banking organizations with predominantly broker-dealer operations. A number of commenters suggested that the Board raise the asset threshold for the U.S. intermediate holding company requirement, expressing the view that a foreign banking organization should be required to form a U.S. intermediate holding company when its U.S. non-branch assets were equal to or greater than $50 billion, rather than $10 billion.

The Board chose to base the proposed U.S. intermediate holding company requirement on asset size because it is a measure that is objective, transparent, readily available, and comparable among foreign banking organizations. The Board believes that imposing the U.S. intermediate holding company requirement based on a case-by-case assessment of the immediate or actual risks, by the identity of the ultimate shareholder, or by an evaluation of the practices of the home-country regulator would be less transparent for foreign banking organizations and market participants, and would create too much uncertainty. The lack of transparency may limit

the ability of foreign banking organizations to anticipate whether they would be subject to the U.S. intermediate holding company requirement in the future and limit their ability to make strategic decisions about their U.S. operations. Furthermore, if the Board were to impose a U.S. intermediate holding company requirement on a case-by-case basis as suggested by commenters, market participants may view the imposition of a U.S. intermediate holding company requirement as a signal that the Board has concerns about a particular foreign banking organization's parent company, U.S. operations, or home-country supervisor, and could cause market participants to limit their exposure to that firm or other firms from that country, thereby increasing stress in the market. In addition, a case-by-case assessment may result in disparate treatment of foreign banking organizations that compete in the same markets. Accordingly, the final rule would base the U.S. intermediate holding company requirement on the size of the firm's U.S. non-branch assets and does not provide for any exemptions or waivers based on the factors described by commenters.

In light of these comments, however, the Board reviewed the proposed $10 billion threshold in light of the applicable considerations under section 165, including the systemic risk posed by operations of this size and the Board's authority to tailor application of the standards pursuant to section 165(a)(2). Based on its review, the Board has determined that it would be appropriate to raise the threshold in the final rule for the U.S. intermediate holding company requirement from $10 billion to $50 billion of U.S. non-branch assets. This threshold will reduce the burden on a foreign banking organization with a smaller U.S. presence, but will maintain the U.S. intermediate holding company requirement for the larger foreign banking organizations that

present greater risks to U.S. financial stability.[98] Moreover, the Board believes that establishing a minimum threshold for forming a U.S. intermediate holding company at $50 billion helps to advance the principle of national treatment and equality of competitive opportunity in the United States by more closely aligning standards applicable to the U.S. non-branch operations of foreign banking organizations under section 165 with the threshold for domestic U.S. bank holding companies that are subject to enhanced prudential standards under Title I of the Dodd-Frank Act.

Some commenters argued that the final rule should exempt foreign banking organizations that do not have a U.S. insured depository subsidiary from the U.S. intermediate holding company requirement. Other commenters expressed concern that the proposal would impose minimum capital requirements for banks or bank holding companies on U.S. intermediate holding companies without subsidiary insured depository institutions. The Board believes that imposing these standards on a foreign bank's U.S. operations is warranted, regardless of whether the foreign bank has a U.S. insured depository institution, and therefore has not adopted this suggested change in the final rule. First, all foreign banking organizations subject to the final rule have banking operations in the United States (either through a U.S. branch or agency, or through a bank holding company subsidiary). Foreign banking organizations that have branches and agencies are treated as if they were bank holding companies for purposes of the Bank

---

[98] See, e.g. Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of $50 billion or More and Nonbank Financial Companies Supervised by the Federal Reserve, 78 FR 52391 (August 23, 2013) ("Larger companies are often more complex companies, with associated risks that play a large role in determining the supervisory resources necessary in relation to that company. The largest companies, because of their increased complexity, risk, and geographic footprints, usually receive more supervisory attention.").

Holding Company Act and the Dodd-Frank Act.[99] In addition, by statute, both uninsured and insured U.S. branches and agencies of foreign banks may receive Federal Reserve advances on the same terms and conditions that apply to domestic insured state member banks. The risks to financial stability presented by foreign banking organizations with U.S. branches and agencies generally are not dependent on whether the foreign banking organization has a U.S. insured depository institution. In many cases, insured depository institution subsidiaries of foreign banks form a small percentage of their U.S. assets. Accordingly, the final rule applies the U.S. intermediate holding company requirement to all foreign banking organizations that meet the asset threshold and have a banking presence in the United States, regardless of whether they own a U.S. insured depository institution.[100] The Board notes that a foreign bank that has a banking presence through a U.S. branch or agency (in lieu of or in addition to operating an insured depository institution) would be permitted to continue to operate the branch or agency outside of the U.S. intermediate holding company.

One commenter asserted that the U.S. intermediate holding company requirement should be an alternative to any domestic regulatory-capital surcharge that would be imposed on a U.S. intermediate holding company with a parent that is a global systemically-important bank. The Board is considering the appropriate framework for domestic systemically-important banking

---

[99] 12 U.S.C. 3106(a); 12 U.S.C. 5311(a).

[100] The final rule also provides that a top-tier foreign banking organization that is organized in any "State" of the United States (including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands) will not be subject to the requirements applicable to foreign banking organizations. These organizations qualify as bank holding companies under the Bank Holding Company Act, are fully subject to U.S. capital and other regulatory requirements, and thus are subject to the enhanced prudential standards applicable to domestic bank holding companies.

organizations, and will consider such comments in connection with any rulemaking relating to domestic systemically-important banking organizations.

4. Method for Calculating the Asset Threshold

Several commenters expressed views on the proposed method for calculating U.S. non-branch assets for purposes of applying the U.S. intermediate holding company requirement. Under the proposal, a foreign banking organization generally would have calculated its U.S. non-branch assets by taking 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) for the previous four quarters. Some commenters argued that foreign banking organizations should be allowed to exclude certain assets from the calculation of total combined U.S. assets, including low-risk assets, such as U.S. government bonds, cash, or U.S. Treasuries; assets of regulated U.S. broker-dealer subsidiaries; high-quality liquid assets; and reserves on deposit at Federal Reserve Banks. Conversely, one commenter suggested that combined U.S. assets should include consideration of off-balance sheet exposures at the U.S. top-tier holding company. As discussed in greater detail in section IV.B.5 of this preamble, commenters also suggested that certain subsidiaries be excluded from the U.S. intermediate holding company requirement and that assets held by these subsidiaries be excluded from the calculation of U.S. non-branch assets.

After considering these comments, the Board has determined to finalize the definition of U.S. non-branch assets largely as proposed. In general, the Board believes that a foreign banking organization should measure its U.S. non-branch assets using a similar methodology to that used by a U.S. bank holding company to measure its total consolidated assets for purposes of section 165. In calculating its total consolidated assets for purposes of the enhanced prudential standards in section 165, a U.S. bank holding company includes all on-balance sheet assets, including those

associated with low-risk activities and functionally regulated subsidiaries, and does not include off-balance sheet exposures. Furthermore, the Board believes that a simple approach to the calculation of U.S. non-branch assets is appropriate and will facilitate planning for foreign banking organizations, particularly for those that are near the threshold for formation of a U.S. intermediate holding company. Accordingly, and consistent with the final rule's requirement to move virtually all subsidiaries under the U.S. intermediate holding company, discussed further below, the final rule's definition of U.S. non-branch assets includes all on-balance sheet assets (other than assets held by a section 2(h)(2) company or by a DPC branch subsidiary).

The proposal would have permitted a foreign banking organization to reduce its U.S. non-branch assets 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. Commenters supported this aspect of the proposal and recommended that the final rule also exclude, for purposes of this calculation, intercompany balances and transactions between U.S. subsidiaries and U.S. branches and agencies, and between the U.S. intermediate holding company's subsidiaries and non-U.S. affiliates.

The final rule requires a foreign banking organization to reduce its U.S. non-branch assets by the amount corresponding to any balances and transactions between any top tier U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed. The final rule does not permit a foreign banking organization to reduce its U.S. non-branch assets by the amount corresponding to balances and transactions between U.S. subsidiaries, on the one hand, and branches or agencies or non-U.S. affiliates, on the other. The purpose of netting intercompany balances between U.S. subsidiaries that would be eliminated in consolidation is to mirror, as closely as possible, the assets of the final consolidated U.S.

intermediate holding company. As the final rule does not provide for consolidated treatment of branches and agencies or non-U.S. affiliates with the U.S. intermediate holding company, netting would not be appropriate in this context.

5. Formation of the U.S. Intermediate Holding Company.

Under the proposal, a foreign banking organization that met the U.S. non-branch asset threshold for U.S. intermediate holding company formation would have been 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 proposal defined the term "subsidiary" to include any company directly or indirectly "controlled" by another company. The foreign banking organization would have "control" of a U.S. company, and thus be required to move that company under the U.S. intermediate holding company, if it (i) directly or indirectly, or acting through one or more other persons, owned, controlled, or had power to vote 25 percent or more of any class of voting securities of the company; (ii) controlled in any manner the election of a majority of the directors or trustees of the company; or (iii) directly or indirectly exercised a controlling influence over the management or policies of the company.[101] The proposal would have provided an exception for U.S. subsidiaries held under section 2(h)(2) of the Bank Holding Company Act. Section 2(h)(2) of the Bank Holding Company Act allows qualifying foreign banking organizations to retain certain interests in foreign commercial firms that conduct business in the United States.[102]

---

[101] 12 U.S.C. 1841(a)(2).

[102] In permitting this exception, the Board has taken into account the nonfinancial activities and affiliations of a foreign banking organization. The proposal would have also provided the Board with authority to approve multiple U.S. intermediate holding companies or alternative organizational structures, as further discussed in section IV.B.5 of this preamble.

Commenters provided several comments on the use of the Bank Holding Company Act definition of "control" for identifying companies to be held under the U.S. intermediate holding company. In addition, commenters suggested other types of subsidiaries that should be excluded from the requirement to transfer U.S. subsidiaries to a U.S. intermediate holding company, and requested clarification regarding the circumstances in which the Board may permit exceptions to the U.S. intermediate holding company requirement. These comments are discussed below.

a. The Definition of "Control"

First, several commenters argued that the Bank Holding Company Act definition of "control" would require a foreign banking organization to hold a broader set of entities through its U.S. intermediate holding company than commenters viewed as necessary to achieve the goals of the proposal. Commenters suggested a variety of alternatives to the Board's use of the Bank Holding Company Act definition, including requesting that the Board adopt a 25 percent threshold (as is used in the resolution plan rule[103]), a tailor-made standard for Title I of the Dodd-Frank Act, a standard under which a foreign banking organization would be required to hold any subsidiary that it "practically controlled" through the U.S. intermediate holding company, or a GAAP consolidation standard. Other commenters asserted that the Board should permit an exemption for subsidiaries that are only partially owned, particularly if integrating those subsidiaries into a U.S. intermediate holding company would disrupt their traditional reporting and consolidation structures. Commenters also asserted that a foreign banking organization might not have or be able to obtain sufficient information to determine whether it has direct or indirect control of U.S. companies under the Bank Holding Company Act definition of control.

---

[103] 12 CFR 243.2.

The Board based its incorporation of the Bank Holding Company Act definition of "control" on the Dodd-Frank Act, which incorporates that definition.[104] Moreover, the use of this definition maintains regulatory parity between foreign banking organizations' U.S. operations and U.S. bank holding companies. The Bank Holding Company Act definition of "control" does not require a shareholder to have absolute control over management and policies of a banking organization or other company in order to exert a significant amount of control over the management and policies of that organization, or to be exposed to the direct or indirect risks (e.g., reputational risks) incurred by that subsidiary. To the extent that a foreign banking organization is able to exercise such control, the Board believes it is appropriate for the ownership interest in that subsidiary to be held by the U.S. intermediate holding company and subject to the risk-management regime applied to the U.S. intermediate holding company's operations.

As a general matter, although foreign banking organizations expressed concern that they might not be able to determine whether they or any of their subsidiaries own more than 25 percent of or exert a controlling influence over an entity, the Board believes that a foreign banking organization should have that information about its holdings.[105] To the extent that a foreign banking organization needs time to gather this information, the extended transition period, described above in section II.B.2 of the preamble, will enable this due diligence process. With respect to comments requesting that the Board adopt a 25 percent standard or tailor-made standard, the definition of control is based on the Dodd-Frank Act. Moreover, as noted, the

---

[104] Section 2 of the Dodd-Frank Act; 12 U.S.C. 5301.

[105] For instance, foreign banking organizations are required to file the Report of Changes in Organizational Structure (Form Y-10) upon the acquisition of control of a nonbanking entity.

Board believes that it is important to maintain parity with bank holding companies in determining which companies are "subsidiaries." The Board understands that the application of the control definition may not be appropriate in all cases, and has provided a mechanism for granting exemptions from the requirement in the final rule, as described below.

b. Exemptions for Specific Subsidiaries

Commenters also provided examples of subsidiaries that they asserted should not be required to be held within the U.S. intermediate holding company, including: (1) subsidiaries that do not pose a material risk to U.S. financial stability, or subsidiaries below a de minimis asset or liability threshold, such as subsidiaries with no more than $1 billion or $10 billion in total consolidated assets; (2) subsidiaries that are fully and unconditionally guaranteed by the parent, conduits for funding, or U.S. subsidiaries of foreign financial subsidiaries; (3) property casualty insurers; (4) investment funds, including registered and unregistered funds under the Investment Company Act of 1940; (5) branch subsidiaries, particularly those that are significantly related to the U.S. branch's operations; (6) investments held in satisfaction of debts previously contracted in good faith (DPC assets); (7) non-U.S. subsidiaries of the foreign banking organization, even if they were held by a U.S. subsidiary; and (8) joint ventures with another foreign banking organization. Commenters asserted that requiring funding subsidiaries, in particular, to be transferred to the U.S. intermediate holding company would increase funding costs for foreign banking organizations. Some commenters also asked the Board to exclude non-U.S. subsidiaries that are consolidated under the U.S. intermediate holding company from U.S. regulations.

As discussed above, the Board is adopting a transparent, objective threshold standard for determining whether a U.S. intermediate holding company is required and which entities must be held by that company. Excluding the subsidiaries described above would be at odds with the

transparency and objectivity of the standard, and, furthermore, would limit the extent to which these subsidiaries would be subject to enhanced prudential standards in a manner consistent with U.S. bank holding companies. The Board believes it is necessary for virtually all legal entities incorporated in the United States, including those mentioned above, to be organized under the U.S. intermediate holding company. This will facilitate application of the capital, liquidity, and other enhanced prudential standards to the operations of these subsidiaries, promoting the financial stability goals discussed earlier. Also, as discussed above, one of the aims of the proposal, and of the final rule, is to provide a platform for consistent supervision and regulation of the U.S. operations of a foreign banking organization. The alternatives suggested by commenters would undermine these goals.

Commenters also requested exclusions for merchant banking subsidiaries or U.S. subsidiaries engaged in or holding non-financial assets, such as private equity investments in non-financial assets, or oil and gas and other similar investments from the U.S. intermediate holding company requirement. In the final rule, the Board has also decided not to exclude from the U.S. intermediate holding company requirement such subsidiaries. These types of subsidiaries have historically been included within a consolidated banking organization subject to supervision by the Board.

In response to comments regarding DPC assets, the final rule provides an exemption from the requirement to hold U.S. subsidiaries through the U.S. intermediate holding company for DPC branch subsidiaries, defined as subsidiaries of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency. To the extent the liabilities in satisfaction of which such assets are held pertain to the U.S. branch or

agency, it is appropriate for the branch or agency to continue holding the assets and dispose of them. Such DPC assets may only be held for a short term (typically two to five years) during which the banking organization (in this case, the branch or agency) must make good-faith efforts to dispose of the assets.[106] Accordingly, the Board does not believe that it is necessary to require foreign banking organizations to transfer such subsidiaries to the U.S. intermediate holding company.

In response to commenters' requests for clarity regarding its approach to non-U.S. subsidiaries of a U.S. intermediate holding company, the Board will apply the enhanced prudential standards to the consolidated operations of a U.S. intermediate holding company, which would include the foreign subsidiaries of a U.S. intermediate holding company.

Commenters also asked whether the foreign banking organization's entire ownership interest in a controlled subsidiary would need to be transferred to the U.S. intermediate holding company, or whether foreign banking organizations could maintain dual ownership of a U.S. subsidiary through the parent and the U.S. intermediate holding company. Commenters asserted that so long as a subsidiary was consolidated with the U.S. intermediate holding company, it should be unnecessary for the foreign banking organization to transfer its minority interest in the U.S. subsidiary to the U.S. intermediate holding company. In the final rule, in response to these comments, the Board is clarifying the types and amount of interests that must be transferred to the U.S. intermediate holding company.

The final rule provides that a foreign banking organization must transfer all of its ownership interests in a U.S. subsidiary (other than a section 2(h)(2) company or DPC branch

---

[106] See 12 CFR 225.140.

subsidiary) to the U.S. intermediate holding company, and may not retain any ownership interest in the U.S. subsidiary directly or through other subsidiaries of the foreign banking organization. The Board believes that the U.S. intermediate holding company's role as a consistent platform for supervision, regulation and risk-management could be undermined by allowing multiple ownership structures for U.S. subsidiaries and attendant uncertainties as to the U.S. intermediate holding company's control over the U.S. subsidiaries. The transition periods should mitigate the difficulties a foreign banking organization may experience in transferring its ownership interest in its U.S. subsidiaries to the U.S. intermediate holding company.

c. Alternative Organizational Structures

The proposal would have provided the Board with authority to permit a foreign banking organization to establish multiple U.S. intermediate holding companies or to use an alternative organizational structure to hold its U.S. operations. The proposal expressly provided that the Board would consider exercising this authority when a foreign banking organization controls multiple lower-tier foreign banking organizations that have separate U.S. operations or 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 have provided 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.

Although commenters supported this aspect of the proposal, they also requested that the Board clarify the circumstances under which it would permit alternative U.S. intermediate holding company structures. As discussed above, commenters requested that the Board provide an exception to a foreign banking organization to the extent that the foreign banking organization

does not have sufficient control to cause a U.S. subsidiary to be made a subsidiary of its intermediate holding company. Other commenters suggested that the Board permit certain foreign banking organizations, such as holding companies with multiple, separate banking operations in the United States, to form multiple U.S. intermediate holding companies depending on the global entity's structure or other considerations. Commenters cited a variety of potential justifications for multiple U.S. intermediate holding companies, such as limiting disruption of existing businesses, restructuring costs, or tax considerations. Some commenters asked that they be allowed to designate a lower-tier entity as the U.S. intermediate holding company in order to avoid restructuring costs. Others argued that the Board should allow a foreign banking organization with a subsidiary insured depository institution to form separate U.S. intermediate holding companies above bank and nonbank operations, and not apply capital standards to the U.S. intermediate holding company with nonbank operations.

The final rule provides that the Board may permit alternate or multiple U.S. intermediate holding company structures. In determining whether to permit an alternate structure, the final rule provides that the Board may consider whether applicable home country law would prevent the foreign banking organization from controlling its U.S. subsidiaries through a single U.S. intermediate holding company, or where the activities, scope of operations, or structure of the foreign banking organization's subsidiaries in the United States warrant consideration of alternative structures, such as where a foreign banking organization controls multiple lower-tier foreign banking organizations that have separate U.S. operations. If it authorizes the formation of more than one intermediate holding company by a foreign banking organization, the Board generally will treat any additional U.S. intermediate holding company as a U.S. intermediate holding company with $50 billion or more in total consolidated assets, even if its assets are

below that threshold. In the narrow circumstance where the Board permits a foreign banking organization to hold its interest in a U.S. subsidiary outside of a U.S. intermediate holding company (for instance, where a foreign banking organization demonstrates that it cannot transfer its ownership interest in the subsidiary to the U.S. intermediate holding company or otherwise restructure its investment), the Board expects to require passivity commitments or other supervisory agreements to limit the exposure to and transactions between the U.S. intermediate holding company and the U.S. subsidiary that remains outside of the U.S. intermediate holding company.

With respect to requests that the Board permit a company to designate a lower-tier subsidiary as the U.S. intermediate holding company or permit multiple U.S. intermediate holding companies over different types of functionally regulated subsidiaries, the Board does not expect to permit an alternative structure where the purpose or primary effect of the alternate structure is to reduce the impact of the Board's regulatory capital rules or other prudential requirements. Thus, the Board would be unlikely to permit a foreign banking organization to form a separate U.S. intermediate holding company for the sole purpose of holding a nonbank subsidiary separate from the banking operations, other than under circumstances of the types noted above, or to designate a company that is not the top-tier company in the United States as the U.S. intermediate holding company.

d. Corporate Form, Designation of Existing Company, and Dissolution of the U.S. Intermediate Holding Company

The proposal would have required a U.S. intermediate holding company to be organized under the laws of the United States, any of the fifty states of the United States, or the District of Columbia. While the proposal generally would have provided 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 the proposal. In addition, the U.S. intermediate holding company would have been required to have a board of directors or equivalent thereto to help ensure a strong, centralized corporate governance system.

Commenters generally supported the flexibility provided in the proposal, but also requested that the Board permit the U.S. intermediate holding company to be a foreign legal entity. Some commenters asked the Board to clarify who might be permitted to sit on the board of directors of the U.S. intermediate holding company, observing that state law may govern citizenship requirements for members of the board of directors.

In the final rule, the Board has retained the flexibility for U.S. intermediate holding companies to choose a corporate form, provided that the U.S. intermediate holding company is organized under the laws of the United States, any of the fifty states thereof, or the District of Columbia. The final rule does not permit the U.S. intermediate holding company to be a foreign legal entity, as this would limit the Board's ability to supervise the U.S. operations of a foreign banking organization in a manner similar to the operations of a U.S. bank holding company and therefore could complicate application of the enhanced prudential standards. To the extent that state law affects the membership of the board of directors, the U.S. intermediate holding company will need to be in compliance with the law of the state in which it is chartered. In addition, as discussed in section IV.D.2 of this preamble, a U.S. intermediate holding company must establish and maintain a risk committee to oversee the risks of its operations.

Several commenters observed that the requirement to form a U.S. intermediate holding company could disrupt the existing capitalization structure of a foreign banking organization's U.S. operations. Among other things, commenters asked the Board to clarify whether a foreign

banking organization would be required to form a new holding company or whether it could instead designate an existing company as the U.S. intermediate holding company. One of these commenters requested that the Board allow a newly-formed top-tier U.S. intermediate holding company to include in common equity tier 1 minority interest any minority interest arising from the issuance of common shares by the subsidiary bank holding company.

The final rule clarifies that a foreign banking organization may designate an existing entity as the U.S. intermediate holding company, provided that that entity is the top-tier entity in the United States. While the final rule does not provide that a bank holding company subsidiary could be treated as a depository institution for purposes of the recognition of minority interest, a foreign banking organization that has a bank holding company subsidiary can designate that bank holding company as its U.S. intermediate holding company. Doing so would allow the foreign banking organization to use the bank holding company's existing capital as the U.S. intermediate holding company's capital, which should address some of the concerns regarding inclusion of minority interests in capital. The Board also has discretion during the transition period to address particular and idiosyncratic issues that may arise in connection with a foreign banking organization's reorganization.

Commenters also requested clarification on whether a foreign banking organization required to form a U.S. intermediate holding company would need to maintain the U.S. intermediate holding company if its assets fall below the applicable threshold. In response to this comment, the Board is clarifying that a foreign banking organization may dissolve the U.S. intermediate holding company if its U.S. non-branch assets fall below the $50 billion threshold for four consecutive quarters. If the foreign banking organization's U.S. non-branch assets were, subsequently, to exceed the $50 billion threshold for four consecutive quarters, the foreign

banking organization would be required to re-form its U.S. intermediate holding company and hold its entire ownership interest in such subsidiaries through the U.S. intermediate holding company. If the foreign banking organization retains an entity that is a bank holding company, that bank holding company would be subject to certain of the enhanced prudential standards if it had over $10 billion in assets, such as risk-management standards and stress testing standards applicable to domestic bank holding companies.

Consistent with the proposal, the final rule generally does not require a foreign banking organization to transfer assets held through a U.S. branch or agency to the U.S. intermediate holding company. However, subsidiaries of branches and agencies, other than DPC branch subsidiaries, are required to be transferred to the U.S. intermediate holding company. Some commenters expressed concerns that foreign banking organizations might attempt to relocate risky activities from the U.S. intermediate holding company to a U.S. branch or agency. The Board intends to monitor how foreign banking organizations adapt their operations in response to the U.S. intermediate holding company requirement, including whether foreign banking organizations relocate activities from U.S. subsidiaries into their U.S. branches and agencies.

e. Implementation Plan

The proposal would have required a foreign banking organization to notify the Board after it had formed its U.S. intermediate holding company. Commenters generally supported this requirement, but a number of commenters requested that the Board clarify the process for forming a U.S. intermediate holding company and transferring U.S. subsidiaries to that company.

The final rule does not prescribe a process by which a foreign banking organization must complete the required transfer of ownership to the U.S. intermediate holding company by the date set forth in the final rule. In response to commenters requesting guidance on the process

that the Board envisions for transferring ownership interests to the U.S. intermediate holding company, the final rule includes the requirement that a foreign banking organization submit an implementation plan outlining its proposed process to come into compliance with the final rule's requirements. Requiring an implementation plan will facilitate dialogue between the organization and the Federal Reserve early in the process to help ensure that the plan is consistent with the transition period and the Board's expectations for compliance.

A foreign banking organization's implementation plan must contain a list of its U.S. subsidiaries and more detailed information relating to U.S. subsidiaries either that the foreign banking organization is not required to hold through its U.S. intermediate holding company (i.e., section 2(h)(2) companies or DPC branch subsidiaries) or for which the foreign banking organization intends to seek an exemption from the U.S. intermediate holding company requirement. The implementation plan must also contain a projected timeline for the transfer by the foreign banking organization of its ownership interest in U.S. subsidiaries to the U.S. intermediate holding company, a timeline of all planned capital actions or strategies for capital accumulation that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements, and quarterly pro forma financial statements for the U.S. intermediate holding company covering the period from January 1, 2015 to January 1, 2018. In addition, the implementation plan must include a description of the risk management and liquidity stress testing practices of the foreign banking organization, and a description of how the foreign banking organization intends to come into compliance with those requirements. Through the supervisory process, the Board may request that a foreign banking organization include additional information in its implementation plan. A foreign banking organization is not required

to file routine updates to its implementation plan; however, the foreign banking organization should notify the Board if it anticipates that it will deviate materially from the plan.

The implementation plan must be submitted on or before January 1, 2015, from each foreign banking organization that has U.S. non-branch assets of $50 billion or more as of June 30, 2014. The Board acknowledges, however, that a foreign banking organization that is above the threshold on that date may try to reduce its U.S. non-branch assets prior to the date on which it would be required to form a U.S. intermediate holding company. In such case, the implementation plan would be required to contain a description of the foreign banking organization's plan for reducing its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, consistent with safety and soundness. The Board may also require an implementation plan from a foreign banking organization that meets or exceeds the threshold for formation of a U.S. intermediate holding company after June 30, 2014, if the Board determines that an implementation plan is appropriate for that foreign banking organization. The Board would expect to evaluate all implementation plans, including those expressing the intent to reduce assets, for reasonableness and achievability.

Two commenters requested that the Board consider waivers of section 23A of the Bank Holding Company Act for institutions subject to the proposal in order to facilitate transfers to the U.S. intermediate holding company. The final rule is not the appropriate vehicle in which to grant or deny such waivers. Any request for a waiver will be considered under the processes set forth in section 23A of the Federal Reserve Act, which require notice and non-objection from the

FDIC.[107] The Board expects that companies will identify instances in which such waivers may be necessary in connection with their implementation plans.

f. Interaction of the U.S. Intermediate Holding Company Requirement with Other Regulatory Requirements

i. Other Regulatory Regimes

Commenters also requested clarification about the interaction between the proposal and the rules proposed by the Commodity Futures Trading Commission (CFTC) under section 710 of the Dodd-Frank Act. The Board has brought the comment to the attention of the CFTC for consideration in their rulemaking process, which is still ongoing.

ii. Source of strength

Commenters asked whether the Board expects a U.S. intermediate holding company to serve as a source of strength for its subsidiaries that are not insured depository institutions. The Board is clarifying that the final rule does not require a U.S. intermediate holding company to serve as a source of strength for its subsidiaries that are not insured depository institutions. The final rule does not affect any other source of strength obligations that would otherwise apply to the U.S. intermediate holding company.[108]

iii. "Fed Lite" Provisions of the Bank Holding Company Act

Section 5(c)(3) of the Bank Holding Company Act, commonly known as the "Fed lite" provision, prohibits the Board from imposing "rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company."[109] Commenters argued that

---

[107] 12 U.S.C. 371c.

[108] See, e.g., 12 U.S.C. 1831o-1.

[109] 12 U.S.C. 1844(c)(3).

the U.S. intermediate holding company requirement was inconsistent with these provisions. In support of their argument, they described the U.S. intermediate holding company requirement as "targeted" towards imposing capital requirements on broker-dealer affiliates of foreign banking organizations, and asserted that the proposal is the equivalent of doing indirectly what the Board cannot do directly. These commenters also asserted that the proposal would impose additional regulatory burdens on broker-dealers owned by foreign banking organizations compared to stand-alone domestic broker-dealers, and thereby would violate national treatment.

The final rule applies to the U.S. operations of all foreign banking organizations, regardless of whether they have significant broker-dealer activities, and requires a foreign banking organization to place all U.S. subsidiaries (other than section 2(h)(2) companies and DPC branch subsidiaries) under a U.S. intermediate holding company, regardless of the type of subsidiary. Accordingly, U.S. intermediate holding companies will have a range of functionally regulated subsidiaries, including broker-dealers, insurance companies, and insured depository institutions, and some may have larger functionally regulated subsidiaries than others. The final rule imposes rules on the U.S. intermediate holding company, not on functionally regulated subsidiaries of the foreign banking organization, in the same way that those rules are applied to domestic bank holding companies, including those with significant broker-dealer activities. Accordingly, the rule does not target foreign banking organizations with broker-dealer activities.

Under section 165(b)(4), the Board is required to consult with the primary financial regulator of a functionally regulated subsidiary before imposing any prudential requirements under section 165 that are likely to have a significant impact on that functionally regulated subsidiary. The Board consulted with the relevant primary financial regulators, including the SEC, the OCC, the CFTC, and the FDIC in establishing the U.S. intermediate holding company

requirement, thus satisfying its statutory obligation. More generally, and consistent with its current practice, the Board intends to coordinate with functional regulators in the ordinary course of supervising compliance with the enhanced prudential standards.

Last, the Board notes that the final rule applies only to those foreign banking organizations that have a banking presence, such as a branch or an agency, in the United States. Accordingly, the broker-dealer subsidiaries of those foreign banking organizations are not similarly situated to stand-alone broker-dealers or broker-dealers owned by foreign banks without a U.S. banking presence. Foreign banking organizations with a banking presence in the United States are subject to regulation by the Board, whereas those other entities are not.

6. Virtual U.S. Intermediate Holding Company

A few commenters suggested that in order to mitigate the costs of the proposal, rather than requiring formation of a U.S. intermediate holding company, the Board should permit a "virtual" U.S. intermediate holding company. According to the commenters, a foreign banking organization opting to adopt a virtual U.S. intermediate holding company structure would calculate, measure and report its capital and liquidity as if its U.S. subsidiaries were consolidated under a U.S. intermediate holding company, and would be subject to examination and safety and soundness review, but no intermediate holding company would actually exist, and no reorganization would therefore be necessary. If needed, additional capital or liquidity would be provided to one or more of the foreign banking organization's major U.S. subsidiaries. The commenters argued that the subsidiaries could be resolved if necessary. Some commenters suggested that the "virtual" U.S. intermediate holding company house all U.S. subsidiaries of the foreign banking organization, while others suggested that the "virtual" intermediate holding

company house only the systemically-significant nonbank U.S.-based subsidiaries of the foreign banking organization.

As discussed in the proposal, and as described further above, the wide variety of foreign banking organization structures and operations make it difficult to consistently apply enhanced prudential standards to foreign banking organizations' U.S. operations using a virtual U.S. intermediate holding company approach. However, the final rule would not permit an institution to form a "virtual" U.S. intermediate holding company. A virtual U.S. intermediate holding company would retain a fractured organizational structure that can reduce the effectiveness of attempts of the foreign banking organization to manage the risks of its U.S. operations. It also would not enable the Board to apply the enhanced prudential standards transparently and consistently across the U.S. operations of foreign banking organizations, hindering achievement of the policy goals and implementation of section 165 of the Dodd-Frank Act.

The Board believes that a "virtual" U.S. intermediate holding company would not provide a consistent platform for supervision and regulation comparable to a U.S. intermediate holding company. For example, determining the appropriate risk management structure and the location of capital and liquidity for a "virtual" U.S. intermediate holding company would require a case-by-case supervisory assessment, which, as described above, would not address the risks that foreign banking organizations with $50 billion in U.S. non-branch assets pose to U.S. financial stability. In addition, the "virtual" U.S. intermediate holding company would not have a centralized risk function, which would hinder risk management at the U.S. intermediate holding company.

Last, the Board believes that a virtual structure would also not materially enhance the ability to resolve the U.S. operations of a foreign banking organization. Given the substantial

uncertainty surrounding the operational challenges of a "virtual" U.S. intermediate holding company, and attendant concerns regarding whether the "virtual" U.S. intermediate holding company can effectively mitigate the systemic risk posed by a foreign banking organization with more than $50 billion in U.S. non-branch assets, the Board is not permitting foreign banking organizations to comply with the final rule by using a "virtual" U.S. intermediate holding company.

7. Transitional Application of the Enhanced Prudential Standards to a Bank Holding Company that is a Subsidiary of a Foreign Banking Organization

The proposed rule provided that a U.S. intermediate holding company that was a bank holding company would be subject to the enhanced prudential standards applicable to U.S. intermediate holding companies and not to the standards applicable to U.S. bank holding companies, regardless of whether the company had total consolidated assets of $50 billion or more. The final rule adopts the approach set forth in the proposed rule. It further clarifies that, prior to the formation of the U.S. intermediate holding company, a bank holding company with total consolidated assets of $50 billion or more controlled by a foreign banking organization is subject to the enhanced prudential standards applicable to bank holding companies that are contained in this final rule beginning on January 1, 2015 and ending on the date on which the U.S. intermediate holding company formed or designated by the parent foreign banking organization becomes subject to parallel requirements under the foreign final rule.

As discussed below in sections IV.C.1 and IV.F.1 of this preamble, the final rule generally delays the application of the leverage capital requirements and stress test requirements to the U.S. intermediate holding company until January 1, 2018 and October 1, 2017, respectively. The final rule clarifies that each subsidiary bank holding company and insured

depository institution of a foreign banking organization must continue to comply with the applicable leverage requirements under the Board's Regulation Q (12 CFR Part 217) and stress testing requirements under subparts F, G, or H of Regulation YY, as applicable, until the U.S. intermediate holding company becomes subject to those requirements under the final rule. If the foreign banking organization designated an existing bank holding company as its U.S. intermediate holding company, that bank holding company would continue to be subject to capital requirements under 12 CFR Part 217 until December 31, 2017, and stress test requirements under subparts F, G, or H of Regulation YY until September 30, 2017.

The Board may accelerate the application of the leverage and stress testing requirements to a U.S. intermediate holding company if it determines that the foreign banking organization has taken actions to evade the application of this subpart. Actions to evade application of the subpart would include, for instance, the transfer of assets from a bank holding company subsidiary to the U.S. intermediate holding company in order to minimize application of the leverage requirements prior to January 1, 2018.

The final rule also includes a reservation of authority for the Board to modify application of the enhanced prudential standards during the transition period if appropriate to accommodate the organizational structure of a foreign banking organization or characteristics specific to such foreign banking organization and the modification is appropriate and consistent with the capital structure, size, complexity, risk profile, scope of operations, or financial condition of the U.S. intermediate holding company, safety and soundness, and the financial stability mandate of section 165 of the Dodd-Frank Act. As foreign banking organizations engage in the restructuring necessary to come into compliance with the final rule, the Board retains the authority to address idiosyncratic issues and discontinuities arising out of the application of the

enhanced prudential standards to the U.S. operations. For example, the Board could use this authority where a temporary location for capital would significantly reduce capital at a holding company through application of the minority interest rules.

C. Capital Requirements

Section 165(b) of the Dodd-Frank Act requires the Board to impose enhanced risk-based and leverage capital requirements on foreign banking organizations with $50 billion or more of total consolidated assets. The proposal would have required a U.S. intermediate holding company, including a U.S. intermediate holding company that does not have a subsidiary depository institution, to comply with the Board's risk-based and leverage capital requirements as if it were a bank holding company. The proposal would also have applied the Board's capital plan rule to U.S. intermediate holding companies with total consolidated assets of $50 billion or more in light of the more significant risks posed by these firms. The proposal would have required 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.

As discussed below, the final rule would adopt the proposal largely as proposed, but in order to reduce burden on U.S. intermediate holding companies that meet the thresholds for application of the advanced approaches risk-based capital rules (the advanced approaches rules), the final rule would provide that such U.S. intermediate holding companies do not have to comply with the advanced approaches rules, even where the U.S. intermediate holding company is a bank holding company.

1. Risk-based and Leverage Capital Requirements Applicable to U.S. Intermediate Holding Companies

The proposal would have applied the Board's risk-based and leverage capital rules to the U.S. intermediate holding company. Thus, under the proposal (following implementation of the revised capital framework), the U.S. intermediate holding company would have been required to meet a minimum common equity tier 1 risk-based capital requirement of 4.5 percent, a minimum tier 1 risk-based capital requirement of 6 percent, a total risk-based capital requirement of 8 percent, and a minimum leverage ratio of tier 1 capital to average total consolidated assets of 4 percent (the generally-applicable leverage ratio). In addition, U.S. intermediate holding companies with total consolidated assets of $250 billion or more or on-balance sheet foreign exposure equal to $10 billion or more would have been required to meet a minimum supplementary leverage ratio, which takes into account off-balance sheet exposures, of 3 percent. The U.S. intermediate holding company would have been subject to the capital conservation buffer, and, if applicable, the countercyclical capital buffer, which would limit the U.S. intermediate holding company's ability to make capital distributions and certain discretionary bonus payments if it did not hold a specified amount of common equity tier 1 capital in excess of the amount necessary to meet its minimum risk-based capital requirements. As the U.S. intermediate holding company would consolidate the U.S. subsidiaries of the foreign banking organization, the U.S. intermediate holding company would have been required to comply with these requirements based on the exposures and capital of its U.S. subsidiaries (and the subsidiaries thereof).

a. Comments on Capital Requirements for the U.S. Intermediate Holding Company

1. U.S. Financial Markets and U.S. Financial Stability

The risk-based and leverage capital requirements proposed to apply to U.S. intermediate holding companies were intended to strengthen the capital position of U.S. operations of foreign

banking organizations in furtherance of section 165's financial stability mandate. However, commenters expressed concern that the proposal would instead have negative effects on U.S. financial markets and U.S. financial stability. Commenters asserted that the requirements would create incentives for foreign banking organizations to reduce their U.S. activities, particularly repo activities. According to commenters, foreign banking organizations, particularly smaller firms dominated by broker-dealer operations, would reduce assets to avoid requirements, and firms would reconsider any strategies to expand in the United States. In the view of these commenters, these assets and activities would shift to U.S. bank holding companies and unregulated institutions, concentrating financial assets and activities in fewer entities and increasing systemic instability. Commenters also asserted that the proposed leverage capital requirements would penalize firms with low-risk assets and create incentives for foreign banking organizations to increase the riskiness of their balance sheets.

Many of these comments rest on implicit assumptions about the costs of the proposed capital requirements and assume that a foreign banking organization would choose to reduce its activities rather than comply with the requirements under the final rule. Some foreign banking organizations, however, will be able to meet the new U.S. intermediate holding company capital requirements by retaining more earnings in their U.S. operations or by contributing equity capital held at the parent to the U.S. intermediate holding company without having to do an external capital raise.

In addition, commenters' arguments that the proposal would increase systemic instability by increasing concentration among U.S. bank holding companies fail to account for the broader changes in the regulatory environment in which the foreign banking organizations and their U.S. competitors operate. The Board has made a number of enhancements to its regulation and

supervision of bank holding companies and foreign banking organizations in the years following the financial crisis. As a result of these enhancements and the final rule, U.S. bank holding companies with consolidated assets of $50 billion or more are subject to enhanced prudential standards parallel to those applied to U.S. intermediate holding companies, thus balancing the effect of the foreign proposal on competition and concentration of activities among domestic and foreign banking organizations. With respect to commenters' assertions that foreign banking organizations will reduce their activities in response to the final rule, the Board believes, on balance, that if a large foreign banking organization or a domestic bank holding company were to reduce its systemic footprint in response to the final rule, this would be consistent with the Board's overall goal of financial stability.

In response to commenters' assertions that the final rule will concentrate activities in unregulated financial institutions, the Board will continue to monitor the migration of risk from the regulated banking system to unregulated entities, and to inform its policy decisions with the results of its monitoring.

Some commenters asserted that the proposed requirements for both U.S. bank holding companies and U.S. intermediate holding companies were too low, and should be strengthened. The Board notes that the final rule is one component of the Board's comprehensive reforms to improve the resiliency of large U.S. banking organizations and the U.S. operations of foreign banking organizations and systemic stability, and should be considered in the context of those comprehensive reforms. More generally, the Board continues to review requirements and consider policy actions as necessary to address emerging risks.

2. Consolidated Capital at the Parent and Parent Support

Multiple commenters asserted that the Board should rely on the capital adequacy of the foreign banking organization and not impose capital requirements separately on the U.S. intermediate holding company. Commenters argued that a foreign banking organization would in practice support its operations in the United States to avoid the reputational and legal consequences of permitting a subsidiary in a host jurisdiction to fail. Commenters noted that European banks provided funding to their U.S. operations during the Eurozone crisis of 2011 as an example of such support. Commenters also opined that the proposal could accelerate withdrawal of foreign banking organizations from U.S. markets in the event of a home-country crisis, because it would be hard for such entities to justify maintaining capital and liquidity in the United States.

The Board agrees with commenters that the financial strength of the foreign bank parent, and its reputation, are important to that institution's ability to support its U.S. operations. The final rule takes this into account by allowing foreign banks to continue to operate in the United States through branches on the basis of the capital of the foreign bank parent. The Board does not believe, however, that it is appropriate to rely solely on the expectation that a foreign banking organization would support its U.S. operations in order to protect the financial stability of the United States. Even if the foreign bank parent is financially strong in stable times, multiple factors may limit its ability to support its U.S. operations during a period of stress. For example, as the proposal observed, home country political and legal developments may hamper a foreign bank parent's ability to support its offshore affiliates. While foreign banks have strong business and reputational incentives to support their U.S. operations, to the extent that the U.S. operations of a foreign banking organization depend on parent support and the parent foreign banking

organization experiences financial or other stress, foreign banking organizations and their home-country supervisors may be forced to choose between the costs involved in supporting U.S. operations and the implications for home country operations. Having considered these risks to U.S. financial stability and the Dodd-Frank Act's mandate to impose enhanced prudential standards, including enhanced risk-based and leverage capital requirements, on foreign banking organizations, the Board believes it is appropriate to impose capital requirements on U.S. intermediate holding companies.

Commenters also argued that the proposal did not give adequate regard to the principles of national treatment, as required by the Dodd-Frank Act, because it would have subjected foreign banking organizations to what they described as more stringent capital requirements than their U.S. counterparts. Commenters alleged that under the proposal, foreign banking organizations would receive no credit for capital that may be held in entities outside the United States that could otherwise offset the Board's capital requirements. Some commenters asserted that the U.S. operations of foreign banking organizations could appear riskier on a stand-alone basis than they would if considered as part of the consolidated entity.

The final rule permits U.S. branches and agencies of foreign banks to continue to operate on the basis of the foreign bank's capital and does not impose capital or stress testing requirements on U.S. branches and agencies of foreign banking organizations. Therefore, the final rule does give credit to foreign banking organizations for capital held at the foreign banking organization because it relies on a home country's implementation of the Basel Capital Framework in evaluating the capital adequacy of the foreign banking organization. As discussed above, notwithstanding capital adequacy at the parent, however, the Board believes that it is

appropriate for the U.S. intermediate holding company to meet capital adequacy standards in the United States separately from the parent foreign bank.

Commenters also argued that the proposed requirements would be disruptive to the consolidated entity and would hamper its ability to support its global operations. These commenters criticized the application of risk-based and leverage capital requirements to the U.S. intermediate holding company. They argued not only that the requirements would prevent centralized resource management throughout the organization, consistent with comments described above in section IV.A.4 of this preamble, but also that the proposal would effectively and inappropriately raise capital requirements on parent foreign banking organizations. Specifically, some commenters asserted that some home-country regulation or supervisors would reflect the "trapping" of capital in the United States by requiring those firms to meet higher stand-alone parent capital requirements, or excluding from the parent's regulatory capital any capital held in the United States. In either case, commenters asserted that the proposal would require foreign banking organizations to raise additional capital at the parent, which commenters asserted would effectively impose home country capital requirements in excess of that required by a home-country's implementation of the Basel Capital Framework. Commenters also argued that home-country regulations limiting the recognition of minority interest in parent capital would create disincentives for foreign banking organizations to capitalize their U.S. intermediate holding companies through the sale of equity interests in the U.S. intermediate holding companies to third parties.

The Board acknowledges that some home-country regulation may require a foreign banking organization that contributes capital to its U.S. intermediate holding company or raises capital through sales of equity in the U.S. intermediate holding company to reduce its capital for

purposes of its parent-only or consolidated capital calculations. In these cases, the parent may be required to raise additional capital. However, even in these instances, the Board believes that it is important for a U.S. intermediate holding company to hold capital in the United States. To the extent that home country regulations limit a foreign banking organization's ability to rely on capital held in the United States in calculating consolidated or parent-only capital, the Board would be concerned that the foreign banking organization might not be able to downstream adequate capital to its U.S. operations during a time of significant stress because it could be considered undercapitalized under its home-country regime. The Board therefore believes that requiring the foreign banking organization to position capital at its U.S. intermediate holding company is appropriate to protect U.S. financial stability.

However, to mitigate transitional costs for foreign banking organizations and the U.S. economy that may occur from the capital requirements and other aspects of the final rule, the final rule generally extends the initial compliance date for foreign banking organizations from July 1, 2015, to July 1, 2016. Furthermore, the leverage ratios of the final rule will not become applicable to the U.S. intermediate holding company until January 1, 2018.[110] This transition period should help foreign banking organizations manage the costs of moving capital to the United States, and therefore should mitigate the impact that capital requirements might otherwise have on foreign banking organizations' U.S. activities.

---

[110] The final rule also provides that a subsidiary bank holding company or insured depository institution prior to formation of the U.S. intermediate holding company must continue to comply with the leverage capital requirements applied to that bank holding company or insured depository institution under the Board's Regulation Q (12 CFR Part 217) until December 31, 2017.

Other commenters contended that even if, in the final rule, the Board determined not to rely on the adequacy of the parent's consolidated capital position, the Board should still modify its requirements to recognize types of capital instruments for the U.S. intermediate holding company which are in addition to those recognized in the Board's revised capital framework. Specifically, the commenters suggested that the Board should allow the U.S. intermediate holding company to count as capital instruments representing claims on the parent, including contingent capital, keepwell agreements, debt, and parent guarantees. These commenters suggested that the Board recognize these instruments on the grounds that the U.S. intermediate holding company would differ from a U.S. bank holding company in the ways it would raise capital and that it would be adequately supported by the parent through these types of instruments and agreements.

The final rule does not recognize alternative forms of capital that do not meet the criteria for capital instruments under the Board's capital rules for bank holding companies. First, the types of capital instruments that the Board recognizes in its revised capital rule are those that provide sufficient loss-absorbency at times of stress. The Board is concerned that the instruments cited by the commenters are not similarly loss-absorbent and may be contingent forms of capital support that could be curtailed if both the U.S. and the home-country operations experienced simultaneous stress. Furthermore, requiring the same types of capital instruments for U.S. intermediate holding companies and U.S. bank holding companies is consistent with national treatment and equality of competitive opportunity.

b. Comments on Applying Capital Regulations at a Sub-consolidated Level

1. Burdens and Costs of Multiple Systems

Commenters also criticized the Board for requiring the U.S. intermediate holding company to calculate its risk-based and leverage capital requirements as a stand-alone entity. Commenters focused on the implementation and compliance burden of the multiple capital calculations required for foreign banking organizations, asserting that they would have to create costly and redundant systems for complying with multiple sets of local rules. These commenters asserted that requiring compliance with the home-country advanced approaches rule (as applicable), home-country Basel I rules, U.S. advanced approaches rules (as applicable), and the U.S. standardized approach was burdensome and unnecessary for systemic stability. In particular, commenters cited the need to create additional models for compliance with the U.S. advanced approaches rules that would be different from and inconsistent with home-country models. Several commenters asked the Board to clarify whether the foreign exposures test for application of the advanced approaches rules would apply to a U.S. intermediate holding company.

In response to commenters' concerns regarding the burdens of implementing the U.S. advanced approaches rules, the Board has determined that the U.S. intermediate holding company will not be subject to the advanced approaches rules, even if the U.S. intermediate holding company meets the thresholds for application of those rules. This exemption also applies to a U.S. intermediate holding company that is a bank holding company. A bank holding company subsidiary of a foreign banking organization that is subject to the advanced approaches rules may opt out of complying with the U.S. advanced approaches rules with the Board's prior

approval.[111] This modification responds to comments about both duplicative model-based calculations required for the U.S. intermediate holding company and whether a U.S. intermediate holding company would have sufficient foreign exposures to require application of the advanced approaches rules. The capital adequacy of a U.S. intermediate holding company will be addressed by standardized risk-based capital rules, leverage rules, and capital planning and supervisory stress testing requirements.

A U.S. intermediate holding company that meets the threshold for the advanced approaches rules will, nonetheless, be subject to the other requirements that apply to advanced approaches banking organizations, including restrictions on distributions and discretionary bonus payments associated with the countercyclical capital buffer, the supplementary leverage ratio provided for in subpart B of the revised capital framework, and the requirement to include accumulated other comprehensive income in regulatory capital.[112] These are aspects of the revised capital framework that apply to institutions that meet the thresholds for application of the advanced approaches rules, but are not part of the advanced approaches rules. The final rule does not, however, require a U.S. intermediate holding company that meets the threshold for application of the advanced approaches rules to deduct from common equity tier 1 or tier 1 capital its expected credit loss that exceeds eligible credit reserves, because the U.S. intermediate holding company would be subject to the standardized approach set forth in the revised capital

---

[111] U.S. intermediate holding companies may, however, elect to comply with the advanced approaches rules.

[112] As discussed above, the final rule provides that a foreign banking organization that has a bank holding company subsidiary prior to formation of the U.S. intermediate holding company must continue to comply with the leverage capital requirements under the Board's Regulation Q until December 31, 2017. Under Regulation Q, such bank holding company subsidiary of a foreign banking organization will be required to calculate and report a supplementary leverage ratio, if applicable.

framework, and that deduction is associated with the advanced approaches risk-based capital requirements. In addition, a bank holding company that is a subsidiary of a foreign banking organization and that currently is subject to the advanced approaches rules may, with the Board's prior written approval, elect not to comply with the advanced approaches rules.

Finally, with respect to commenters' concerns about requiring jurisdiction-specific systems for complying with local rules, as noted above, consistent with the Basel Capital Framework, multiple jurisdictions apply host-country regulation to the locally incorporated subsidiaries of global banking organizations. Maintaining operations in multiple jurisdictions may therefore require a foreign banking organization to create systems that take into account different regulatory regimes and approaches. The U.S. intermediate holding company requirement, with its attendant risk-based and leverage capital requirements, applies only to those institutions with $50 billion or more in U.S. non-branch assets, which are institutions that are large and sophisticated and capable of implementing such systems. In addition, the enhanced prudential standards rely on the Basel Capital Framework, with which the foreign banking organizations subject to the final rule should already be familiar.

2. Applying the Leverage Ratio to the U.S. Intermediate Holding Company

Commenters expressed concerns about the burdens of complying with both U.S. and home-country leverage requirements, asserting that inconsistencies among the standards would force U.S. intermediate holding companies to manage to the stricter requirement. Many commenters criticized application of the generally-applicable leverage ratio of 4 percent to a U.S. intermediate holding company prior to adoption of the international leverage ratio provided

for in Basel III (the Basel III leverage ratio).[113] Other commenters argued that the requirement would result in extraterritorial application of the Board's rules, and asserted that having a single global leverage ratio would be preferable to having multiple local leverage ratios.

Consistent with the principle of national treatment, the final rule imposes the same leverage capital requirements on U.S. intermediate holding companies as it does on U.S. bank holding companies. These leverage capital requirements include the generally-applicable leverage ratio and the supplementary leverage ratio for U.S. intermediate holding companies that meet the scope of application for that ratio. These requirements do not result in extraterritorial application of the Board's rules, because the final rule applies the leverage ratios only to the U.S. operations of the foreign banking organization, and not to the foreign banking organization parent. The Board has longstanding experience with leverage measures as complements to risk-based capital measures. From a safety-and-soundness perspective, each type of requirement offsets potential weaknesses of the other, and the two sets of requirements working together are more effective than either would be in isolation. The Board believes that requiring the U.S. intermediate holding company to meet these ratios, as applicable, on the basis of its U.S. capital and exposures will strengthen the U.S. intermediate holding company's capital position in the same way that it strengthens the capital position of U.S. bank holding companies.[114] The Board

---

[113] As part of Basel III, the Basel Committee introduced a minimum leverage capital requirement of 3 percent as a backstop measure to the risk-based capital requirements, designed to improve the resilience of the banking system worldwide by limiting the amount of leverage that a banking organization may incur. The Basel III leverage ratio is defined as the ratio of tier 1 capital to a combination of on- and off-balance sheet exposures.

[114] The supplementary leverage ratio cited by the commenters, which is expected to be implemented internationally in 2018 consistent with the Basel Capital Framework transition period, is a measure that is applied only to the largest, most internationally active U.S. banking organizations. The revised capital framework requires an advanced approaches banking

intends to apply the supplementary leverage ratio to a U.S. intermediate holding company that meets the scope of application of that ratio based on its U.S. assets and exposures because it believes that it will similarly strengthen the capital position of a U.S. intermediate holding company.

Many commenters criticized application of the generally-applicable leverage ratio to foreign banking organizations with predominantly broker-dealer activities in the United States. Some commenters asserted that the U.S. intermediate holding companies of several foreign banking organizations would be comprised of over 90 percent U.S. broker-dealer subsidiary assets, making the generally-applicable leverage ratio particularly burdensome. Commenters also argued that if U.S. bank holding companies with large broker-dealer subsidiaries were judged on a sub-consolidated level, the generally-applicable leverage ratio might cause them to appear undercapitalized, and that this illustrated the proposal's departure from the principles of national treatment and competitive equality. Some of these commenters also objected to the application of the generally-applicable leverage ratio to broker-dealer-dominated U.S. intermediate holding companies on the grounds that the generally-applicable leverage ratio treats low-risk broker-dealer activities as risky, and suggested that the generally-applicable leverage ratio exclude what the commenters' characterized as low-risk assets or assets meeting the definition of highly liquid assets under the rule. Other commenters suggested that as an alternative to the generally-applicable leverage ratio, the Board should rely on the results of stress tests of risk-based capital measures.

---

organization to meet the supplementary leverage ratio starting on January 1, 2018, consistent with the Basel Capital Framework transitions period.

The final rule does not distinguish between U.S. intermediate holding companies on the basis of their activities. While the U.S. intermediate holding companies of some foreign banking organizations may engage primarily in broker-dealer activities, the U.S. intermediate holding companies of other foreign banking organizations will be more focused on commercial banking or other financial activities. The operations of domestic banking organizations, all of which the Board requires to comply with the minimum generally-applicable leverage ratio, exhibit a similar level of diversity. Rules applicable to U.S. bank holding companies do not vary depending on whether a U.S. bank holding company has predominantly broker-dealer operations.[115] The leverage capital requirements contained in the final rule similarly apply to a foreign banking organization's U.S. intermediate holding company on a consolidated basis regardless of its overall activities.

Moreover, the Board notes that commenters' assertions that certain U.S. bank holding companies might not meet the generally-applicable leverage ratio if it were applied on a sub-consolidated basis were based on commenters' analyses of the generally-applicable leverage ratios of the broker-dealer subsidiaries of those bank holding companies. These comparisons overlook the capital that U.S. bank holding companies maintain at the holding company level or at U.S. subsidiaries other than the broker-dealer, and accordingly, are not relevant comparisons.

For all of the reasons discussed in this section, the final rule applies leverage requirements to the U.S. intermediate holding company as proposed. These leverage requirements include the generally-applicable leverage ratio of 4 percent and, for U.S. intermediate holding companies with total consolidated assets of $250 billion or more or total

---

[115] See, e.g., 12 CFR part 217.

consolidated on-balance sheet foreign exposures of $10 billion or more, the minimum supplementary leverage ratio of 3 percent. To mitigate the transitional burdens cited by commenters, the final rule generally delays application of the generally-applicable leverage ratio to the U.S. intermediate holding company until January 1, 2018.[116] As described above, in section IV.B.7 of this preamble, to the extent that the foreign banking organization controlled a U.S. bank holding company prior to the formation of the U.S. intermediate holding company, that U.S. bank holding company continues to be subject to the generally-applicable leverage ratio until the U.S. intermediate holding company becomes subject to leverage requirements at the consolidated level.

c. Disclosure requirements

The final rule, by subjecting a U.S. intermediate holding company to the Board's regulatory capital rules, also requires a U.S. intermediate holding company to make public disclosures according to subpart D of the revised capital framework. Some commenters argued that the disclosure requirements would disproportionately burden foreign banking organizations, which would have to make disclosures at a sub-consolidated level. The disclosure requirement in subpart D, however, has an exception for a subsidiary of a foreign banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. The Board expects that any parent foreign banking organization that is able to certify that it meets home-country requirements at a consolidated level that are consistent with the Basel Capital Framework will be making public disclosures that are comparable to those set forth in subpart D

[116] Consistent with the Basel III transition periods, a banking organization that meets or exceeds the thresholds for application of the supplementary leverage ratio must maintain a minimum supplementary leverage ratio of 3 percent beginning on January 1, 2018.

of the revised capital framework. In most cases, therefore, a U.S. intermediate holding company will not be required to make the disclosures under subpart D of the revised capital framework.[117] For a parent foreign banking organization that is unable to demonstrate to the satisfaction of the Board that it meets home country standards that are consistent with the Basel Capital Framework, the Board will evaluate home-country disclosures for general consistency with the disclosures set forth in subpart D of the revised capital framework and will notify the parent and the U.S. intermediate holding company, through the supervisory process, whether disclosures by the U.S. intermediate holding company would be necessary.

2. Capital Planning Requirements

The foreign proposal provided that all U.S. intermediate holding companies with total consolidated assets of $50 billion or more would have been required to comply with the capital plan rule in the same manner and to the same extent as a bank holding company subject to that section.[118] 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 Supervision & Regulation Letter 01-01 are not required to comply with the capital plan rule until July 21, 2015).[119]

Under the foreign proposal, a U.S. intermediate holding company with total consolidated assets of $50 billion or more would be required to submit an annual capital plan to the Federal

---

[117] 12 CFR 217.61.

[118] 12 CFR 225.8. See 76 FR 74631 (December 1, 2011).

[119] Supervision & Regulation Letter 01-01 (January 5, 2001), available at: http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.

Reserve in which it demonstrated 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. The proposal provided that a U.S. intermediate holding company that is unable to satisfy these requirements generally may not make any capital distributions (other than those capital distributions with respect to which the Board has indicated in writing its non-objection) until it provided a satisfactory capital plan to the Board.

Although some commenters supported the foreign proposal's requirement that a U.S. intermediate holding company engage in capital planning, others asserted that requiring capital planning at the U.S. intermediate holding company level was inappropriate. Commenters criticized the foreign proposal's capital planning requirement on grounds similar to their overall criticism of the foreign proposal, arguing that home-country consolidated capital regulation and parent support were sufficient. Commenters argued that capital planning should be evaluated in the context of the global organization and consider the financial condition of the parent foreign banking organization and developments in the foreign banking organization's home country. Commenters asserted that in the absence of material concern about a foreign banking organization's capital planning process or financial strength, the Board should not require the U.S. intermediate holding company to meet additional proposed capital standards. Commenters suggested that instead of applying the capital plan rule, the Board should use the supervisory process to impose dividend distribution restrictions or additional capital planning and stress-testing requirements on the U.S. intermediate holding company if necessary based on the financial condition of the parent foreign banking organization.

Other commenters expressed concern that applying the capital plan rule would add a "hidden buffer" to the minimum requirements applicable to the U.S. intermediate holding

company and argued that the capital plan rule's 5 percent minimum tier 1 common ratio over a nine-quarter stress horizon effectively requires the company to hold capital in excess of the minimum requirements in the Basel Capital Framework. In particular, commenters suggested that applying the capital plan rule to U.S. intermediate holding companies with predominantly broker-dealer operations would impose significant new regulatory requirements on broker-dealers. Commenters also criticized the burdens associated with creating a localized capital-planning infrastructure and producing multiple calculations of risk-weighted assets and capital in connection with capital planning. Some commenters argued that the generally-applicable leverage ratio should not be applied as part of the capital plan rule, or, if applied, should be adjusted for assets collateralized by U.S. government or agency debt, or other high-quality collateral.

The capital plan rule is a critical element of the Board's overall capital adequacy framework for large bank holding companies. As applied to U.S. intermediate holding companies, the capital plan rule will help to ensure that such companies hold capital commensurate with the risks they would face under stressed financial conditions and reduce the probability of their failure by limiting their capital distributions if they are unable to demonstrate the ability to meet minimum capital requirements under these stressed financial conditions. While applying the requirements to the U.S. intermediate holding company does not present a complete picture of the consolidated foreign banking organization, it does evaluate whether the foreign banking organization holds sufficient capital in the United States to support its U.S. operations.

In addition, the Board believes that applying the standards to U.S. intermediate holding companies with total consolidated assets of $50 billion or more would further national treatment

and competitive equity. The capital plan rule applies to all bank holding companies with total consolidated assets of $50 billion or more and does not distinguish between bank holding companies based on their operations. Applying these standards to the U.S. intermediate holding company of a foreign banking organization in the same way that they are applied to U.S. bank holding companies puts these firms on equal footing with U.S. bank holding companies that compete in the same markets.

One commenter stated that the Board should allow surplus capital in local entities above regulatory thresholds to be deployable to other entities within the group. A U.S. intermediate holding company will be permitted to pay dividends or make other capital distributions under the same conditions in which a U.S. bank holding company could do so.

Commenters also had a variety of requests for flexibility in capital planning as applied to U.S. intermediate holding companies, particularly requesting that the Board permit a U.S. intermediate holding company to reflect parent support in its capital plan. The Board expects U.S. intermediate holding companies to reflect parent support of the U.S. intermediate holding company, through guarantees and keepwell agreements, in their capital plan. However, in demonstrating an ability to meet minimum capital requirements, U.S. intermediate holding companies would not be permitted to reflect these agreements as sources of capital. As discussed above in section IV.A.4 of this preamble, the Board believes that it is important for foreign banks to have sufficient capital in the United States to support their U.S. operations, and that there may be a number of factors that limit a foreign bank's ability to support its U.S. operations during a period of stress. Furthermore, several U.S. bank holding company subsidiaries of foreign banking organizations already comply with the Board's capital planning and stress-testing requirements. Accordingly, the Board is finalizing the capital plan requirement

for U.S. intermediate holding companies as proposed. A U.S. intermediate holding company formed by July 1, 2016 will be required to submit its first capital plan in January 2017.[120]

Commenters suggested that the Board apply any capital planning standards in consultation and coordination with home-country supervisors. The Board will continue to work with home-country supervisors in its supervision of foreign banking organizations and their U.S. intermediate holding companies.

3. Parent Capital Requirements

The proposal provided that a foreign banking organization with total consolidated assets of $50 billion or more would have been required 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, as defined below. This requirement was intended to help ensure that the consolidated capital base supporting the activities of U.S. branches and agencies remains strong, and to lessen the degree to which weaknesses at the consolidated foreign parent could undermine the financial strength of its U.S. operations.

The proposal defined the Basel Capital Framework as the regulatory capital framework published by the Basel Committee, as amended from time to time. This requirement would have included the standards in Basel III for minimum risk-based capital ratios, any leverage ratio, and restrictions and limitations if capital conservation buffers above the minimum ratios are not

---

[120] The Board intends to expand the reporting panel for the FR Y-14 to provide that a U.S. intermediate holding company must begin filing the FR Y-14A in the reporting cycle after formation of the U.S. intermediate holding company, subject to the transition provisions for new reporters of the FR Y-14 schedules.

maintained, as these requirements would come into effect under the transitional provisions included in Basel III.[121]

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

In addition, under the foreign proposal, a foreign banking organization would have been required to provide to the Board certain information on a consolidated basis. This information would have included 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 Basel III, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and

---

[121] Basel III establishes minimum risk-based capital standards of 4.5 percent common equity tier 1 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, Basel III includes restrictions on capital distributions and certain discretionary bonus payments if a banking organization does not hold common equity tier 1 sufficient to exceed the minimum risk-weighted ratio requirements outlined above by at least 2.5 percent. See 78 FR 62018.

total leverage assets on a consolidated basis.[122] The Board intends to propose separately for notice and comment an amendment to the FR Y-7Q to incorporate these items.

Commenters asked the Board to clarify how it would assess whether a home country's capital standards are consistent with the Basel Capital Framework, and urged the Board to be flexible when making such determinations, stating that the Board should look for general consistency with the Basel Capital Framework, rather than requiring point-by-point equivalence. For purposes of the final rule, the Board is clarifying that it intends to consider materiality when assessing consistency with the Basel standards, including whether the home country regulator timely implements any standards made part of the Basel Capital Framework. The Board also intends to take into account analysis regarding the comparability of capital standards, such as the Basel Committee's peer review process.

The proposal provided that if a foreign banking organization did not certify or otherwise demonstrate to the Board's satisfaction that it met capital adequacy standards at the consolidated level that were consistent with the Basel Capital Framework or provide the required information relating to its capital levels and ratios, the Board could impose conditions or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The proposal further provided that the Board would coordinate with any relevant State or Federal regulator in the implementation of such conditions or restrictions. The Board is finalizing the substance of this provision as proposed. In the event that the foreign banking organization does not make the certification or provide the required information, the Board expects to impose requirements, conditions, or restrictions, including risk-based or leverage capital requirements,

---

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

on or relating to the activities or business operations of the U.S. operations of the foreign banking organization, but may also take other action as the Board determines is appropriate.

Some commenters requested that the Board establish a standard procedure before imposing conditions or restrictions on the U.S. operations of foreign banking organizations if the foreign banking organization is unable to demonstrate that its home country standards are consistent with the Basel Capital Framework. In response to these comments, the final rule also includes a notice procedure by which the Board would notify a company before it imposes one or more requirements, conditions, or restrictions; describe the basis for imposing any requirement, condition, or restriction; and provide the company an opportunity to request the Board reconsider such requirement, condition, or restriction.

Commenters also urged the Board to allow for flexible application of the definition of "foreign banking organization" in determining whether a foreign banking organization means a top-tier holding company or a direct parent of a U.S. subsidiary. As described above in section IV.B.5 of this preamble, the Board has reserved flexibility to modify the standards as necessary to accommodate alternative organizational structures. The Board is therefore finalizing the substance of the parent capital requirements as proposed.

D. Risk-Management Requirements for Foreign Banking Organizations

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish 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 and large foreign banking organizations.[123] Section 165(h) of the Dodd-

---

[123] 12 U.S.C. § 5365(b)(1)(A).

Frank Act directs the Board to issue regulations requiring publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees.[124]

In the proposal, the Board sought to apply the risk-committee and chief risk officer requirements proposed for U.S. banking organizations to foreign banking organizations in a way that would strengthen a foreign banking organization's oversight and risk management of its combined U.S. operations and would require a foreign banking organization with a large U.S. presence to aggregate and monitor risks on a combined U.S. operations basis. The proposal permitted a foreign banking organization 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.

While expressing general support for enhanced risk management standards, many commenters advocated that the Board rely on local corporate governance norms and permit greater flexibility in implementing the U.S. risk committee and chief risk officer requirements. Many commenters also urged the Board to defer to home country risk-management standards rather than imposing separate requirements on foreign banking organizations, asserting that foreign regulators already monitor or plan to monitor risk-management practices and have a better perspective on the risk-management practices of a foreign banking organization. Some commenters expressed concern about separating the U.S. risk-management framework from the global risk-management framework.

Additionally, a few commenters asserted that the proposed rule does not adequately take into account the extent to which a foreign company is subject on a consolidated basis to

---

[124] 12 U.S.C. § 5365(h).

comparable home country risk-management standards. One commenter asserted that the Board has significantly more authority to tailor the risk-management requirements to foreign banking organizations than it exercised in the proposal.

The Board recognizes that foreign banking organizations generally are subject to consolidated risk-management standards in their home countries and that many foreign regulators have strengthened their risk-management requirements since the financial crisis. However, consolidated risk-management practices have not always ensured that a foreign banking organization fully understands the risks undertaken by its U.S. operations. For example, these practices may limit the ability of large foreign banking organizations to aggregate, monitor, and report risks across their U.S. legal entities in an effective and timely manner. In light of the risks posed to U.S. financial stability by foreign banking organizations with a large U.S. presence, the Board believes that it is important for such organizations to aggregate and monitor risks on a combined U.S. operations basis.

Consistent with section 165(b)(2) of the Dodd-Frank Act, the Board has taken into account the extent to which foreign financial companies are subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. In deference to existing home-country governance standards, the final rule generally provides flexibility for the foreign banking organization to locate its U.S. risk committee as either a committee of its home office or its U.S. intermediate holding company. For the reasons discussed above, the Board believes that foreign banking organizations with a sizable U.S. presence should aggregate and monitor the risks of their combined U.S. operations to ensure the resiliency of such operations. The proposal was tailored to permit foreign banking

organizations to structure their risk-management functions based on their unique circumstances while ensuring strong oversight of risks on a combined U.S. operations basis.

Some commenters asserted that fragmented, country-specific risk-management requirements could increase operational risk or hinder communication regarding risk management within an organization and requested that foreign banking organizations be permitted to design their own risk-management systems and structures. A few commenters asserted that, as an alternative to the proposed rule, the Board should work with its foreign counterparts to create an international standard for assessing risk-management practices.

The final rule is intended to address the financial stability risks posed by the U.S. operations of foreign banking organizations. The framework established by the final rule helps foreign banking organizations to effectively aggregate, monitor, and report risks across their U.S. legal entities on a timely basis and helps U.S. supervisors to understand risks posed to U.S. financial stability by the U.S. operations of foreign banking organizations. The Board expects that the U.S. risk-management requirements would be integrated and coordinated with the foreign banking organization's enterprise-wide risk-management practices and therefore would not lead to a fragmented approach to risk-management. The Board will continue to work through the Basel Committee, the FSB, and other international coordinating bodies to promote safe and effective risk-management practices.

Many commenters asserted that the proposed rule was did not adequately consider the diversity among foreign banking organizations and that, because foreign banking organizations structure their global and U.S. operations in diverse ways, the proposal would be costly to implement. Several commenters expressed concern that the proposal was too rigid to accommodate the risk profiles of all foreign banking organizations, such as foreign banking

organizations with significant nonbank operations. One commenter asserted that the requirements in the proposed rule would be cumbersome if compliance is strictly enforced at a foreign banking organization's U.S. subsidiary. Another commenter asserted that the proposed rule should not apply to a foreign banking organization's U.S. subsidiary that has $50 billion or more in assets but does not transact with third parties and is established solely for tax, accounting, or administrative purposes.

The Board recognizes that the level and types of risks posed by foreign banking organizations vary based on the size and nature of their U.S. operations, and believes that the final rule strikes an appropriate balance between mandating specific risk-management approaches and permitting foreign banking organizations to structure their risk-management oversight as needed to fit their circumstances. Furthermore, the Board believes that the requirements of the final rule are flexible enough to cover a variety of organizational structures. For instance, a foreign banking organization with a branch or agency may maintain its U.S. risk committee at either the global board of directors or at the U.S. intermediate holding company.[125]

One commenter asserted that the proposed risk-management requirements might not accurately capture U.S. risks because, for example, certain trading positions booked by a U.S. broker-dealer may be hedged by positions booked at the U.S. branch or outside of the United States. Under the final rule, as under the proposal, a foreign banking organization must take appropriate measures to ensure that its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out its responsibilities. Thus, a U.S. risk committee should obtain information relevant to hedges booked at the U.S.

---

[125] As further described below, the final rule provides that a U.S. intermediate holding company must have its own risk committee.

branch. With respect to positions booked outside of the United States, the Board expects that a U.S. risk committee and U.S. chief risk officer's overview of the risks of the foreign banking organization's combined U.S. operations will be informed by frequent consultation with the global risk committee and global chief risk officer.

Several commenters stated that the Board's existing framework for risk-management oversight of foreign banking organizations is sufficiently robust and that the proposal was therefore unnecessary. The Board emphasizes that the enhanced U.S. risk-management requirements contained in this final rule supplement the Board's existing risk-management guidance and supervisory expectations for foreign banking organizations.[126] All foreign banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk. The final rule creates additional standards regarding the aggregating and monitoring of risks on a combined U.S. operations basis. For the reasons discussed above, the Board believes that these enhanced prudential standards are important for protecting the stability of the U.S. financial system.

1. Risk Committee Requirements for Foreign Banking Organizations with $10 Billion or More in Total Consolidated Assets but less than $50 Billion in Combined U.S. Assets

a. General Comments

---

[126] See Supervision and Regulation Letter SR 08-8 (Oct. 16, 2008), available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0808.htm; Supervision and Regulation Letter SR 08-9 (Oct. 16, 2008), available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0809.htm; Supervision and Regulation Letter SR 12-17 (December 17, 2012), available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.

Consistent with the requirements of section 165(h) of the Dodd-Frank Act and with the proposed rule, the final rule requires a foreign banking organization with a U.S. presence that has any class of stock (or similar interest) that is publicly traded and total consolidated assets of $10 billion or more, and a foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of $50 billion or less, regardless of whether its stock is publicly traded, to certify to the Board, on an annual basis, that it maintains a U.S. risk committee of its board of directors or equivalent home-country governance structure that (1) oversees the U.S. risk-management policies of the combined U.S. operations of the company, and (2) has at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms. This certification must be filed on an annual basis with the Board concurrently with the foreign banking organization's Federal Reserve Form FR Y-7, Annual Report of Foreign Banking Organizations. The proposed rule would have required the foreign banking organization to take appropriate measures to ensure that its combined U.S. operations implement the risk management policies overseen by the U.S. risk committee, and that 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 the proposal. It provided that 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 if the foreign banking organization was unable to satisfy these requirements.

Several commenters asserted that the asset thresholds that would subject a foreign banking organization to the risk management and risk committee requirements were too low. One commenter urged the Board to exempt all foreign banking organizations with less than $50 billion in combined U.S. assets. Another commenter proposed an exemption for foreign

banking organizations with less than $10 billion in combined U.S. assets. The asset thresholds governing the overall risk-management requirements and the risk committee requirement are set by sections 165(a) and 165(h) of the Dodd-Frank Act. Accordingly, the Board is finalizing this aspect of the proposal without change. The final rule also clarifies that a foreign banking organization is a "publicly traded company" under the statute if any class of stock (or similar interest, such as an American Depositary Receipt) is publicly traded.

b. Qualifications of Risk-committee Members

Under the proposal, at least one member of the U.S. risk committee of a publicly traded foreign banking organization with total consolidated assets of $10 billion or more and a foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of $50 billion or less, regardless of whether it was publicly traded, would have been required to have risk-management expertise that is commensurate with the capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors of the foreign banking organization's combined U.S. operations. A few commenters urged the Board not to adopt by regulation minimum qualifications to fulfill the risk-management expertise requirement. These commenters suggested that risk-management expertise be left to home-country discretion.

Although the final rule does not specify by regulation minimum educational or professional credentials for a foreign banking organization's risk committee members, it is appropriate, in light of the requirements of the Dodd-Frank Act, to ensure that at least one member of a foreign banking organization's risk committee has risk-management experience. Under the final rule, a risk committee of foreign banking organizations with $10 billion or more in total consolidated assets but less than $50 billion in combined U.S. assets must include at least

one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.[127] Similar to the requirements for risk-management experience for bank holding companies with total consolidated assets of at least $10 billion but less than $50 billion under the domestic rule, experience in a nonbanking or nonfinancial field may satisfy the requirements of the rule for a foreign banking organization with $10 billion or more in total consolidated assets but less than $50 billion in combined U.S. assets, as long as the experience includes the identification, assessment, and management of risk of large, complex firms. Additional discussion of the qualifications necessary for risk-management expertise is presented in section III.B.2 of this preamble.

Consistent with the proposed rule, in order to accommodate the diversity in corporate governance practices across different jurisdictions, the final rule does not require the U.S. risk committee of a foreign banking organization with total consolidated assets of $10 billion or more but combined U.S. assets of less than $50 billion to maintain a specific number of independent directors on the U.S. risk committee.[128]

2. Risk-management and Risk Committee Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 billion or More

The proposed rule would have established additional requirements regarding responsibilities and structure for the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more. In finalizing these requirements, the Board has

---

[127] This provision is consistent with the requirement in section 165(h)(3)(C) of the Dodd-Frank Act and mirrors the requirement in the Board's final rule for U.S. companies, discussed above in section III.B of this preamble. 12 U.S.C. § 5365(h)(3)(C).

[128] As described below, the final rule requires a foreign banking organization with combined U.S. assets of $50 billion or more to maintain an independent director on its U.S. risk committee.

generally sought to maintain consistency with the risk-management requirements included in the final rule for domestic companies with total consolidated assets of $50 billion or more, with certain adaptations to account for the unique characteristics of foreign banking organizations.

a. Responsibilities of U.S. Risk Committee

Under the proposal, a U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more would have been required 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, size, and other appropriate risk-related factors of the company's combined U.S. operations. The proposal would have required the risk management framework for the combined U.S. operations to be consistent with the enterprise-wide risk management policies and include enumerated policies, procedures, policies, and systems.

Some commenters opposed the proposed establishment of specific roles and responsibilities for the U.S. risk committee. For example, one foreign bank stated that the U.S. risk committee should be permitted to rely on the parent company's global policies and procedures and that establishing stand-alone policies and procedures for the company's U.S. operations would be duplicative and result in increased costs and complexity. Some commenters requested additional clarity regarding the relationship between the U.S. risk committee and the global risk-management function. A few commenters also asserted that the U.S. risk committee's responsibilities and its relationship to management and the board of directors should be left to the discretion of the foreign banking organization.

The required elements of a foreign banking organization's risk management framework under the final rule are crucial elements of effective risk management and are consistent with

international risk-management standards.[129] Therefore, because of the risks posed by the companies covered by the final rule, the Board believes that it is important to specify the responsibilities for their U.S. risk committees. Accordingly, the Board is finalizing the responsibilities of the U.S. risk committee generally as proposed, with some modifications, as discussed below.

As noted above, the risk management framework for a foreign banking organization's U.S. operations must be consistent with its global framework, and foreign banking organizations generally may rely on their parent company's enterprise-wide risk management policies, as long as those policies and procedures fulfill the minimum requirements established by the final rule. Consistent with the final rule for bank holding companies, as discussed in section III.B of this preamble, the final rule requires the U.S. risk committee to approve and periodically review the risk-management policies, rather than the risk-management practices, of the combined U.S. operations. Additionally, the final rule does not require a foreign banking organization to certify that it has a U.S. risk committee because the Board expects to gain sufficient information through the supervisory process to evaluate whether the U.S. risk committee meets the requirements of this section.

Under the proposal, a U.S. risk committee would have had to meet at least quarterly and more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions. One commenter supported the requirement that a U.S.

---

[129] See, e.g., "Principles for Enhancing Corporate Governance," (October 2010), available at: http://www.bis.org/publ/bcbs176.pdf (stating that large, internationally active banks should have a board-level risk committee responsible for overseeing implementation of a risk management framework that includes procedures for identifying, assessing, monitoring, and reporting key risks and risk mitigation measures).

risk committee meet quarterly, but another urged the Board not to adopt a minimum number of meetings for the U.S. risk committee. Based on its supervisory experience, the Board understands that quarterly meetings of board committees are standard in the financial industry and the Board believes that this standard is consistent with good risk management practices, as it helps ensure the risk committee receives timely information about the risk profile of the institution. Accordingly, the Board is adopting these provisions as proposed. In addition to the responsibilities described above, under the proposal, the U.S. risk committee would have been responsible for certain liquidity risk-management responsibilities. These liquidity risk-management responsibilities are components of the U.S. risk-management framework. The Board has adopted the proposed liquidity risk-management responsibilities with some modifications in response to comments and other considerations, as further discussed in section IV.E.2.

b. Independent Member of the U.S. Risk Committee

Under the proposal, the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must include at least one member who (1) is not 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, and (2) is not 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 was adapted from director independence requirements of certain U.S. securities exchanges and was similar to the requirement in the domestic proposal that the chair of the risk committee of a U.S. bank holding company be independent. The proposed requirement applied regardless of where the foreign banking organization's U.S. risk committee was located.

A few commenters asserted that the independent director requirement is not necessary to achieve the U.S. risk committee's purposes. One commenter stated that the independence requirement could hinder the efficacy of the U.S. risk committee because the independent director would not be familiar with the day-to-day operation of the business. One commenter urged the Board to consider allowing foreign banking organizations to include an autonomous reporting line to the chief executive officer or the board of directors in lieu of an independence requirement. Other commenters urged the Board to defer to home country independence standards. One commenter stated that the Board should focus on the U.S. risk committee's independence from business lines, rather than on a particular director's independence from the foreign banking organization.

The Board believes that requiring one member of the U.S. risk committee to be independent from the foreign banking organization helps to ensure that an objective view of the company's U.S. operations is represented on the committee. Further, given the variation in independence requirements across jurisdictions, the final rule, consistent with the proposal, establishes independence standards to ensure consistency among companies subject to the rule. The Board therefore believes that the independence standards set out in the proposal are appropriate minimum requirements. Thus, the Board is adopting the director-independence requirements as proposed.

In addition, the proposal would have required at least one member of the U.S. risk committee to have risk-management expertise. In the final rule, the risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must include at least one member having experience in identifying, assessing, and managing risk exposures of large,

complex financial firms. This is consistent with the final rule's requirement for bank holding companies with total consolidated assets of $50 billion or more.

c. Placement of the Risk Committee

Under the proposal, in most cases, a foreign banking organization would have been permitted to maintain its U.S. risk committee either as a committee of the global board of directors, on a standalone basis or as part of its enterprise-wide risk committee, or as a committee of the board of directors of its U.S. intermediate holding company, if applicable. The proposal would have required a foreign banking organization that has combined U.S. assets of $50 billion or more and operates in the United States solely through a U.S. intermediate holding company to maintain its U.S. risk committee at the U.S. intermediate holding company.

Several commenters supported the proposed rule's option to house the U.S. risk committee at either the U.S. intermediate holding company or the parent company. A few commenters urged the Board to permit additional flexibility. Two commenters suggested that the Board should permit a foreign banking organization to comply with the risk committee requirements by establishing a management committee or an independent risk-management function. Another foreign bank requested that the final rule allow supervisors authority to adjust the risk-management requirements where the foreign banking organization operates in the United States only through U.S. subsidiaries. One commenter asserted that the Board should allow the U.S. risk committee to be placed at a company's U.S. branch. One commenter opined that the responsibilities of the U.S. risk committee are more important than its placement. Some commenters, however, indicated that it would be appropriate for foreign banking organizations with large U.S. operations to maintain a risk function in the United States rather than in the company's head office.

The Board believes that it is important to ensure that a senior committee of the board of directors of the foreign banking organization or of the U.S. intermediate holding company has primary responsibility for oversight of the risks of the combined U.S. operations. A management or independent committee or representatives of a U.S. branch may not have the requisite ability to oversee the risks of the combined operations. Under the final rule, the risk committee for the combined U.S. operations generally must be a committee either of the global board of directors of the foreign banking organization or of the U.S. intermediate holding company.[130]

Furthermore, the final rule requires each U.S. intermediate holding company to have a risk committee to oversee the risk function of the U.S. intermediate holding company. As described above, the final rule raises the threshold for formation of a U.S. intermediate holding company from $10 billion to $50 billion in U.S. non-branch assets. In consideration of this change, and the systemic footprint of a foreign banking organization that is required to form a U.S. intermediate holding company, the Board believes that each U.S. intermediate holding company must have a risk committee to oversee the risk function of the U.S. intermediate holding company. The risk committee of the U.S. intermediate holding company may also fulfill the responsibilities of the U.S. risk committee described above.

d. U.S. Chief Risk Officer

Under the proposal, a foreign banking organization with combined U.S. operations of $50 billion or more would have been required to appoint a U.S. chief risk officer. The U.S. chief

---

[130] For those foreign banking organizations that operate in the United States solely through U.S. intermediate holding companies, the Board also has retained the requirement that such a foreign banking organization place its U.S. risk committee at the U.S. intermediate holding company as an appropriate means for the U.S. risk committee to have exposure to the foreign banking organization's U.S. operations and to ensure that the U.S. risk committee is accessible to U.S. supervisors.

risk officer would have been required to be employed by the U.S. branch, U.S. agency, U.S. intermediate holding company, or other U.S. subsidiary.

i. Responsibilities

Under the proposal, the U.S. chief risk officer was directly responsible for the measurement, aggregation, and monitoring of risks undertaken by the company's combined U.S. operations. The U.S. chief risk officer would have been directly responsible for the regular provision of information to the U.S. risk committee, the global chief risk officer, and the Board or Federal Reserve supervisory staff.[131] Such information would have included 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. The proposal also provided that the U.S. chief risk officer would be expected to oversee regularly scheduled meetings, as well as special meetings, with the Board to assess compliance with its risk-management responsibilities. The proposal would have required the U.S. chief risk officer to be available to respond to supervisory inquiries from the Board as needed. The proposal also included several additional risk-management responsibilities for which a U.S. chief risk officer was directly responsible.

Many commenters asserted that the proposal was overly restrictive and advocated for additional flexibility in the U.S. chief risk officer role. One commenter asserted that the U.S. chief risk officer requirement is unnecessary, so long as the foreign banking organization is able to identify an officer inside of the organization to serve as the point of contact for the Board regarding U.S. risk-management practices. Another commenter asserted that the responsibilities

---

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

of the U.S. chief risk officer should vary depending on the foreign banking organization's activities in the United States. On the other hand, one commenter stated that the responsibilities assigned to the U.S. chief risk officer by the proposed rule were appropriate.

The Board believes that requiring a foreign banking organization with over $50 billion in combined U.S. assets to have a single point of contact within a foreign banking organization that is required to oversee the management of risks within the organization's combined U.S. operations will help reduce the risks posed by foreign banking organizations. Such a structure ensures accountability within the foreign banking organization and facilitates communication between the organization and supervisors. Although the relative emphasis on the responsibilities assigned to the U.S. chief risk officer by the final rule may vary depending on the foreign banking organization's U.S. activities, each responsibility is a crucial component of the role of the U.S. chief risk officer for every foreign banking organization with a large U.S. presence. Accordingly, the final rule continues to require that the U.S. chief risk officer report directly and regularly provide to the U.S. risk committee and global chief risk officer and regularly meet and provide information to the Board regarding risk management and compliance with this section. In other cases, consistent with the discussion in section III.B.4 of this preamble, the U.S. chief risk officer of a foreign banking organization may execute his or her responsibilities by working with, or through, others in the organization. Accordingly, the final rule requires the U.S. chief risk officer to "oversee" the execution of certain of the responsibilities, rather than to be directly responsible for them.

In addition, the U.S. chief risk officer is responsible for certain liquidity risk-management responsibilities discussed in section IV.E.2 of this preamble. The final rule includes a cross reference to these responsibilities.

ii. Structural requirements

Under the proposal, a U.S. chief risk officer generally would have reported directly to the U.S. risk committee and the company's global chief risk officer. The preamble to the proposal indicated that the Board may approve an alternative structure on a case-by-case basis if the company demonstrated that the proposed reporting requirements would create an exceptional hardship for the company.

Several commenters advocated for greater flexibility in the reporting structure for the U.S. chief risk officer, asserting that each company should be able to determine reporting lines consistent with its organization and business lines. The Board believes that, in general, it is important for the U.S. chief risk officer to report directly to both the risk committee and the global chief risk officer to ensure that both management and the board are kept apprised of risks facing the company's U.S. operations. The Board's ability to approve an alternative reporting structure on a case-by-case basis provides for sufficient flexibility for companies for which the dual reporting structure would be an exceptional hardship. Accordingly, the Board is adopting the U.S. chief risk officer reporting structure as proposed.

In the proposal, the Board noted that it 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. Several commenters opposed this aspect of the proposal and a few commenters stated that the Board should not prohibit the U.S. chief risk officer from fulfilling other roles within the organization, as it may be beneficial for the U.S. chief risk officer to have a broad scope of duties. One commenter asserted that the U.S. chief risk officer should be permitted to fulfill other responsibilities appropriate for his or her level of experience.

The Board continues to believe that, in order to ensure that the U.S. chief risk officer is primarily focused on the risk management oversight of the foreign banking organization's combined U.S. operations, the U.S. chief risk officer should not fulfill other roles within the organization. The separation of the U.S. chief risk officer's duties is important to ensure that the oversight of risks facing the foreign banking organization's combined U.S. operations is not compromised by the U.S. chief risk officer devoting attention to other matters within the organization. Accordingly, the Board expects that the U.S. chief risk officer's primary responsibility will be risk management oversight of the combined U.S. operations of the foreign banking organization. The U.S. chief risk officer also should not serve as the company's global chief risk officer.

The proposal would have required the U.S. chief risk officer to be employed by the U.S. branch, U.S. agency, U.S. intermediate holding company, or another U.S. subsidiary. One commenter stated that requiring the U.S. chief risk officer to be employed by a U.S. entity would increase parent company costs. However, in order for the U.S. chief risk officer to have appropriate exposure to the foreign banking organization's U.S. operations and to ensure that the U.S. chief risk officer is accessible to U.S. supervisors, the final rule retains the requirement that the U.S. chief risk officer be employed by a U.S. entity and further clarifies that the U.S. chief risk officer must also be located at a U.S. entity.

The proposal stated that a U.S. chief risk officer must 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. In the proposal, the Board solicited comment on whether it should specify by regulation the minimum qualifications, including educational attainment and professional experience, for a U.S. chief risk officer. Several

commenters asserted that establishing minimum qualifications for the U.S. chief risk officer is unnecessary. These commenters encouraged the Board to allow a foreign banking organization to make its own determination as to whether a U.S. chief risk officer candidate is qualified. A few commenters asserted that the U.S. chief risk officer should not be required to hold any specific educational or professional qualifications. One commenter supported minimum qualifications for the U.S. chief risk officer but noted that, as a practical matter, few candidates might initially meet the formal requirements.

Although a foreign banking organization generally should have flexibility to determine the particular qualifications it desires in a U.S. chief risk officer, in light of the risks posed by foreign banking organizations with combined U.S. assets of $50 billion or more, a U.S. chief risk officer should satisfy certain minimum standards. Consistent with the Board's final rule for domestic companies, for the reasons set forth in section III.B.4 of the preamble, the final rule requires a U.S. chief risk officer to have experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

One commenter urged the Board to include other relevant supervisory authorities, including state supervisors in the case of state-licensed foreign banking organizations, in meetings with the U.S. chief risk officer. Consistent with its current practice, the Board expects that other relevant supervisory authorities will be involved throughout the supervision process as appropriate.

In addition, the proposal would have required the U.S. chief risk officer to receive compensation consistent with providing an objective assessment of risks. The Board is finalizing the substance of this requirement as proposed.

E. Liquidity Requirements for Foreign Banking Organizations

Similar to the domestic proposal, the foreign proposal would have required a foreign banking organization with combined U.S. assets of $50 billion or more to establish a framework for managing liquidity risk, conduct monthly liquidity stress tests, and maintain a buffer of highly liquid assets to cover cash-flow needs under stressed conditions. The proposal would have applied a more limited set of liquidity requirements to a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion. These organizations would have been required 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 only, conducted consistently with the Basel committee principles for liquidity risk management[132] and incorporating 30-day, 90-day, and one-year stress test horizons.[133]

In certain cases, commenters provided views on the liquidity provisions of the proposal that were also applicable to U.S. bank holding companies. Many of the comments and final rule changes applicable to both the foreign and domestic liquidity requirements have been addressed in section III.C of this preamble. Foreign banking organizations seeking more information on the adjustments made to the proposed enhanced prudential standards should therefore also refer to section III.C of this preamble.

1. General Comments

Several commenters expressed support for the proposed rule, stating that many of the requirements would formalize standards already in development within the industry and would align with the liquidity standards applied by other jurisdictions, including liquidity requirements

---

[132] See Basel Committee principles for liquidity risk management, supra note 46.

[133] See discussion of reporting of stress test results in section III.C.

on foreign companies in the United Kingdom. One commenter asserted that the proposal would help foreign banking organizations to withstand small runs and reduce those institutions' reliance on emergency programs. Other commenters raised concerns that the requirements, and particularly the proposed liquidity buffer, discussed further below, could have a potential negative impact on economic growth and reduce the availability of funding in the United States. These commenters also argued against the proposal on systemic stability grounds, asserting that liquidity would be better managed on an integrated or enterprise-wide basis and that local liquidity requirements, particularly for branches operating in the United States, would significantly compromise the ability of a foreign banking organization to manage its liquidity efficiently and effectively on global basis. One commenter expressed concern that local liquidity requirements in the United States could exacerbate the U.S. financial system's exposure to contagion by reducing a foreign banking organization's ability to divert liquid assets from U.S. operations to address a shock abroad. Another commenter suggested that excess liquidity above the minimum amounts required should be permitted to flow freely outside of the United States to address needs in other parts of a foreign banking organization's operations.

As discussed above in section IV.A of this preamble, in a circumstance where multiple parts of a foreign banking organization come under stress simultaneously, a firm that manages its liquidity on a centralized basis may not have sufficient resources to provide support to all parts of the organization, and indeed, during the recent financial crisis, many foreign organizations relied on substantial amounts of Federal Reserve lending to meet liquidity needs in the United States. Further, as noted above in section IV.A of this preamble, foreign banking organizations' increased use of short-term funding in the lead-up to the financial crisis exposed them, in certain cases, to maturity mismatch. While maturity transformation is central to the bank intermediation

function, it can also pose risks from both a firm-specific perspective and a broader financial stability perspective. Therefore, the Board is requiring a foreign banking organization to establish a framework for managing liquidity risk and stress-test its liquidity in the United States, as well as maintain a minimum amount of liquidity in the United States. The liquidity requirements contained in the final rule are designed to help address these risks.

The impact of the requirements on a particular foreign banking organization will vary based on a variety of factors. The Board believes the positive impact of the rule in helping to improve the liquidity risk management and position of the U.S. operations of foreign banking organizations justifies the required approach. The Board notes that the final rule continues to permit foreign banking organizations to raise funding in the United States for home-country or other overseas operations, provided that they do so in compliance with the requirements in the final rule. The Board has calibrated the requirements so as not to limit excessively a foreign banking organization's ability to manage liquidity risk on a global basis, and under the proposal and the final rule excess liquidity held in the United States may be used outside the United States to address needs in other parts of the foreign banking organization's operations.

Many commenters asserted that instead of the proposed rule, there should be a global agreement on monitoring and managing liquidity on a consolidated basis, potentially through standards implemented under the Basel Committee principles for liquidity risk management. Several commenters suggested that the proposed requirements are not appropriate for a foreign banking organization whose home country has fully adopted the Basel III LCR. Some commenters requested that the Board exempt from the standards foreign banking organizations that meet certain criteria, such as strength of supervision in the home jurisdiction, parent support, and willingness to provide information, or reduce requirements applicable to those entities.

Commenters also recommended that instead of establishing enhanced prudential standards for liquidity, the Board should defer to a foreign banking organization's implementation of home-country liquidity standards, particularly where home-country standards for liquidity monitoring are comparable to those of the proposed enhanced prudential standards, and coordinate with home-country supervisors to evaluate the liquidity adequacy and risk management of the foreign banking organization's U.S. operations. Other commenters argued that the proposed liquidity requirements should be more closely aligned with the liquidity standards under the Basel Committee principles for liquidity risk management. Some stated that the proposal would cause confusion as to how the requirements for foreign banking organizations would align with the proposed U.S. LCR. In addition, one commenter suggested that the Board should synchronize the implementation of liquidity standards under section 165 of the Dodd-Frank Act with the implementation of the Basel III LCR.

The Board remains committed to international cooperation among supervisors and will continue to work on a bilateral and multilateral basis to improve the supervision of international banking organizations. At the same time, the Board does not believe that deferring to home-country supervisors' liquidity supervision adequately addresses foreign banking organizations' liquidity risk in the United States and the associated risks to financial stability. The final rule will ensure that all foreign banking organizations with combined U.S. assets of $50 billion or more have uniform requirements that are also consistent with the requirements for domestic institutions. For the reasons described in section III.C of this preamble in connection with the domestic final rule, above, the Board believes that the final liquidity requirements, which are firm-specific in nature, complement the Basel III LCR, which is a standard, quantitative liquidity requirement. The Board intends through future separate rulemakings to implement the

quantitative liquidity standards included in Basel III for the U.S. operations of some or all foreign banking organization with 50 billion or more in combined U.S. assets.

A number of commenters asserted that the proposed liquidity requirements were unnecessary to mitigate risks to the U.S. financial system posed by the U.S. operations of foreign banking organizations. These commenters contended that existing regulations, including section 23A of the Federal Reserve Act, Financial Industry Regulatory Authority rule 10-57, and the SEC's net capital rules already create an effective framework to mitigate the liquidity risk of exposures to affiliates. Although existing requirements may address aspects of liquidity risks at certain subsidiaries, the requirements in the final rule are meant to establish a framework to address liquidity risk across a foreign banking organization's combined U.S. operations. The existing regulations cited by the commenters may be helpful in mitigating risk, but they do not address liquidity risk across a foreign banking organization's entire U.S. operations.

One commenter requested that the Board clarify that intercompany transactions would be netted for purposes of calculating whether a foreign banking organization would be subject to the liquidity standards. In calculating combined U.S. assets for determining applicability of these requirements, the final rule will rely on "Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies" as reported on the FR Y-7 form (as of March 31, 2014), which nets interoffice transactions between U.S. entities.

The final rule requires a foreign banking organization with combined U.S. assets of $50 billion or more to establish a framework for managing liquidity risk, engage in independent review and cash-flow projections, establish a contingency funding plan and specific limits, engage in monitoring, stress test its combined U.S. operations and its U.S. intermediate holding

company and its U.S. branches and agencies (if any), and hold certain liquidity buffers. Each of these elements of the final rule is discussed below.

2. Framework for Managing Liquidity Risk

As discussed above in section IV.D of this preamble, the foreign proposal would have required foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to establish a U.S. risk committee to oversee the risk management of the combined U.S. operations of the company and to appoint a chief risk officer to be responsible for implementing the company's risk-management practices for the combined U.S. operations. The foreign proposal would have required the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more to oversee the liquidity risk management processes of the U.S. operations of the foreign banking organization, and to review and approve the liquidity risk management strategies, policies, and procedures. As part of these responsibilities, the U.S. risk committee would have been required to review and approve the company's liquidity risk tolerance for its U.S. operations at least annually. As discussed in the preamble to the foreign proposal, in reviewing the liquidity risk tolerance of a foreign banking organization's U.S. operations, the U.S. risk committee would have been required to consider the capital structure, risk profile, complexity, activities, and size of the company's U.S. operations in order to help ensure 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 proposal provided that the liquidity risk tolerance for the U.S. operations should 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. The foreign proposal provided that 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 foreign proposal would have required the U.S. chief risk officer to review and approve the liquidity costs, benefits, and risk of each significant new business line and significant new product of the U.S. operations before the foreign banking organization implements the line or offers the product. At least annually, the U.S. chief risk officer would have been 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. As discussed below, a foreign banking organization with combined U.S. assets of $50 billion or more would have also been required to establish a contingency funding plan for its combined U.S. operations. The U.S. chief risk officer would have been 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 have required the U.S. chief risk officer, at least quarterly, to conduct an enumerated set of reviews and to establish procedures governing the content of reports on the liquidity risk profile of the combined U.S. operations. The proposal would have also required the U.S. chief risk officer to review strategies and

policies for managing liquidity risk established by senior managers and regularly report to the U.S. risk committee.

A few commenters asserted that the proposed governance provisions were too limiting and intruded into parallel governance, risk-management, internal and supervisory reporting, audit and independent review, stress-testing, and IT requirements being imposed by foreign banking organizations' home jurisdictions. While the Board recognizes that foreign banking organizations may be subject to parallel liquidity risk management requirements in their home countries, the Board believes that foreign banking organizations should specifically manage the liquidity risks of their combined U.S. operations through a designated U.S. risk committee and U.S. chief risk officer. The liquidity risk management requirements of the final rule are informed by the liquidity stress that the U.S. operations of foreign banking organizations faced during the recent financial crisis and the risks to U.S. financial stability that could result if foreign banking organizations came under similar stress in the future. As discussed above, during the recent crisis, many foreign banking organizations experienced funding difficulties in their U.S. operations, and the stressed conditions of these operations posed risks to the U.S. financial system. The Board believes that sound liquidity risk management is vital to ensuring the safety and soundness of the U.S. operations of a foreign banking organization and understands that companies already employ such practices in order to monitor and manage liquidity risk for their U.S. operations.

The Board has adjusted the responsibilities assigned to the U.S. risk committee in the final rule in light of the comments received and in keeping with the Interagency Liquidity Risk Policy Statement. The final rule requires that, rather than the chief risk officer, the U.S. risk committee or a designated subcommittee thereof must review the contingency funding plan of

the foreign banking organization. The U.S. chief risk officer is required to approve each new business line and new product and ensure that the liquidity costs, benefits, and risks of each new business line and each new product offered, managed or sold through the company's combined U.S. operations that could have a significant effect on the company's liquidity risk profile are consistent with the company's liquidity risk tolerance, and to review at least annually significant business lines and products offered, managed or sold through the combined U.S. operations to determine whether such business or product has anticipated liquidity risk and to confirm that the strategy or product is within the established liquidity risk tolerance.

The Board is finalizing the other requirements assigned to the U.S. chief risk officer generally as proposed.

3. Independent Review

Under the proposed rule, a foreign banking organization with combined U.S. assets of $50 billion or more would have been 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 have been independent of management functions that execute the firm's funding strategy (i.e., the corporate treasury function). The independent review function would have been required to review and evaluate the adequacy and effectiveness of the U.S. operations' liquidity risk management processes regularly, and at least annually. The independent review function would also have been 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. The proposal

provided that an appropriate internal review conducted by the independent review function must 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.

The Board continues to believe these requirements are important to a comprehensive liquidity risk management framework and is finalizing the independent review requirement as proposed.

4. 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 have required comprehensive cash-flow projections for the company's U.S. operations that include forecasts of cash flows arising from assets, liabilities, and off-balance sheet exposures over short-term and long-term time periods, and that identify and quantify discrete and cumulative cash-flow mismatches over these time periods. The proposed rule would have required a foreign banking organization to establish a methodology for making cash-flow projections for its U.S. operations; use reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in the projections; and adequately document its methodology and assumptions.[134] The preamble to the proposal stated that the Board would

[134] The projections would have been required to reflect cash flows arising from contractual maturities and intercompany transactions, as well as cash flows from new business, funding

expect a company to use dynamic analysis of cash-flow projections 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. In addition, the proposal would have required the U.S. chief risk officer to review cash flow projections at least quarterly, and the preamble to the proposal stated that the Board would expect senior management periodically to review and approve the assumptions used in the cash-flow projections for the U.S. operations to ensure that they are reasonable and appropriate.

Several commenters objected to the proposed cash-flow projection requirements on the basis that other liquidity controls, such as the liquidity stress tests, already provide an indication of potential liquidity issues. The Board believes that the level of detail required of cash-flow projections under the proposal is consistent with industry standards and that the proposal allows for significant flexibility by permitting cash-flow projections to be commensurate with the risk profile, complexity, and activities of the U.S. operations. While cash-flow projections and stress tests may at times identify a common element of liquidity exposure, the two exercises are complementary tools. Cash-flow projections are most often prepared under business-as-usual base case scenarios and are useful for identifying any funding surpluses or shortfalls on the horizon, while stress tests identify funding vulnerabilities based on adverse market conditions and play a key role in shaping the institution's contingency planning. The Board is adopting the substance of the cash-flow projection requirement without change.

In the proposed rule, the Board requested comment on whether foreign banking organizations should be required to provide statements of cash flows for all activities conducted

---

renewals, customer options, and other potential events that may affect the liquidity of the U.S. operations.

in U.S. dollars, without reference to whether those activities were conducted through their U.S. operations. Several respondents stated generally that any potential risk would be better addressed through other means, such as assessments of the effectiveness of liquidity risk management (for example, stress testing, or the contingency funding plan) conducted by individual banks on a global basis. One commenter stated that cash flows associated with repos involving U.S. government bonds held by non-U.S. entities should be exempted from the requirement because the purpose of such cash flows is evident. Further, commenters requested that the Board give due consideration to the additional burden caused by such reporting. One commenter was generally supportive of a requirement to provide global U.S. dollar cash-flow statements but only if foreign banking organizations that provide such data are not required to hold capital and liquidity buffers in the United States.

Though the Board sees value in foreign banking organizations producing U.S. dollar cash-flow statements on a periodic basis to help identify potential U.S. dollar mismatches, given considerations cited by commenters, particularly the estimated resources required to produce such a report, the final rule does not require global cash-flow statements for activities conducted in U.S. dollars. However, the Board continues to consider the issue and may separately seek comment in the future on regulatory reporting requirements or information collections pertaining to a company's global U.S. dollar flow activities.

5. Contingency Funding Plan

As part of comprehensive liquidity risk management, the proposal would have required a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain a contingency funding plan to set out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan would have been required to

be commensurate with the foreign banking organization's capital structure, risk profile, size, and complexity, among other characteristics. The objectives of the contingency funding plan were 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. Under the proposed rule, the contingency funding plan would have included a quantitative assessment, an event-management process, and procedures for monitoring emerging liquidity risk events. In addition, a foreign banking organization would have been required to test periodically the components of its contingency funding plan and to update the contingency funding plan annually or more often if necessary.

One commenter asked whether loans from FHLBs and other similar sources of funding, or parent support could be included in the contingency funding plan. The Board is clarifying in this preamble that lines of credit may be included as sources of funds in contingency funding plans; however, firms should consider the characteristics of such funding and how the counterparties may behave in times of stress. Similarly, the Board expects that parent support may be included in the contingency funding plan, but the foreign banking organization must consider limitations on those funds, including the probability of simultaneous stress.

As discussed in the proposal, 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 or subsidiary U.S. insured depository institutions, 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.

The Board is generally adopting the contingency funding plan requirements as proposed, with modifications consistent with the modifications made to the contingency funding plan requirements for U.S. bank holding companies discussed in section III.C of this preamble. For the reasons discussed in that section, the focus of the contingency funding plan requirements is on the operational aspects of such sources, which can often be tested via "table top" or "war room" type exercises; however, the implementation of the contingency funding plan for a foreign banking organization should include periodic liquidation of assets, including portions of the foreign banking organization's liquidity buffer in certain instances.

Under the proposal, as part of its event-management process, a foreign banking organization would have been required to identify the circumstances in which it will implement its contingency funding plan. In order to maintain consistency with the rule applicable to bank holding companies, the final rule clarifies that these circumstances must include a failure to meet any minimum liquidity requirement established by the Board for the foreign banking organization's U.S. operations. Foreign banking organizations seeking additional detail on the Board's general supervisory expectations for contingency funding plans should refer to section III.C.5 of this preamble.

6. Liquidity Risk Limits

To enhance management of liquidity risk, the proposed rule would have required 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 have included

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. The U.S. operations would also have been required to monitor intraday liquidity risk exposure in accordance with procedures established by the foreign banking organization.

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

One commenter objected to the establishment of specific limits, stating that fixed limits could preclude management from taking reasonable and necessary actions to remain funded during times of stress. The Board views a robust limit structure as an important tool in a liquidity risk governance structure and believes that specific limits would not prevent a firm from taking necessary actions to manage through a crisis. The limits set by the firm must be reflective of the foreign banking organization's structure as well as the risk appetite set by management and the board of directors. The Board expects that there are circumstances that may warrant exceeding a limit threshold; for limits to be effective they should be monitored and have escalation procedures for any breaches that may include notification of senior management, the risk committee, and possibly the Board depending on the severity and impact of the limit breach. Therefore the Board is adopting the limits in the final rule as proposed.

7. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

The proposed rule would have required 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. Commenters primarily objected to the intraday liquidity monitoring requirement, stating that collecting and aggregating relevant information from all entities under the U.S. intermediate holding company would be burdensome. One commenter stated that if intraday liquidity monitoring on settlement activities conducted through a correspondent bank (a direct participating bank in settlement) is expected, it would be impossible unless the correspondent bank discloses relevant information (which may require some type of regulation to enforce). The Board emphasizes that the final rule contains an internal monitoring requirement, which requires foreign banking organizations to establish and maintain procedures for monitoring intraday liquidity risk on the combined U.S. operations. The Board continues to believe intraday liquidity monitoring is an important component of the liquidity risk management process and therefore the final rule adopts the monitoring requirements as proposed.

8. Liquidity Stress Testing

The proposal would have required a foreign banking organization with combined U.S. assets of $50 billion or more to conduct monthly liquidity stress tests separately for its U.S. intermediate holding company and its U.S. branches and agencies. As noted in the preamble to the proposal, the Board believes that stress tests conducted by a foreign banking organization can identify vulnerabilities; quantify the depth, source, and degree of potential liquidity strain in its U.S. operations; and provide information to analyze how severely adverse events, conditions, and outcomes would affect the liquidity risk of its U.S. branches and agencies and its U.S. intermediate holding company. When combined with comprehensive information about an

institution's funding position, stress testing can serve as an important tool for effective liquidity risk management.

The proposed rule set forth general parameters for companies' internal liquidity stress testing and would have required each foreign banking organization to take into account its own business model and associated exposure to liquidity risks. The proposed rule would have required the stress testing to incorporate a range of forward-looking stress scenarios that include, at a minimum, separate stress scenarios for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses. To ensure that a company's stress testing for its U.S. operations contemplated a range of stress events, the proposed rule would have required 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.

Many commenters asserted that the Board should rely on stress tests performed at the home country or consolidated level and not separately impose stress-testing requirements for the U.S. operations. Several commenters stated that the proposal's assumption that the parent foreign banking organization would fail to provide liquidity to the U.S. operations under stress is unrealistic. These commenters stated that there is a low likelihood that a foreign banking organization would sacrifice major subsidiaries to protect the parent without failure of the foreign banking organization as well. Commenters suggested that the Board should instead use the supervisory process to assess resolution plans and determine if additional protections are required. One commenter requested clarification on whether a company may rely on support from a parent entity or an affiliate for a time horizon that is longer than 30 days. Other commenters expressed the view that the proposal would be too burdensome.

The Board agrees that liquidity stress testing at the level of the consolidated parent provides valuable information about the organization's ability to manage liquidity risk on an enterprise-wide basis. The final rule requires the foreign banking organization parent of a U.S. intermediate holding company to make available the results of home-country liquidity stress testing for Board review. However, the Board does not view liquidity stress testing at the parent as a substitute for stress testing at the combined U.S. operations. As explained above, the Board believes that the U.S. and non-U.S. operations of a foreign banking organization could face simultaneous funding pressures, which could hinder the ability of the foreign bank parent to provide the necessary liquidity support to its U.S. operations. Given that risk, the Board does not believe it would be appropriate to modify the proposed requirements to reflect an assumption that foreign banking organizations would provide such liquidity, or to rely solely on the supervisory process to address remaining risks. Therefore, as described further below, for purposes of the stress test used to calculate the liquidity buffer requirement for U.S. intermediate holding companies and U.S. branches and agencies, internal cash inflows can only be used to offset internal cash outflows. However, the Board is clarifying that in stress tests with time horizons longer than 30 days, internal inflows can be considered to offset both internal and external outflows. For the reasons described in section III.C of this preamble, for stress tests beyond 30 days, a foreign banking organization may include lines of credit as cash flow sources, but should fully consider the constraints associated with those lines of credit.

Commenters also asserted that liquidity stress-tests should be tailored to the foreign banking organization's business mix and risk profile. One commenter encouraged the Board to clarify that a foreign banking organization may apply its own models and assumptions for run-off rates and haircuts when conducting liquidity stress tests and when calculating the liquidity

buffer. As discussed above and further below, the stress testing requirement is based on internal models. When conducting liquidity stress tests and when calculating the liquidity buffer, each foreign banking organization, consistent with the rules applied to domestic institutions, is required to apply its own models and assumptions for run-off rates and haircuts that are appropriate for its liquidity risks and business model. The final rule does not require a foreign banking organization's U.S. operations to use standardized models or assumptions. Accordingly, the liquidity stress tests are tailored by their nature to the business mix and risk profile of the U.S. operations of the foreign banking organization. In addition, because the liquidity stress tests required by the final rule use firm-derived stress scenarios, the Board would expect the stress scenarios to incorporate historical and hypothetical scenarios to assess the effect on liquidity of various events and circumstances, including variations thereof. As in the proposed rule, the final rule requires a company 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 Board expects foreign banking organizations to derive their own assumptions (subject to supervisory review) as they measure the potential sources and uses of liquidity of the U.S. operations under various stress scenarios, rather than simply adopt standardized haircuts and runoff rates of assets and liabilities, such as those prescribed in the Basel III LCR.

Under the final rule, and as discussed above, only those foreign banking organizations with $50 billion or more in U.S. non-branch assets will be required to form a U.S. intermediate holding company. Accordingly, the final rule clarifies that stress testing must be conducted for the combined U.S. operations (including the U.S. intermediate holding company, if any, or the

foreign banking organization's U.S. subsidiaries, if there is no U.S. intermediate holding company, and any U.S. branches and agencies) and separately for each of the U.S. intermediate holding company, if any, and the U.S. branches and agencies of the foreign bank. The Board generally expects that any liquid assets and cash-flow sources considered for purposes of the stress tests would be in the same location and legal entity as the outflows.

In addition to monthly stress testing, the foreign banking organization would have been required to conduct more frequent stress tests, upon the request of the Board, to address rapidly emerging risks or consider the effect of sudden events. The Board could, for example, require the U.S. operations of a company to perform additional stress tests when there has been a significant deterioration in the company's earnings, asset quality, or overall financial condition; when there are negative trends or heightened risks 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. The proposal further provided 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 tailoring may require analyses by business line, legal entity, or jurisdiction, as well as stress scenarios that use more time horizons than the minimum required under the final rule. The Board is finalizing these requirements generally as proposed, with clarifications to the proposed standards that are consistent with the clarifications to the liquidity stress testing requirements for U.S. bank holding companies.

To account for deteriorations in asset valuations when there is market stress, the proposed rule would have required the foreign banking organization to discount the fair value of an asset that is used as a cash flow source to offset projected funding needs in order to reflect any credit

risk and market price volatility of the asset. The proposed rule would have also required that sources of funding used to generate cash to offset projected outflows be diversified by collateral, counterparty, or lender (in the case of stress tests longer than 30 days for the U.S. intermediate holding company or 14 days for the U.S. branch and agency), or other factors associated with the liquidity risk of the assets throughout each stress test planning horizon. Thus, if a foreign banking organization's U.S. operations held high quality assets other than cash and securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored enterprise to meet future outflows, the assets must be diversified by collateral and counterparty and other liquidity risk identifiers. The Board is finalizing the substance of these requirements as proposed.

The proposed rule would have required that the U.S. operations of a foreign banking organization maintain policies and procedures that outline those operations' 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 have required the foreign banking organization to have an effective system of controls and oversight over the stress test function. The final rule maintains these requirements generally as proposed.

The proposal would also have required 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 have been 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 the stress test. Several commenters took issue with the requirement that reports be provided within 14 days of completing the stress tests, stating that the requirement would present challenges for foreign

banking organizations, and requesting a longer timeframe. To reduce reporting burden, in the final rule, the Board has revised the reporting requirement to require that the results of liquidity stress testing must be made available to the Board in a timely manner, rather than requiring that the results be reported within 14 days.

9. Liquidity Buffer

The proposal would have required a foreign banking organization to hold separate liquidity buffers for its U.S. branches and agencies and its U.S. intermediate holding company, if any, that are equal to their respective net stressed cash-flow needs as identified by the required stress tests. The proposal provided that each calculation of the net stressed cash-flow need described below would need to be performed for the U.S. branches and agencies and U.S. intermediate holding company separately. These calculations assess the stressed cash-flow need both with respect to intragroup transactions and transactions with unaffiliated parties to quantify the liquidity vulnerabilities of the U.S. operations during the 30-day stress horizon. As discussed below, the Board has modified some provisions of the proposed requirements in the final rule in response to comments. Notably, the final rule only requires U.S. branches and agencies to maintain a liquidity buffer for days 1 through 14 of a 30-day stress scenario.

a. General comments on the liquidity buffer

Several commenters argued that the proposed requirement to hold liquid assets in the United States would cause foreign banking organizations subject to the rule to incur costs that would reduce the amount of financing available for long-term lending, and argued that the proposal could negatively affect U.S. wholesale investors by driving demand for wholesale funding away from the United States or to riskier sources of financing. Commenters also stated that the requirement to maintain the liquidity buffer in the United States to cover potential

outflows in the United States would create inefficiencies and operational risks, and could cause many foreign banking organizations to reconsider and possibly reduce their U.S. operations. Commenters argued that the proposal could reduce credit availability by disrupting cross-border funding and hedging of international transactions, and increasing reliance on local funding. One commenter asserted that it would be more appropriate to tailor the liquidity buffer to the individual institution's stress situation. According to commenters, an individually tailored liquidity buffer, which may be larger or smaller than any predefined liquidity buffer, would provide greater flexibility to regulators than a "one-size-fits-all" approach and result in a more efficient use of liquidity under non-stressed circumstances. Some commenters stated that the buffer should be tailored at the time that early remediation is invoked.

For the reasons described above in section IV.B.3 of this preamble regarding the U.S. intermediate holding company, the Board does not think that a case-by-case determination for applying the enhanced prudential standards to foreign banking organizations is appropriate. The final rule allows an institution to tailor the liquidity buffer according to the institution's individual liquidity risk profile. The Board believes that it is appropriate to have a minimum highly liquid asset buffer to offset outflows over the first 30 days for the U.S. intermediate holding company and the first 14 days for the U.S. branch or agency to ensure that the U.S. operations can withstand a short period of severe liquidity stress. The Board also believes that it is not appropriate to expect firms to be able to build a buffer just prior to or during a stress event to respond to the causes and consequences of the stressed liquidity conditions. The liquidity buffer is designed so that the firm will have pre-positioned assets that can be used in a time of stress to offset outflows. The liquidity buffer is calculated based on the firm's liquidity stress-test results, and the stress test reflects a firm's capital structure, risk profile, complexity,

activities, size and other relevant characteristics of the U.S. operations. This buffer should give the firm more flexibility in a crisis and the pre-positioning of liquidity should give market participants more comfort in a firm's ability to meet short-term obligations during a crisis.

Several commenters asserted that the proposed liquidity requirements would increase foreign banking organizations' overall consolidated liquidity requirement, resulting in a larger overall consolidated liquidity buffer. The primary goal of the proposal and the final rule is to ensure that firms have adequate liquidity buffers in the United States to offset net cash outflows associated with short-term U.S. liabilities. As a general matter, the Board does not believe the final rule will result in a substantially higher consolidated liquidity requirement since the requirements included in the final rule require liquid assets to be maintained in the U.S. to offset potential funding vulnerabilities in the U.S. and the liquidity maintained in the United States will often count toward the foreign banking organization's consolidated requirement. However, the Board acknowledges that the final rule may result in a larger liquidity buffer requirement in certain cases, such as where previously unidentified areas of risk are measured in a more thorough manner as a result of the new requirements.

The Board also believes that requiring firms to maintain a liquidity buffer in the United States to cover potential liquidity needs is consistent with global liquidity monitoring and management of liquidity risk. The Basel Committee principles for liquidity risk management indicate that firms should actively monitor and control liquidity risks at the level of individual legal entities and foreign subsidiaries as well as the consolidated group. As many commenters noted, the Board's proposal is generally consistent with liquidity standards currently in place in other jurisdictions, including the United Kingdom, to address similar concerns with the operations of banks foreign to those jurisdictions.

One commenter suggested that the proposed buffer requirements were not strong enough, noting that during the 2007-2008 financial crisis several foreign banking organizations borrowed heavily from the Federal Reserve for more than one year to deal with their liquidity stress, and urged the Board to require a buffer for more than 30 days. The Board believes that a 30-day liquidity buffer balances the need to ensure adequate liquidity in individual companies, on the one hand, against the availability of adequate liquidity in the market generally, on the other, and will help to provide an institution that is under stress with the required flexibility to meet its most important funding obligations. The Board nonetheless recognizes the importance of maintaining liquidity for time periods both longer and shorter than 30 days and, as such, is requiring that companies conduct stress tests over a minimum of four time horizons, including a one-year horizon. Consistent with the final rule for bank holding companies, the final rule clarifies that the minimum liquidity buffer must be sufficient to meet the projected net stressed cash flow need over the 30-day planning horizon of a liquidity stress test that incorporates an adverse market condition scenario, an idiosyncratic stress event scenario, and a combined market and idiosyncratic stresses scenario. The Board expects, however, that a foreign banking organization will consider the results of its stress tests to determine the appropriate time period for which to hold a liquidity buffer. The Board will continue to monitor liquidity at individual companies and in the market generally.

b. Calculation of net stressed cash-flow need

The proposed rule provided that the net stressed cash-flow need, calculated for each of the U.S. intermediate holding company, if any, and the U.S. branches and agencies, would be equal to the sum of (1) the net external stressed cash-flow need and (2) the net intragroup stressed cash-flow need. The calculation of external and intragroup stressed cash-flow needs is

conducted separately in order to provide different treatment for these two sets of cash flows when determining the liquidity buffer needs of the U.S. operations. The proposal would have treated these cash flows differently in order to address the risk that internal cash-flow sources may not be available in times of stress. Specifically, the proposed methodology would have permitted internal cash-flow sources of the U.S. branches and agencies or U.S. intermediate holding company to offset internal cash-flow needs of the U.S. branches and agencies or U.S. intermediate holding company only to the extent that the term of the internal cash-flow source is the same as, or shorter than, the term of the internal cash-flow need. These assumptions reflect the risk that under stressed circumstances, 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. branches and agencies of the foreign bank or the U.S. intermediate holding company when those funds are most needed.

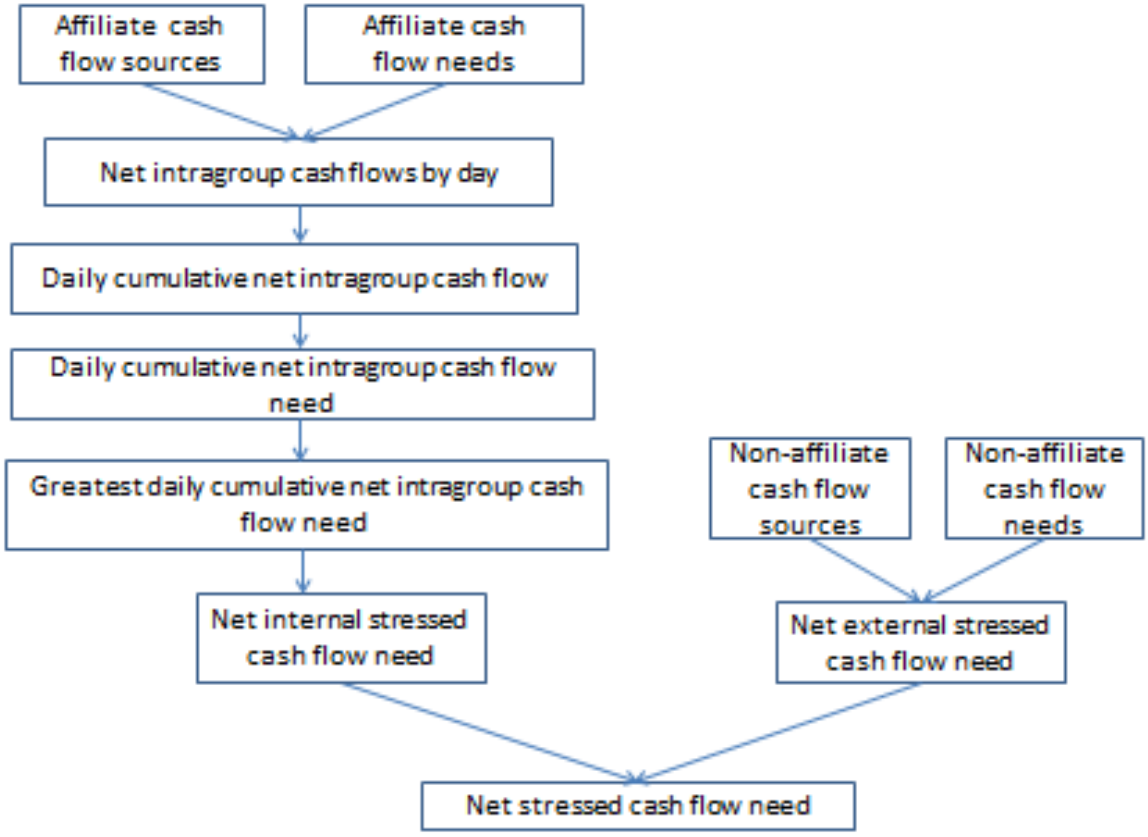
Under the proposal, the net external stressed cash-flow need was defined as the difference between (1) the amount that the U.S. branches and agencies or the U.S. intermediate holding company, respectively, must pay unaffiliated parties over the relevant period in the stress test horizon and (2) the amount that unaffiliated parties must pay the U.S. branches and agencies or the U.S. intermediate holding company, respectively, over the relevant period in the stress test horizon.

The net intragroup stressed cash-flow need was defined as the greatest daily cumulative cash-flow need of the U.S. branches and agencies or a U.S. intermediate holding company, respectively, with respect to transactions with the head office and other affiliated parties during the stress horizon. The daily cumulative cash-flow need was calculated as the sum of the net intragroup cash-flow need calculated for that day and the net intragroup cash-flow need

calculated for each previous day of the stress test horizon. The methodology used to calculate the net intragroup stressed cash-flow need was designed to provide a foreign banking organization with an incentive to minimize maturity mismatches in transactions between the U.S. branches and agencies or U.S. intermediate holding company, on the one hand, and the company's head office or affiliates, on the other hand.

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



Tables 3, 4, and 5, 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 simplification, the cash flows relate to uncollateralized positions. For purposes of the example, cash-flow needs are represented as negative, and cash-flow sources are represented as positive.

TABLE 3: 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)**

TABLE 4: EXAMPLE OF NET INTRAGROUP 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 intragroup cash-flows	**1**	**(3)**	**(7)**	**3**	**3**	**(3)**
Daily cumulative net intragroup cash-flow	**1**	**(2)**	**(9)**	**(6)**	**(3)**	
Daily cumulative net intragroup cash-flow need		**(2)**	**(9)**	**(6)**	**(3)**	
Greatest daily cumulative net intragroup cash-flow need			**(9)**			
Net intragroup stressed cash-flow need			**(9)**			**(9)**

TABLE 5: EXAMPLE OF NET STRESSED CASH-FLOW NEED CALCULATION

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

Many commenters provided views on the proposal's approach to intragroup cash flows. For instance, some commenters asserted that intragroup cash flows should be available to offset external cash-flow needs unless the Board has significant, specific reasons to believe that the intragroup cash flows would not be available under stressed conditions. Several commenters argued that, at minimum, some internal funding sources should be allowed to offset external outflows, and that the appropriate level could be tailored to the company or situation, depending upon the level of resources available and parent strength.

The Board believes that it is appropriate to limit the extent to which internal inflows may offset external outflows within the 30-day period. As shown during the recent financial crisis, a foreign banking organization and its U.S. operations could come under simultaneous liquidity stress, limiting the ability of the foreign banking organization to provide support to its U.S. operations. Additionally, during times of stress, unforeseen impediments may arise that do not allow the timely repayment of intercompany loans. Accordingly, the final rule does not allow internal inflows to offset external cash flow needs of a foreign banking organization.

Additionally, when determining inter-company cash flow needs the Board believes it is critical to allow foreign banking organizations to count inflows to meet its internal stressed cash-flow needs only to the extent that the term of an internal cash-flow source is the same as, or shorter than, the term of the internal cash-flow need. This ensures that, to the extent the foreign banking organization is reliant on intercompany inflows to offset intercompany outflows, they are scheduled to occur at the same time or before the outflows, limiting maturity mismatch for internal cash flows. The concept of maturity matching ensures that firms with outflows at the beginning of the period cannot for purposes of the final rule recognize inflows that will occur at the end of the stressed period to meet those outflows.

One commenter expressed the view that the bifurcated treatment of internal and external flows would interfere with the ordinary course of financial intermediation between affiliates, specifically for foreign banking organizations that use their U.S. operations to perform U.S. dollar-based activities for other non-U.S. members of their corporate group. For example, a foreign banking organization might use a single U.S. corporate affiliate to conduct certain transactions, such as clearing, hedging, or cash management, on behalf of other non-U.S. affiliates, with the U.S. subsidiary receiving funding from its non-U.S. parent to fund activity with an external counterparty, such as a U.S. central counterparty or other clearing and settlement system.

Though the Board recognizes that the rule could alter the manner in which some of the services that U.S. operations have routinely provided for the global entity are delivered, the Board also notes that a U.S. subsidiary or branch that acts as an intermediary for a non-U.S. affiliate or office of the foreign bank parent is subject to liquidity risk with respect to the non-U.S. affiliate or other office of the foreign bank parent. To the extent the non-U.S. affiliate or

office of the foreign bank parent booking the transaction experiences liquidity stress and is unable to return the funding to the U.S. subsidiary or branch, the U.S. subsidiary or branch would need to raise the required funds on its own, placing a strain on the U.S. entity.

Several commenters also raised a concern about securities financing transactions, whereby a foreign banking organization would use its U.S. subsidiaries or branches to provide access to the U.S. financing markets by engaging in matched back-to-back repo, reverse repo and other securities lending and borrowing transactions. One commenter argued that although these transactions present almost no risk to the intermediate entity, which would book two matched, collateralized obligations, the methodology of calculating internal and external liquidity buffers would prevent the cash due from the affiliate from offsetting the U.S. entity's external cash-flow need.

The Board believes the proposed liquidity buffer calculation appropriately addresses the risks associated with the types of back-to-back financing arrangements commenters describe. For example, if a U.S. subsidiary or branch has assumed that the inflows from a maturing reverse repo with the head office can be used to offset the outflows associated with a maturing repo with an external counterparty, the failure of the head office to fulfill its obligation could create an incremental liquidity need on the part of the U.S. subsidiary or branch. Therefore, the Board believes it is appropriate to require the U.S. subsidiary or branch to hold an amount of highly liquid assets against this risk based on stress-test results. The amount of highly liquid assets may, among other things, reflect the types of collateral involved in the back-to-back transactions and the identity and type of counterparties. Notably, the leg of the transaction between the U.S. subsidiary or branch and the head office generally would not be reflected in the net internal cash-flow calculation of the U.S. subsidiary or branch if it is secured

by highly liquid assets, as net internal cash-flow calculations would exclude internal cash-flow sources and internal cash-flow needs that are secured by such assets.

One commenter requested that the final rule clarify that excess liquidity above and beyond stress requirements at an entity held by the U.S. intermediate holding company (such as a broker-dealer) should be available to offset net cash outflows of subsidiaries of the U.S. intermediate holding company. Nothing in the rule would prevent a foreign banking organization from using any liquidity that is held at a subsidiary of the U.S. intermediate holding company to offset potential outflows elsewhere within the U.S. intermediate holding company structure, to the extent that those funds are freely available to the U.S. intermediate holding company.

Many commenters contended that the final rule should allow U.S. intermediate holding companies to deposit cash portions of their liquidity buffer with affiliated branches or U.S. agencies. One commenter requested that if an organization could not deposit funds at an affiliated branch or agency they should be able to maintain their buffer at the Federal Reserve. In these commenters' views, the Board has ample supervisory authority to prevent evasion or misuse of those accounts. While the final rule would allow a U.S. intermediate holding company to maintain its liquidity buffer at a subsidiary of the U.S. intermediate holding company, allowing the U.S. intermediate holding company to maintain its liquidity buffer at the foreign banking organization's U.S. branches or agencies is at odds with the requirement that external outflows not be offset with internal inflows. If a U.S. intermediate holding company were permitted to maintain its liquidity buffer at the foreign banking organization's U.S. branches or agencies and the U.S. intermediate holding company needed to use assets in that buffer to cover outflows during a stress event, that action could exacerbate funding problems at the U.S.

branches or agencies at a point in time when it is already likely to be facing liquidity stress. Thus, the final rule adopts this aspect of the proposal without change. Organizations that have affiliates within the U.S. intermediate holding company with access to the Federal Reserve can maintain portions of their buffers at the Federal Reserve; however, for those U.S. intermediate holding companies that do not have access to the Federal Reserve, the Board believes there are sufficient eligible assets for the U.S. intermediate holding company to invest in to maintain an appropriate buffer.

The proposal also would have required the U.S. intermediate holding company and the U.S. branches and agencies of a foreign bank to maintain the liquidity buffer in the United States. One commenter requested that maintenance of the buffer in the United States should mean that the U.S. intermediate holding company or the U.S. branches and agencies have the power of disposition. The Board is clarifying that maintenance of assets in the U.S. means that the assets should be reflected on the balance sheet of the U.S. intermediate holding company or the U.S. branches or agency. As noted below, the Board anticipates that high-quality liquid assets under the proposed U.S. LCR would generally be liquid under most scenarios. The Board acknowledges there may be highly liquid assets that trade on secondary markets and that in order for the U.S. operations of the foreign banking organization to own the assets, the assets must be maintained in an offshore custodial account. The Board further clarifies that cash held in deposits at other banks is a loan and therefore an inflow, not an asset that may be counted in the buffer. For the reasons stated above, the Board is finalizing the substance of these requirements as proposed. In the final rule, the Board has separated the calculations of the net stressed cash flow need for U.S. intermediate holding companies and for U.S. branches and agencies for readability.

The proposal also sought comment on three alternative approaches to address intragroup transactions in determining the size of the required U.S. liquidity buffer: (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; (2) allow the U.S. operations to net all intragroup 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 intragroup cash-flow sources within the stress horizon; or (3) assume that all intragroup cash-flow needs during the relevant stress period mature and roll-off at a 100 percent rate and that all intragroup cash-flow sources within the relevant stress period are not received (that is, they could not be used to offset cash-flow needs).

Commenters requested that the Board not adopt any of these alternative approaches, raising a number of concerns about the technical challenges they might pose. The final rule does not adopt these alternative proposals. The Board believes it will be in a better position to assess the need for additional measures to address intragroup transactions, as well as the potential impact of such measures on firms, after the requirements contained in the final rule are implemented. The Board also expects that the intraday monitoring required in the final rule will capture intraday liquidity risk (internally and externally) and prompt mitigating action when necessary. Therefore, the Board is not adopting these alternative approaches as part of the final rule.

c. National treatment

Several commenters argued that the limitations on recognizing intragroup cash flow sources unfairly affect foreign banking organizations, and therefore, the Board did not give adequate regard to national treatment in designing the standards. These commenters argued that

because U.S. bank holding companies are permitted to rely on global sources of liquidity to meet liquidity needs identified by their internal stress tests, the proposed requirements placed a more substantial burden on foreign banking organizations.

Under the foreign proposal, foreign banking organizations would not have been permitted to assume that liquid assets held at the consolidated level will be available to offset potential U.S. outflows during the first 30 days of a stress scenario. The domestic proposal, however, would have allowed U.S. bank holding companies to take into account highly liquid assets that they held in foreign jurisdictions, while requiring them to recognize foreign outflows, with the expectation that local liquidity requirements must be met before an asset will be considered a liquidity source to meet U.S. obligations.

The liquidity requirements applied to foreign banking organizations treat intragroup flows differently than the requirements applied to U.S. bank holding companies in recognition of the structural differences between U.S. and foreign banking organizations. Simultaneous funding pressures at the U.S. and non-U.S. operations of the foreign banking organization could hinder the ability of the foreign bank parent to provide the necessary liquidity support to its U.S. operations. As explained above, the Board believes that it is important for a foreign banking organization to maintain liquidity in the United States to support its U.S. operations.

While the same stresses could affect a U.S. bank holding company, through the supervisory process, the Board has and will continue to ensure that U.S. bank holding companies maintain sufficient liquid assets to offset potential outflows. The Board observes that the proposed rules are only one aspect of the enhanced liquidity framework applicable to U.S. bank holding companies and foreign companies, and that the Board will continue to give due regard to national treatment in implementing section 165.

d. Buffers for the U.S. Branches and Agencies of a Foreign Bank

Under the proposal, a U.S. intermediate holding company and the U.S. branches and agencies of a foreign banking organization would have been required to maintain a liquidity buffer equal to their respective net stressed cash-flow need over a 30-day stress horizon. The proposal would have required the U.S. intermediate holding company to maintain the entire 30-day buffer in the United States. In recognition that U.S. branches and agencies are not separate legal entities from their parent foreign bank and can engage only in banking activities by the terms of their licenses, the proposal would have required the U.S. branches and agencies to maintain days 1 through 14 of their 30-day liquidity buffer in the United States, and permitted the remaining requirement to be held at the consolidated level.

Many commenters stated that there should be no separate buffer requirement for U.S. branches and agencies. These commenters argued that a foreign banking organization could calculate its liquidity according to home country regulatory rules and should not be required to specifically hold liquidity in its U.S. branches (for example, it could continue to manage its liquidity on a consolidated basis according to its global liquidity management model). One commenter observed that liabilities are generally due and payable at the head office as well as the branch. One commenter approved of the Board's approach of matching liquidity risk and the liquidity buffer across the U.S. branches and agencies rather than on an individual branch basis.

As discussed in the proposal, the Board proposed the U.S. branch and agency liquidity requirements in order to address the risks created by reliance on short-term funding by U.S. branches and agencies. U.S. branches and agencies exhibited many of the same funding vulnerabilities during the crisis as other foreign banking entities. As a result, the Board generally is finalizing the requirement for U.S. branches and agencies as proposed. However, to reduce

the burden on the foreign banking organization, the final rule does not require that U.S. branches and agencies maintain a buffer for days 15 through 30 of the 30-day stress scenario.[135] This recognizes the unique legal structure of branches and agencies and addresses the fact that buffer assets located outside of the U.S. may not be isolated on the parent organization's balance sheet. The Board believes that a buffer maintained outside of the U.S. may be a part of the organization's global liquidity risk management strategy. The Board expects, however, that foreign banking organizations would hold additional liquidity resources, either at the home office or in the United States, to protect against longer periods of funding pressure at their U.S. branches and agencies.

7. Composition of the Liquidity Buffer

The liquidity buffer under the foreign proposal would have been required to be composed of unencumbered highly liquid assets. The proposed definition of highly liquid assets included cash and securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored enterprise because these securities have remained liquid even during prolonged periods of severe liquidity stress. In addition, recognizing that other assets could also be highly liquid, the proposed definition included a provision that would allow a foreign banking organization to include other types of assets in the foreign banking organization's U.S. liquidity buffer if the foreign banking organization demonstrated to the satisfaction of the Federal Reserve that those assets: (i) have low credit and market risk; (ii) are traded in an active secondary two-

---

[135] The final rule clarifies that for U.S. branches and agencies, the minimum liquidity buffer must be sufficient to meet the first 14 days of the projected net stressed cash flow need over the 30-day planning horizon of a liquidity stress test that incorporates an adverse market condition scenario, an idiosyncratic stress event scenario, and a combined market and idiosyncratic stresses scenario.

way market that has observable market prices, committed market makers, a large number of market participants, and a high trading volume; and (iii) are types of assets that investors historically have purchased in periods of financial market distress during which liquidity is impaired. Several commenters requested that the definition of "highly liquid assets" eligible for inclusion in a covered foreign banking organization's liquidity buffer be expanded to include high quality foreign sovereign debt, all assets eligible for inclusion in the Basel III LCR buffer under the Basel Committee standard, and collateral eligible to be pledged at the discount window. One commenter stated that the proposed definition would be unduly narrow and that the Board should "preapprove" additional classes of assets in its final rule to provide certainty. Another commenter indicated that high quality securities issued by sovereigns are used extensively as collateral and their exclusion could disrupt the market for non-U.S. sovereign debt and increase systemic risk. One commenter stated that the Board should publish guidelines for qualifying assets and clarify the standards it would apply to reject an asset, and that these guidelines should be the same as those followed by U.S. domestic bank holding companies

One commenter requested confirmation from the Board that G-7 sovereign debt securities held in the United States by a foreign banking organization's branches and agencies would be eligible to meet the buffer requirement for the first 14 days. Additionally, this commenter requested confirmation from the Board that G-7 sovereign debt that is pledged as collateral with Federal Reserve banks would be eligible for meeting the first 14 days of the branch liquidity buffer requirement. One commenter asserted that preapproving U.S. sovereign debt but not debt of other sovereigns may provide U.S. bank holding companies with an advantage relative to a foreign banking organization. For the reasons discussed in connection with the domestic rule in section III.C.9 of this preamble, the final rule does not specifically enumerate assets other than

securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise, or eliminate any assets from consideration for inclusion as highly liquid assets, although, consistent with the domestic final rule, the Board anticipates that high-quality liquid assets under the proposed U.S. LCR will qualify as highly liquid assets for purposes of the buffer.

The proposal also provided that highly liquid assets in the liquidity buffer must be unencumbered and thus readily available at all times to meet a foreign banking organization's liquidity needs. The proposal would have defined unencumbered, with respect to an asset, to mean that: (i) the asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien; (ii) the asset is free of legal, contractual, or other restrictions on the ability of the company to sell or transfer; and (iii) the asset is not designated as a hedge on a trading position. Commenters requested clarification as to whether assets used to hedge positions would be treated as unencumbered. For the reasons described above in section III.C.9 of this preamble, the final rule's definition of "unencumbered" has been modified.

Several commenters requested clarification on how to account for reverse repo transactions in the buffer, particularly those secured by highly liquid assets, and how the tenor of the agreement would play a role in the availability of the asset in a company's highly liquid asset calculation. The Board has addressed these concepts in section III.C.9 of this preamble in connection with the final rule.

One commenter requested clarification as to whether assets held to satisfy the OCC's Capital Equivalency Deposit requirement or state law asset-pledge requirements would be considered "encumbered" and thus, not eligible for inclusion in the proposed liquidity buffer.

For example, a federally-licensed branch must maintain deposits generally equivalent to 5 percent of the branch's total third-party liabilities in one or more accounts with unaffiliated banks in the state where the branch is located. The commenter objected to considering such assets encumbered, as the encumbrance of those assets is the result of unique bank regulatory and supervisory requirements and therefore, in the commenter's view, these assets should not be viewed as privately pledged or encumbered.

Under the final rule, consistent with the proposal, the Board observes that for assets to be considered highly liquid assets, they must be available for use in the event of a liquidity stress to mitigate cash outflows. Assets required to be pledged to other entities or maintained in segregated accounts due to regulatory requirements may not be available for use in a stress scenario and thus, should not be characterized as highly liquid assets. Should this regulatory requirement be certain to be lowered in a prescribed stressed environment, the firm could include the portion of highly liquid assets that would be made available when simulating such a scenario.

Several commenters recommended that the Board permit a foreign banking organization to hold its liquidity buffer in multiple currencies, and asserted that restricting eligible currencies to only U.S. dollars was unnecessary and inappropriate, as well as inconsistent with the Basel III LCR and home country definitions of highly liquid assets. The commenter argued that diversification provided by a mixed-currency liquidity buffer would be beneficial, and asserted that many U.S. branches and subsidiaries have both U.S. dollar and non-U.S.-dollar liabilities. The commenter also argued that if a branch or intermediate holding company's liquidity risk is denominated in another currency, the buffer for that risk should be permitted to be in that other currency.

The final rule, like the proposal, does not disqualify foreign-currency-denominated assets from inclusion in the buffer. However, currency matching of projected cash inflows and outflows is an important aspect of liquidity risk management that should be monitored on a regular basis and accounted for in the composition of a foreign banking organization's liquidity buffer. Stress testing should consider vulnerabilities associated with currency mismatches of highly liquid assets to potential outflows. When determining appropriate haircuts for buffer assets, currency mismatches should be considered as well as potential frictions associated with currency conversions in certain stress scenarios. In order to ensure robust buffer composition, the proposed rule would also have required a foreign banking organization to impose a discount to the fair value of an asset included in the liquidity buffer to reflect any credit risk and market volatility of the asset. In addition, the proposed rule would have required the pool of unencumbered highly liquid assets to be sufficiently diversified. The final rule adopts these provisions as proposed.

Several commenters requested that the Board clarify when assets in the liquidity buffers could be used to meet liquidity needs and the potential consequences if such use led to a buffer smaller than the net outflows as measured by the stress test. One commenter urged the Board to align the final rule with certain components of the Basel III LCR that allow firms to use their liquidity buffers in a "situation of financial stress" and provide guidelines for how banking regulators should evaluate a firm's use of its branches' liquidity buffer. The Board describes the appropriate parameters for the use of the buffer in response to similar comments on the domestic proposal in section III.C.9 of this preamble.

10. 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 would have been required 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 only, conducted consistently with the Basel Committee principles for liquidity risk management[136] 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. One commenter asserted that, in the absence of effective management and exit strategies from the due from position, this level was too high, and that a lower percentage or permitting a due to position would be appropriate. The Board proposed the net due from limitation as a precautionary measure, because in the event that the foreign banking organization does not provide the results of an internal liquidity stress test report, the Board would have difficulty in assessing the liquidity risk position and management of the foreign banking organization. The Board notes that this requirement applies only when a foreign banking organization with over $50 billion in total consolidated assets but combined U.S. assets of less than $50 billion is unable 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 consistently with the Basel Committee principles for liquidity risk management. The Board

---

[136] Basel Committee principles for liquidity risk management, supra note 46.

believes that these restrictions are appropriate for a company that is unable to make such a report, and is finalizing these standards as proposed.

11. Short-term Debt Limits

The Board noted in the preamble to the proposed rule that the Dodd-Frank Act contemplated additional enhanced prudential standards, including a limit on short-term debt, and requested comment on whether it should establish short term debt limits in addition to, or in place of, the Basel Committee principles for liquidity risk management in the future. Most commenters felt that establishing short term debt limits would be overbroad and that there are other more effective tools in place, and that such regulatory requirements are best handled via the Basel III LCR and the NSFR and bank-prepared liquidity stress tests. One commenter suggested that the Board should refrain from implementing a short-term debt limit until after it determined how the other aspects of the proposal work in practice. One commenter was in favor of such a limit, stating that if a short term debt limit were set low enough, it could mitigate the effects of shortfalls in dollar funding caused by transient shocks to financial markets.

As discussed above, the Board has sought comment on the proposed U.S. LCR, and it continues to work with the Basel Committee to improve the Basel Committee principles for liquidity risk management. The Board will continue to evaluate whether short-term debt limits would be appropriate in light of the developing liquidity regulatory and supervisory framework, and may seek comment on a proposal in the future.

F. Stress-test Requirements for Foreign Banking Organizations

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. In addition, section 165(i)(2) requires the Board to issue

regulations establishing requirements for certain regulated financial companies, including 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.

On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress testing requirements for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board.[137] Concurrently, the Board issued a final rule implementing the company-run stress testing requirements for bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion.[138]

The foreign proposal sought to adapt the requirements of the final stress testing rules currently applicable to bank holding companies to the U.S. operations of foreign banking organizations. Under the proposal, U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would have been required to conduct annual company-run stress tests. U.S. intermediate holding companies with assets of $50 billion or more would have been required to conduct semi-annual company-run stress tests and would have been subject to annual supervisory stress tests. These requirements are similar to the requirements that apply to bank holding companies.

Under the foreign proposal, the remaining U.S. operations of a foreign banking organization—the branches and agencies and, to the extent that a foreign banking organization does not establish a U.S. intermediate holding company, the foreign banking organization's U.S. subsidiaries—would have been subject to a separate stress testing standard. Under this standard,

---

[137] See 77 FR 62378 (October 12, 2012).

[138] See 77 FR 62396 (October 12, 2012).

a foreign banking organization would have been required to meet the requirements of its home country stress test regime (provided that the home country stress test regime meets certain minimum standards). In addition, certain foreign banking organizations would have been required to submit the information required by the rule.

The proposal provided that if any of the conditions above were not met, then the U.S. branches and agencies of a foreign banking organization would have been subject to an asset-maintenance requirement and, potentially, other requirements, and the foreign banking organization would have been 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. In addition, the foreign proposal would have applied 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. Consistent with the approach taken in the final stress testing rules for U.S. firms, the proposal would have tailored the stress testing requirements based on the size of the U.S. operations of the foreign banking organizations.

1. U.S. Intermediate Holding Companies

Under the proposal, U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would have been subject to the annual company-run stress-testing requirements set forth in Regulation YY, including the reporting and disclosure requirements. As discussed previously, the Board has raised the threshold for requiring formation of a U.S. intermediate holding company to $50 billion. Accordingly, the final rule does not include this provision. A U.S. bank holding company with total consolidated

assets greater than $10 billion but less than $50 billion that was a subsidiary of a foreign banking organization would be subject to subpart B (renumbered in connection with this final rule, as described above) under the terms of that subpart.

Under the proposal, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would have been subject to the annual supervisory and semi-annual company-run stress-testing requirements set forth in subparts F and G of Regulation YY.[139] The Board would have conducted an annual supervisory stress test of the U.S. intermediate holding company in the same manner as the Board conducts supervisory stress tests under subpart F of Regulation YY and disclosed the results of the stress test. The U.S. intermediate holding company would have been required to report information to the Board to support the supervisory stress tests. The U.S. intermediate holding company would also have been required to conduct two company-run stress tests per year in the same manner as a bank holding company under subpart G of Regulation YY. The first test would have used scenarios provided by the Board (the annual test) and the second would have used scenarios developed by the company (the mid-cycle test). In connection with the annual test, the U.S. intermediate holding company would have been 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.[140] In connection with the mid-cycle test, the company would have been required to file a regulatory report containing the results of

---

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

[140] 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).

this stress test by July 5 of each year and disclose a summary of results between September 15 and September 30.

a. General Comments

While one commenter expressed the view that the stress-testing requirements were appropriately calibrated for a foreign banking organization without a U.S. branch or agency, other commenters expressed views that the Board should fully defer to the home country stress-testing regimes and receive information on home-country reports, rather than impose stress-testing requirements on the U.S. intermediate holding companies. Commenters argued that stress testing is most effective when applied on a consolidated basis, and that requiring U.S. intermediate holding companies to conduct a separate stress test would be redundant and would not accurately reflect the ability of the U.S. intermediate holding company to absorb losses. Several commenters requested that the Board align U.S. intermediate holding company stress tests with stress tests conducted by the foreign banking organization, and permit the U.S. intermediate holding company to follow the stress-testing framework, methodology, and timing used by the foreign bank in its home country stress tests. In these commenters' views, aligning the requirements would avoid conflicts, inconsistent results, and duplicative efforts.

The Board agrees that stress testing at the level of the consolidated parent provides valuable information about the organization's ability to maintain adequate capital through stressed circumstances on an enterprise-wide basis. The final rule requires the foreign banking organization parent of a U.S. intermediate holding company to be subject to a home-country stress testing regime and to report the results of those stress tests to the Board. However, these parent stress tests are not a substitute for stress tests at the U.S. intermediate holding company level, which provide information on the capital adequacy of the U.S. intermediate holding

company and on its ability to support its U.S. operations during a period of stress. As discussed in sections IV.A and IV.C of this preamble, the Board believes that it is important for the U.S. operations of a foreign banking organization to hold capital in the United States with respect to their operations, and for the same reasons, U.S. intermediate holding companies should be able to demonstrate an ability to absorb losses and continue operations in times of stress.

While the Board recognizes that the stress tests conducted at the U.S. intermediate holding company might involve different assumptions than those conducted at the foreign bank parent, the stress test conducted by the U.S. intermediate holding company will be consistent with and comparable to those conducted by similarly-sized U.S. firms. The Board uses a consistent stress-testing approach across companies to conduct the supervisory stress test and requires companies to conduct company-run stress tests under the supervisory stress test scenarios to permit supervisors, firms, and the public to facilitate comparison of the results across companies. Similarly, the Board prescribes a set of capital action assumptions for holding companies to use in their company-run stress tests, uses those same capital assumptions in its supervisory stress test, and discloses the results of its stress test during the same timeframe that bank holding companies are required to disclose the results of their company-run stress tests. Permitting U.S. intermediate holding companies to deviate from the stress-test requirements for U.S. bank holding companies in favor of the regime in the home country of their foreign bank parents would reduce comparability across companies and with the results of the Board's supervisory stress tests.

One commenter argued that the proposed U.S. intermediate holding company requirements would increase operating costs and could potentially misalign U.S. intermediate holding company and foreign banking organization risk management, creating the possibility of

operational risk. For instance, one commenter suggested that a foreign bank might maintain hedges of trades booked at the U.S. broker-dealer outside of the United States, so that these hedges would not be reflected in the stress tests. Commenters noted that foreign banking organizations are already subject to Basel III and home-country supervision, and that the Board should focus on building international regulatory networks. Commenters also requested that the Board allow U.S. intermediate holding companies to account for the capital and financial strength of the parent and support from the parent and affiliates in stress testing projections, provided the U.S. intermediate holding company can demonstrate that the parent could provide support under a given scenario.

During periods of financial stress, subsidiaries of foreign banking organizations may not be able to rely on support from their home-country parent, and therefore, these subsidiaries should have the ability to absorb losses and maintain ready access to funding, meet obligations to creditors and other counterparties, and continue to serve as credit intermediaries without assuming such support. Accordingly, under the final rule, a U.S. intermediate holding company must project its regulatory capital ratios in its stress tests without additional consideration of possible support from its home-country parent. As noted above in section IV.D of this preamble, the Board expects the U.S. risk-management requirements under the final rule to be integrated and coordinated with the foreign banking organization's enterprise-wide risk-management practices, and therefore the Board believes that the final rule will not lead to a fragmented approach to risk management.

Some commenters argued that the Board did not adequately take into account home country standards in developing the proposed stress testing requirements and that the proposed requirements were inconsistent with national treatment because they required stress testing at a

subsidiary level, rather than at the consolidated parent level. According to these commenters, the proposal could result in extraterritorial application if U.S. authorities imposed stricter requirements on foreign banking organizations than home-country supervisors.

The final rule relies on the home-country stress-test regime in applying stress-testing requirements to branches and agencies of foreign banks, in recognition that branches and agencies of foreign banks are not separate legal entities from their parent foreign bank.[141] It imposes stress-testing standards on U.S. intermediate holding companies because they are separate legal entities, and may not be able to rely on support from their home-country parent in times of stress as discussed above. In addition, the stress-testing requirements promote market discipline for foreign banking organizations and U.S. bank holding companies by ensuring that all banking organizations with $50 billion or more in assets in the United States are subject to comparable stress-testing requirements. Bank holding companies with over $50 billion in total consolidated assets—including some bank holding companies owned by foreign banking organizations—are already subject to stress-test requirements. Furthermore, foreign subsidiaries of U.S. bank holding companies may be required to comply with stress-test requirements imposed by host-country regulators, and in some circumstances, may be subject to requirements similar to those included in the final rule.

b. Reporting and Disclosure

Under the proposal, U.S. intermediate holding companies would have been subject to reporting obligations in connection with their company-run and supervisory stress tests, and

---

[141] The Board notes that the requirement to take into account comparable home country standards pursuant to section 165(b)(2) does not by its terms apply to the stress testing requirement in section 165(i) of the Dodd-Frank Act.

would have been required to publicly disclose the results of their company-run stress tests. In connection with the annual stress test, a U.S. intermediate holding company would have been 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.[142] In connection with the mid-cycle test, the company would have been 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. The U.S. intermediate holding company would have been 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.

Commenters suggested that the reporting requirements should be more limited for U.S. intermediate holding companies than for U.S. bank holding companies, which are required to file the Board's Forms FR Y-14A, Q, and M (Capital Assessments and stress testing (FR Y-14)), because U.S. intermediate holding companies are likely to be nonpublic subsidiaries of foreign banking organizations.

The Board uses the FR Y-14 regulatory report to receive information necessary to support its supervisory stress test and for it to review the stress tests that a company conducts. Because U.S. intermediate holding companies will be required to conduct company-run stress tests and will be subject to the Board's supervisory stress test, it will be necessary for U.S.

---

[142] As noted above, 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).

intermediate holding companies to file similar regulatory reports with the Board. Moreover, the Board notes that some wholly-owned U.S. bank holding company subsidiaries of foreign banking organizations have already filed the FR Y-14 in connection with their first supervisory stress test. The Board intends to expand the reporting panel for the FR Y-14 to provide that a U.S. intermediate holding company must begin filing the FR Y-14A in the reporting cycle after formation of the U.S. intermediate holding company, subject to the transition provisions for new reporters of the FR Y-14 schedules. For U.S. intermediate holding companies formed by July 1, 2016, the first FR Y-14A report is expected to be due in January 2016.

Commenters also criticized the proposed stress-testing disclosure requirements. Some commenters stated that publication of stress-test results should not be required because U.S. intermediate holding companies do not operate separately from their foreign bank parents. One commenter argued that U.S. intermediate holding companies are unlikely to have external equity shareholders, and disclosure of stress-test results would be likely to confuse the parent foreign banking organization's investors without a corresponding benefit. In addition, one commenter argued that requiring public disclosure of U.S. intermediate holding company stress-test results would disadvantage foreign banking organizations, which would publish on a U.S. intermediate holding company level, against their U.S. peers, which could publish on a total bank holding company level. Another commenter suggested that the Board should consult with industry and individual U.S. intermediate holding companies before disclosing stress-test results.

The Board believes that the public disclosure of the results of supervisory and company-run stress tests helps to provide valuable information to market participants, enhance transparency, and facilitate market discipline. While a U.S. intermediate holding company may not have external shareholders, the company's external creditors, counterparties, and clients

would benefit from the enhanced information about the capital adequacy of the U.S. intermediate holding company. Further, public disclosure is a key component of the stress-test requirements mandated by the Dodd-Frank Act. The Dodd-Frank Act requires disclosure by all financial companies, including bank holding companies that are not publicly traded.[143]

The final rule's stress-testing disclosure requirements for U.S. intermediate holding companies set only the minimum standard of disclosure and would not limit the ability of a foreign banking organization or its U.S. intermediate holding company to publish additional information on the stress test results. For instance, to the extent that a U.S. intermediate holding company's disclosures are different from disclosures required of the foreign parent, the foreign banking organization could describe the differences between the stress testing methodologies that led to the divergent results. The final rule maintains the timing and content of the disclosures in order to facilitate the comparability of stress tests results across companies subject to Dodd-Frank Act stress tests.

c. Timing of Stress Tests

Several commenters requested that the Board provide additional time for foreign banks to come into compliance. Some commenters suggested that the Board allow two or three years to phase in the stress-test requirements, suggesting that this additional time would give time for markets and firms to adjust and for policymakers to monitor and modify the stress-test regime as necessary. More specifically, one commenter suggested that the Board phase in application of the rule, such that in the initial years of the framework, U.S. intermediate holding companies would be required to conduct stress tests and report to the Board, but would not be required to

---

[143] 12 U.S.C. 165(i)(2)(C)(iv).

publicly report the results or be sanctioned for deficiencies. This commenter cited the Board's treatment of U.S. bank holding companies with over $50 billion in total consolidated assets that participated in the Capital Plan Review exercise as precedent for this approach.

Commenters indicated that a phase-in period would be particularly important for those U.S. intermediate holding companies that do not own U.S. depository institutions and are not currently subject to the Board's stress-testing regimes. Similarly, one commenter suggested that a longer phase-in period would be appropriate for foreign banks with U.S. assets of less than $50 billion, as they would face a more onerous implementation process. One commenter also suggested that the Board should allow extensions as necessary for additional time to meet the structural requirements of the proposal. As discussed previously in section II.B of this preamble, the Board has extended the compliance period for all companies in order to give them adequate time to comply with all of the standards, including the stress testing standards. The stress-test cycle for a U.S. intermediate holding company formed by July 1, 2016 will begin in October 2017.[144]

2. Stress-test Requirements for Branches and Agencies of Foreign Banks with Combined U.S. Assets of $50 Billion or More

In addition to the U.S. intermediate holding company requirements described above, the proposal provided that a foreign banking organization with combined U.S. assets of $50 billion

---

[144] The final rule also provides that if the foreign banking organization parent of the U.S. intermediate holding company has a subsidiary bank holding company or insured depository institution that was subject to the Board's stress-testing requirements prior to formation of the U.S. intermediate holding company, the subsidiary bank holding company or insured depository institution will continue to be subject to the applicable stress-testing requirements until September 30, 2017, after which time the stress testing requirements will be applied at the U.S. intermediate holding company level.

or more must be subject to a consolidated capital stress testing regime that included an annual supervisory stress test conducted by the foreign banking organization's home-country supervisor.[145] Alternatively, 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 would have met the requirements. In either case, the proposal provided that in order to be recognized by the stress-testing framework of the proposed rule, the home-country capital stress-testing regime must set forth requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization. The foreign banking organization would have been required to conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

Many commenters expressed broad support for the approach to stress tests for U.S. branches and agencies. These commenters expressed the view that the proposed stress-test framework would provide additional insight to U.S.-specific capital adequacy assessments and contains straightforward and common-sense steps. Some commenters requested more information about the Board's metrics for evaluating whether a home-country stress testing framework is consistent with Dodd-Frank Act stress testing. Commenters asked for clarification that the elements described above are the only elements required to satisfy the requirement that stress tests be broadly consistent with the U.S. stress-testing requirements, and others suggested that the comparison should not match the U.S. stress testing regime point-by-point to the home-country regime. Other commenters requested more clarity on desired home-country

---

[145] For these purposes, the central bank may be the home country supervisor provided that the requirements of the rule are met.

requirements for governance and controls over stress tests. Some commenters asked that the Board provide flexibility for small deviations from the enumerated standard, for example, allowing for a multi-year rather than annual, stress test cycle.

The Board believes that all elements set forth in the final rule are appropriate standards for stress testing, and a home-country stress test must meet all of the elements of the final rule. For instance, the requirement that a company conduct a stress test at least annually ensures that the stress test results do not become stale and signifies that stress tests are integrated into the home-country supervisory process. Similarly, the requirement that stress testing practices be subject to governance and controls by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization helps to ensure that the stress tests produce meaningful results that inform a company's business and risk management decisions, and that those tests function as intended. The rule requires governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization but is flexible regarding appropriate standards for governance and controls because of the variety of risk-management structures and practices across countries. A foreign banking organization could satisfy the governance standards required under the final rule by maintaining appropriate oversight of stress-testing practices, policies and procedures, and the use of stress-test results by senior management and the board of directors in their decision-making. Similarly, a foreign banking organization could meet the standards for controls by adopting process verification, model validation, documentation, and internal audit.

Under the proposal, if the U.S. branches and agencies of a foreign banking organization with combined U.S. assets of $50 billion or more were providing funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates on a net basis over a stress test cycle, the

foreign banking organization would have also been required to demonstrate to the Board that it has adequate capital to withstand stressed conditions. Commenters requested clarification on what standards the Board would apply to determine whether a foreign banking organization that has U.S. branches and agencies in a net "due from" position with respect to the foreign bank parent or its international affiliates has adequate capital to "absorb losses in stressed conditions." Commenters expressed the view that the operative standards should be based on the foreign banking organization's own home country stress testing regime, and not, for example, on Board-defined criteria. In light of these comments, the Board has removed this requirement in the final rule. In the event that a foreign banking organization were in a net "due from" position, the Board would seek more information from the foreign banking organization regarding the results of its supervisory stress test and may take other supervisory actions. However, the Board does not intend to make a formal determination that the foreign banking organization has adequate capital to "absorb losses in stressed conditions."

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

Under the proposal, a foreign banking organization with combined U.S. assets of $50 billion or more would have been required to submit key information regarding the results of its home-country stress test that included: 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

any changes in regulatory capital ratios.[146] One commenter suggested that, if a home-country supervisory authority applies robust stress tests broadly comparable to those in the United States, the stress-testing reporting requirements should be waived for those foreign banking organizations.

Commenters also asked for clarification on the exact reporting requirements, particularly if the level of detail will be similar to that for the Board's FR Y-14A. Some commenters suggested that the Board tailor the proposal's information reporting requirements for foreign banking organizations with combined U.S. assets of $50 billion or more to match the content and timing of home country stress testing. Commenters also asserted that if home-country stress tests are concluded on a different cycle than the Board's preferred cycle, the Board should accept results from the home-country stress tests at a reasonable interval after their completion. Similarly, commenters argued that if home-country stress tests do not produce the Board's requested metrics, the Board should accept alternative metrics, provided they are generally effective in depicting the soundness of the institution.

The proposed reporting requirements were intended to provide the Board with important information regarding stress test results. The stress test report serves an important purpose, as it allows the Board better to understand the capital adequacy of the foreign banking organization, its ability to support its U.S. operations, and the nature of the home-country stress testing regime. The Board clarifies that it does not presently intend to require a specific reporting form for a

---

[146] Commenters asked for clarification as to whether the reporting requirements apply to foreign banking organizations with total consolidated assets of $50 billion or more, or foreign banking organizations with U.S. assets of $50 billion or more. The final rule clarifies that the reporting requirements apply only to foreign banking organizations with combined U.S. assets of $50 billion or more.

foreign banking organization to use to report its company-run stress test results and has attempted to minimize any conflict with home-country standards regarding the timing and content of a foreign banking organization's stress tests. Further, the Board has not mandated a specific timeline for when a stress test must be conducted. By January 5 of each year, the foreign banking organization must report on its stress-testing activities and results, but that report can consist of the most recent stress test conducted by the home-country supervisor or the foreign banking organization, provided that the foreign banking organization is subject to capital stress testing at least annually.

If a foreign banking organization is subject to slightly different home country stress testing metrics, the Board would expect to accept those metrics, provided they included sufficient information on the foreign banking organization's losses, revenues, changes in expected loan losses, income, and capital under stressed conditions. While a foreign banking organization could choose to provide the same type of information as included on the FR Y-14A to report on the results of its stress test, a more abbreviated report could satisfy the foreign banking organization's requirements. Thus, these requirements should not conflict with the timing or content of the foreign banking organization's home country stress-testing requirements.

Commenters also requested that the Board take appropriate precautions to protect the confidentiality of information relating to home country stress-test results provided to the Board, including by treating all stress-test results as confidential supervisory information exempt from disclosure under the Freedom of Information Act and, if necessary, entering into confidentiality agreements with the foreign banking organization or its home-country regulators. According to these commenters, decisions regarding the extent of public disclosure of a foreign banking organization's stress tests results should lie solely with the home-country supervisor. In

response, the Board notes that it would maintain the confidentiality of any information submitted to the Board with respect to stress-testing results in accordance with the Board's rules regarding availability of information.[147] The Board has no plans to disclose the results of foreign banking organization home-country stress tests.

4. Additional Information Required from a Foreign Banking Organization with U.S. Branches and Agencies that are in an Aggregate Net Due From Position

Under the proposal, if the U.S. branches and agencies of a foreign banking organization were in a net due from position to the foreign bank parent or its foreign affiliates on an aggregate basis, calculated as the average daily position over the last stress test cycle (from October 1 of a given year through September 30 of the next year), the foreign banking organization would have been required to report additional information to the Board regarding its stress tests. The additional information would have included 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. As described in the proposal, the heightened information requirements reflect the greater risk to U.S. creditors and U.S. financial stability that may be 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 have been required to provide this information by January 5 of each calendar year, unless extended by the Board in writing.

---

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

Commenters requested clarification on what additional information the Board would require to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions. The exact additional information that the Board will require when the U.S. branch and agency network is in a net due from position to the foreign bank parent or its foreign affiliates will be determined on a case-by-case basis, accounting for the size, complexity, and business activities of the foreign banking organization and its U.S. operations. For instance, the Board may require additional information on particular portfolios or business lines located in the United States, or that have a significant connection to the foreign banking organization's U.S. operations. The Board expects that the information regarding a foreign banking organization's methodologies will include those employed to estimate losses, revenues, and changes in capital positions. Information must be provided for all elements of the stress tests, including loss estimation, revenue estimation, projections of the balance sheet and risk-weighted assets, and capital levels and ratios.

5. Supplemental Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More that do not Comply with Stress-testing Requirements

Under the proposal, if a foreign banking organization with combined U.S. assets of $50 billion or more did not meet the stress-test requirements above, the Board would have required its U.S. branches and agencies to meet an asset-maintenance requirement by maintaining eligible assets equal to 108 percent of third-party liabilities. The mechanics of this asset-maintenance requirement generally would align with the asset-maintenance requirements that may apply to U.S. branches and agencies under existing federal or state rules. In addition, the foreign banking organization would have been 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). The stress test of such subsidiary could have been conducted separately or as part of an enterprise-wide stress test.[148]

In addition to the asset-maintenance requirement and the subsidiary-level stress testing requirement described above, the proposal would have permitted the Board to impose intragroup funding restrictions, or increased local liquidity requirements, on the U.S. branches and agencies of a foreign bank, as well as any U.S. subsidiary that is not part of a U.S. intermediate holding company. Under the proposal, 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 have provided the company with a notification no later than 30 days before the Board proposed to apply the funding restrictions or increase local liquidity requirements.

The proposal provided that the notification would include the basis for imposing the additional requirement. Within 14 calendar days of receipt of the notification, the proposal provided that the foreign banking organization could request in writing that the Board reconsider the requirement, including an explanation as to why the reconsideration should be granted. The Board would then have been required to respond in writing within 14 calendar days of receipt of the company's request. The proposal also would have required the foreign banking organization to report summary information about the results of the stress test to the Board on an annual basis.

Several commenters argued that none of the supplemental requirements should be mandatory, and that the Board should retain discretion to impose penalties based on financial

---

[148] The final rule clarifies that the Board must approve an enterprise-wide stress test in order for it to satisfy the requirements of this section.

stability risks or a deficiency in home country standards or reporting. Commenters further suggested that before imposing any penalties based on inadequacy of home country standards, the Federal Reserve should discuss the penalties with home-country supervisors. In addition, commenters asserted that the Federal Reserve should ensure that any penalties do not conflict with requirements prescribed by state supervisors or home-country supervisors. Commenters argued that asset-maintenance requirements are typically under the jurisdiction of the state or the OCC, that the Board should eliminate the requirement or coordinate with states and the OCC, and that unilateral Board action may result in confusion and cause undue burden.

The Board believes that the mandatory asset-maintenance requirement is a clear, transparent regulatory response to companies that are unable to satisfy the stress-test requirements. In most cases, the Board anticipates that it would notify home-country supervisors and any relevant state and federal banking supervisors before the requirement is imposed. As requested by commenters, the Board notes that the consolidated branch and agency asset-maintenance requirements would not pre-empt state asset-maintenance requirements or otherwise affect the ability of state supervisors to impose asset-maintenance requirements. Given that asset-maintenance requirements are a common supervisory tool, the use of an asset-maintenance requirement is unlikely to conflict with requirements prescribed by a home-country supervisor.

Commenters also addressed the proposed calculation of the asset-maintenance requirement. One commenter suggested that the Board should not calculate asset maintenance on an aggregate basis for all U.S. branches and agencies of a foreign bank. According to the commenter, this approach fails to consider that eligible assets may reside in different state jurisdictions or experience varying rates of deterioration.

The final rule retains the proposed calculation of the asset-maintenance requirement. The Board believes that applying an asset-maintenance requirement on a consolidated branch or agency basis is appropriate in this context because this asset-maintenance requirement is triggered by the adequacy of the foreign banking organization's stress testing on a consolidated basis, not because of weaknesses at a particular U.S. branch or agency. The requirements of this rule do not supersede any existing asset-maintenance requirements that U.S. branches and agencies of a foreign bank may be subject to, and U.S. branches and agencies of a foreign bank will be expected to meet both the requirements under the final rule and any state-level asset-maintenance requirements.

Other commenters suggested that the Board expand the definition of eligible assets for asset-maintenance requirements, either to include all assets that are permitted for investment purposes by a U.S. bank, with appropriate haircuts to adequately reflect any credit risk associated with such assets, or to align the assets with the assets available under the liquidity coverage ratio. Under the proposal, definitions of the terms "eligible assets" and "liabilities" were generally consistent with the definitions of the terms "eligible assets" and "liabilities requiring cover" used in the New York State Superintendent's regulations.[149] The proposal, and final rule, align the definition of "eligible assets" with the asset-maintenance requirements that are familiar to many U.S. branches and agencies under existing rules.

The final rule makes minor adjustments to the proposed definition of eligible assets. In the proposal, eligible assets would have excluded amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts; however, the

---

[149] 3 NYCRR § 322.3-322.4.

definition would have permitted the Board to treat amounts due from other offices or affiliates located in the United States as eligible assets. The Board has determined that such treatment would be inappropriate, and has removed that provision from the final rule. In addition, the Board has removed the specific valuation rules for Brady Bonds and precious metals. If Brady Bonds qualify as marketable debt securities, they would be valued at their principal amount or market value, whichever is lower, consistent with the final rule. Precious metals and other assets not listed in the final rule would be valued as recorded on the general ledger (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets).

One commenter suggested that the asset-maintenance provisions, taken together with intragroup funding restrictions and local liquidity requirements, may be too onerous and seriously limit the types of assets or investments that an institution could hold. The commenter also argued that the timing for intragroup funding restrictions may be impractical if serious liquidity issues exist. Under the final rule, the Board has retained discretion in applying the intragroup funding restrictions and local liquidity requirements, and, on a case-by-case basis, will assess whether the interaction of these additional restrictions with the asset-maintenance requirement would have results other that the intended increase in safety and soundness. The Board has modified the notice provisions to provide that, if a company requests a reconsideration of the requirement, the Board will respond in writing to the company's request for reconsideration prior to applying the condition, but not necessarily within 14 days.

The preamble to the foreign proposal raised a question as to whether the Board should consider conducting supervisory loss estimates on the U.S. branches and agencies of large foreign banking organizations, or whether the Board should consider requiring a foreign banking

organization to conduct internal stress tests of its U.S. branches and agencies. Several commenters suggested that the Board should not impose additional requirements on the U.S. branches and agencies of a foreign banking organization, asserting that such additional collection would be burdensome but not meaningful. However, one commenter argued that the Board should gather data from such networks similar to the data gathered from U.S. bank holding companies, conduct supervisory loss estimates, and require foreign banking organizations to conduct internal stress test on their U.S. branch and agency networks to equalize the treatment with foreign-owned subsidiaries and also with U.S. banks.

The Board has decided against imposing such additional requirements at this time. U.S. branches and agencies do not hold capital separately from their parent foreign banking organization, and the losses on assets borne by the branch or agency would be due and payable by the parent. For these reasons, the branch would be required to make a number of assumptions that would reduce the utility of the analysis, and in the Board's view, the cost and burden to firms of conducting the test would therefore at present outweigh the supervisory benefit

6. Stress-test Requirements for Foreign Banking Organizations with Total Consolidated Assets of More than $50 Billion but Combined U.S. Assets of Less than $50 Billion

Under the proposal, a foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion would have been required to be subject to a home-country stress testing regime that satisfied the same requirements applied to foreign banking organizations with combined U.S. assets of $50 billion or more. Under these requirements, the home-country stress testing regime would have been required to include an annual supervisory capital stress test or an annual supervisory evaluation and review of a company-run stress test, and requirements for governance and controls of the stress-testing

practices by relevant management and the board of directors (or equivalent thereof) of the company. A foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion would have been required to meet the minimum standards set by its home-country supervisor with respect to the stress tests.

If a foreign banking organization did not meet the stress-testing standards above, the Board would require the foreign banking organization's U.S. branches and agencies, as applicable, to maintain eligible assets equal to 105 percent of third-party liabilities, calculated on an aggregate basis. As discussed in the proposal, the Board would require a 105 percent asset-maintenance requirement (instead of the 108 percent requirement applied to foreign banking organizations with combined U.S. assets of $50 billion or more) in light of the more limited risks to U.S. financial stability posed by foreign banking organizations with combined U.S. assets of less than $50 billion as compared to risks posed by foreign banking organizations with a larger presence. In addition, the proposal would have required the foreign banking organization to conduct an annual stress test of its U.S. subsidiaries (other than a section 2(h)(2) company).[150] The company would have been required to report high-level summary information about the results of such stress test to the Board on an annual basis.

Some commenters argued that the asset-maintenance requirement should be parallel regardless of the size of the institution. The final rule maintains the 105 percent requirement for an institution with a smaller U.S. presence in light of its smaller systemic footprint. In addition, the final rule clarifies that an enterprise-wide stress test conducted by a foreign banking

---

[150] As described above in section IV.B of this preamble, a foreign banking organization with U.S. non-branch assets of less than $50 billion would not be required to form a U.S. intermediate holding company.

organization is subject to the Board's approval to the extent it is used to satisfy the U.S. subsidiary stress testing requirement.

7. 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.[151] The proposal would apply the stress-testing requirements to foreign banking organizations with total consolidated assets of more than $10 billion but less than $50 billion and foreign savings and loan holding companies with total consolidated assets of more than $10 billion that were consistent with the requirements described in section III.F.7 above applicable to foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

Commenters suggested that the Board should not apply stress-testing requirements for smaller foreign banking organizations with less than $50 billion in combined U.S. assets, asserting that these entities may not pose any risks to U.S. financial stability. These commenters argued that the Board has discretion to use U.S. assets rather than global assets as the threshold for application under section 165(i)(2) of the Dodd-Frank Act. One commenter also suggested that the Board exempt foreign banking organizations from jurisdictions where similar banks are subject to consolidated supervision.

---

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

Section 165(i)(2) of the Dodd-Frank Act states that "financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests." Accordingly, the final rule applies to these companies. However, foreign banking organizations with less than $50 billion in combined U.S. assets are likely to pose more limited risks to U.S. financial stability than larger companies. Accordingly, the Board sought in the final rule to minimize any undue regulatory burden on those companies by allowing them to use a home-country stress test, while ensuring that the requirements meet the statutory requirements of the Dodd-Frank Act. Responses to other comments received on these standards are discussed in section III.F.6 of this preamble.

G. Debt-to-Equity Limits for Foreign Banking Organizations

Section 165(j) provides that the Board must require a foreign banking organization to maintain a debt-to-equity ratio of no more than 15-to-1 if the Council determines 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 foreign banking organization poses to the financial stability of the United States.[152] The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).[153]

The proposal would have implemented 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.

---

[152] 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. The statute expressly exempts any federal home loan bank from the debt to equity ratio requirement. See 12 U.S.C. 5366(j)(1).

[153] 12 U.S.C. 5366(j)(3).

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. branches and agencies as an equivalent to a debt-to-equity limitation. 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. The proposal provided that within 180 calendar days from the date of receipt of the notice, the foreign banking organization must come into compliance with the proposal's requirements. The proposal would have permitted 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. The proposal provided that 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.

Consistent with comments received on the domestic proposal, some commenters argued that the substitution of "total liabilities" for the statutory term "debt" would be inappropriate, especially as applied to insurance companies. As discussed in detail in section III.D of this preamble, the Board chose to define "debt" and "equity" on the basis of "total liabilities" and "total equity capital" included in a company's report of financial condition. Commenters also noted that the section 165(j) debt-to-equity ratio is not based on any applicable international standard and could prompt reciprocal measures from foreign governments, and one commenter stated that the debt-to-equity limits should be integrated into a single equity standard applied at the parent level. Two of the commenters argued that the Board should consult with home country regulators before imposing the debt-to-equity ratio. One commenter asserted that asset-maintenance requirements are typically the jurisdiction of the state or the OCC, and that the Board's asset-maintenance requirement was unnecessary.

While the Board recognizes that section 165(j) debt-to-equity ratio is not an international standard, it is a standard that is required by the Dodd-Frank Act and is imposed after the Council (and not the Board) makes the "grave threat" determination. Were the Council to make such a determination regarding a foreign banking organization, the Board expects that it or the Council would notify the appropriate home country regulator before the expiration of the compliance period. For the reasons described above in section IV.F of this preamble, the Board believes that the asset-maintenance requirement is an appropriate standard. The Board is adopting the debt-to-equity requirements as proposed.

V. Administrative Law Matters

A. Regulatory Flexibility Act

The Board has considered the potential impact of the final rule on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a final regulatory flexibility analysis.

Under regulations issued by the Small Business Administration ("SBA"), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization).[154] The final rule establishes risk committee and company-run stress test requirements for bank holding companies and foreign banking organizations with total consolidated assets of more than $10 billion and establishes enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more. Companies that are subject to the final rule therefore substantially exceed the $175 or $500 million asset threshold at which a banking entity is considered a "small entity" under SBA regulations.[155]

The Board did not receive any comments on the proposed rules regarding their impact on small entities. In light of the foregoing, the Board does not believe that the final rule would have a significant economic impact on a substantial number of small entities.

---

[154] 13 CFR 121.201.

[155] 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 standards. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

B. Paperwork Reduction Act

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 number is 7100–0350. The Board reviewed the final rule under the authority delegated to the Board by OMB. The Board did not receive any specific comments on the PRA; however, most commenters expressed concern about the amount of burden imposed by the requirements of the rule.

The final rule contains requirements subject to the PRA. The reporting requirements are found in sections 252.122(b)(1)(iii); 252.132(a), (b), and (d); 252.143(a), (b), and (c); 252.144(a), (b), and (d); 252.145(a); 252.146(c)(1)(iii); 252.153(a)(3); 252.153(c)(3); 252.153(d); 252.154(a), (b), and (c); 252.157(b); 252.158(c)(1); 252.158(c)(2); and 252.158(d)(1)(ii).[156] The recordkeeping requirements are found in sections 252.34(e)(3), 252.34(f), 252.34(h), 252.35(a)(7), 252.153(e)(5), 252.156(e), 252.156(g), and 252.157(a)(7). The disclosure requirements are found in section 252.153(e)(5). These information collection requirements would implement section 165 of the Dodd-Frank Act, as mentioned in the Abstract below.

The reporting requirements in sections 252.153(b)(2) and 252.153(e)(5) will be addressed in a separate Federal Register notice at a later date.

Comments are invited on:

---

[156] Most of the recordkeeping requirements for Subpart D pertaining to the Liquidity Requirements have been addressed in the Funding and Liquidity Risk Management Guidance (FR 4198; OMB No. 7100-0326). Only new recordkeeping requirements are being addressed with this final rulemaking.

(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: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer: 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, Agency Desk Officer.

Proposed Revisions, with extension, to the following Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (Enhanced Prudential Standards).

Agency Form Number: Reg YY.

OMB Control Number: 7100-0350.

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

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving 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 implement enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

Reporting Requirements

Section 252.122(b)(1)(iii) (formerly section 252.264(b)(2) in the proposed rule) would require, unless the Board otherwise determines in writing, a foreign banking organization with total consolidated assets of more than $10 billion but less than $50 billion or a foreign savings and loan holding company with total consolidated assets of $10 billion or more that does not meet does not meet the home-country stress testing standards set forth in the rule to report on an annual basis a summary of the results of the stress test to the Board that includes 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 aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes

and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization or foreign savings and loan holding company and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

Section 252.132(a) would require a foreign banking organization with a class of stock (or similar interest) that is publicly traded and total consolidated assets of at least $10 billion but less than $50 billion, must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that (1) oversees the risk management policies of the combined U.S. operations of the foreign banking organization and (2) includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

Section 252.132(b) would require the certification to be filed on an annual basis with the Board concurrently with the Annual Report of Foreign Banking Organizations (FR Y-7; OMB No. 7100-0297).

Section 252.132(d) would require that if a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, 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 State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of

receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.143(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 certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the Basel Capital Framework. Home country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in Basel III, each as applicable and as implemented in accordance with the Basel III, including any transitional provisions set forth therein. In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards on a consolidated basis that are consistent with the Basel Capital Framework were it subject to such standards.

Section 252.143(b) would require a foreign banking organization with total consolidated assets of $50 billion or more to provide to the Board reports relating to its compliance with the capital adequacy measures concurrently with filing the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q; OMB No. 7100-0125).

Section 252.143(c) would require that if a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions,

including risk-based or leverage capital requirements, relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.144(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, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that (1) oversees the risk management policies of the combined U.S. operations of the foreign banking organization and (2) includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

Section 252.144(b) would require the certification to be filed on an annual basis with the Board concurrently with its FR Y-7.

Section 252.144(d) would require that if a foreign banking organization does not satisfy the requirements of that section, the Board may impose requirements, 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 State or Federal regulator in

the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition, or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.145(a) (formerly section 252.231(a) in the proposed rule) 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 foreign banking organization or the combined U.S. operations of the foreign banking organization.

Section 252.146(c)(1)(iii) would require, unless the Board otherwise determines in writing, a foreign banking organization with total consolidated assets of more than $50 billion but combined U.S. assets of less than $50 billion that does not meet does not meet the home-country stress testing standards set forth in the rule to report on an annual basis a summary of the results of the stress test to the Board that includes 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 aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and 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 an explanation of the most significant causes for any changes in regulatory capital ratios.

Section 252.153(a)(3) (formerly section 252.203(b) in the proposed rule) would require that within 30 days of establishing or designating a U.S. intermediate holding company, a foreign banking organization with U.S. non-branch 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 252.153(c)(3) (formerly section 252.202(b) in the proposed rule) would require a foreign banking organization with U.S. non-branch assets of $50 billion or more that submits a request to establish or designate multiple U.S. intermediate holding companies to be submitted to the Board 180 days before the foreign banking organization forms a U.S. intermediate holding company. A request not to transfer any ownership interest in a subsidiary must be submitted to the Board either 180 days before the foreign banking organization acquires the ownership interest in such U.S. subsidiary, or in a shorter period of time if permitted by the Board. The request must include a description of why the request should be granted and any other information the Board may require.

Section 252.153(d)[157] would require a foreign banking organization that, as of June 30, 2014, has U.S. non-branch assets of $50 billion or more to submit an implementation plan to the

---

[157] This reporting requirement was added in response to a public comment received asking for further clarity on the requirements and process for foreign banking organizations to re-organize its U.S. legal entities under one intermediate holding company.

Board by January 1, 2015, unless that time is accelerated or extended by the Board. An implementation plan must contain (1) a list of all U.S. subsidiaries controlled by the foreign banking organization setting forth the ownership interest in each subsidiary and an organizational chart showing the ownership hierarchy; (2) for each U.S. subsidiary that is a section 2(h)(2) company or a debts previously contracted in good faith (DPC) branch subsidiary, the name, asset size, and a description of why the U.S. subsidiary qualifies as a section 2(h)(2) or a DPC branch subsidiary; (3) for each U.S. subsidiary for which the foreign banking organization expects to request an exemption from the requirement to transfer all or a portion of its ownership interest in the subsidiary to the U.S. intermediate holding company, the name, asset size, and a description of the reasons why the foreign banking organization intends to request that the Board grant it an exemption from the U.S. intermediate holding company requirement; (4) a projected timeline for the transfer by the foreign banking organization of its ownership interest in U.S. subsidiaries to the U.S. intermediate holding company, and quarterly pro forma financial statements for the U.S. intermediate holding company, including pro forma regulatory capital ratios, beginning December 31, 2015, to January 1, 2018; (5) a projected timeline for, and description of, all planned capital actions or strategies for capital accretion that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements set forth in paragraph (e)(2) of this section; (6) a description of the risk-management practices of the combined U.S. operations of the foreign banking organization and a description of how the foreign banking organization and U.S. intermediate holding company will come into compliance with the final rule's requirements; and (7) a description of the current liquidity stress testing practices of the U.S. operations of the foreign banking organization and a description of how the

foreign banking organization and U.S. intermediate holding company will come into compliance with the final rule's requirements.

If a foreign banking organization plans to reduce its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, the foreign banking organization may submit a plan that describes how it intends to reduce its U.S. non-branch assets below $50 billion and any other information the Board determines is appropriate.

The Board may require a foreign banking organization that meets or exceeds the threshold for application of this section after June 30, 2014, to submit an implementation plan containing the information described above if the Board determines that an implementation plan is appropriate for such foreign banking organization.

Section 252.154(a) 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 certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework). Home country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in Basel III, each as applicable and as implemented in accordance with the Basel III, including any transitional provisions set forth therein. In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy

standards at the consolidated level that are consistent with the Basel Capital Framework were it subject to such standards.

Section 252.154(b) would require a foreign banking organization with total consolidated assets of $50 billion or more to provide to the Board reports relating to its compliance with the capital adequacy measures concurrently with filing the FR Y-7Q.

Section 252.154(c) would require that if a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, 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 State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.157(b) (formerly section 252.226(c) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to make available to the Board, in a timely manner, the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction. The report required under this paragraph must include the results of its liquidity stress test and liquidity

buffer, if required by the laws or regulations implemented in the home jurisdiction, or expected under supervisory guidance.

Section 252.158(c)(1) (formerly section 252.263(b)(1) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to report to the Board by January 5 of each calendar year, unless such date is extended by the Board, summary information 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 any changes in regulatory capital ratios.

Section 252.158(c)(2) (formerly section 252.263(b)(2) in the proposed rule) would require that if, on a net basis, the U.S. branches and agencies of a foreign banking organization with combined U.S. assets of $50 billion or more provide funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking organization must report the following information to the Board by January 5 of each calendar year, unless such date is extended by the Board (1) a detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, and changes in capital positions; (2) estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; and loan losses (dollar amount and as a percentage of

average portfolio balance) in the aggregate and by material sub-portfolio; and (3) any additional information that the Board requests.

Section 252.158(d)(1)(ii) (formerly section 252.263(c)(2) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more that does not meet the home-country stress testing standards set forth in the rule and provide requested information to the Board must to the extent that a foreign banking organization has not formed a U.S. intermediate holding company, conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions and report on an annual basis a summary of the results of that stress test of this section to the Board that includes the qualitative and quantitative information required for home country supervisory stress and any other information specified by the Board.

Recordkeeping Requirements

Section 252.34(e)(3) (formerly section 252.61 in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to adequately document its methodology for making cash flow projections and the included assumptions and submit such documentation to the risk committee.

Section 252.34(f) (formerly section 252.58 in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and

when changes to market and idiosyncratic conditions warrant. The contingency funding plan must include specified quantitative elements.

The contingency funding plan must include an event management process that sets out the bank holding company's procedures for managing liquidity during identified liquidity stress events. 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 company's capital structure, risk profile, complexity, activities, and size.

Section 252.34(h)(1) (formerly section 252.60(a) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties and sets forth minimum standards for those procedures.

Section 252.34(h)(2) (formerly section 252.60(b) in the proposed rule) would require a bank holding company with total consolidated 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, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

Section 252.34(h)(3) (formerly section 252.60(c) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain procedures for monitoring intraday liquidity risk exposure. These procedures must address how the management of the bank holding company will (1) monitor and measure expected daily gross liquidity inflows and outflows, (2) manage and transfer collateral to obtain intraday credit, (3) identify and prioritize time-specific obligations so that the bank holding

company can meet these obligations as expected and settle less critical obligations as soon as possible, (4) control the issuance of credit to customers where necessary, and (5) consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the bank holding company's overall liquidity needs.

Section 252.35(a)(7) (formerly section 252.56(c) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time. The bank holding company would establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the final rule's stress testing requirements. The bank holding company would 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 liquidity stress testing.

Section 252.156(e) (formerly section 252.228 in 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 that sets out the foreign banking organization'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 the established liquidity risk tolerance for the combined U.S. operations. The foreign banking organization must update the contingency funding plan for its combined U.S. operations at least annually, and when changes to market and idiosyncratic conditions warrant. The contingency funding plan must include specified quantitative elements.

The contingency funding plan for a foreign banking organization's combined U.S. operations must include an event management process that sets out the foreign banking organization's procedures for managing liquidity during identified liquidity stress events for the combined U.S. operations as set forth in the final rule. 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, and size of the foreign banking organization and its combined U.S. operations.

Section 252.156(g)(1) (formerly section 252.230(a) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain policies and procedures to monitor assets that have been or are available to be pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties. These policies and procedures must provide that the foreign banking organization (1) calculates all of the collateral positions for its combined U.S. operations on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged, (2) monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure, (3) monitors shifts in the foreign banking organization's funding patterns, including shifts between intraday, overnight, and term pledging of collateral, and (4) 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).

Section 252.156(g)(2) (formerly section 252.230(b) in 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 for its combined U.S. operations, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

Section 252.156(g)(3) (formerly section 252.230(c) in 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 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) maintain, manage and transfer collateral to obtain intraday credit, (3) identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected and settle less critical obligations as soon as possible, (4) control the issuance of credit to customers where necessary, and (5) 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.

Section 252.157(a)(7) (formerly section 252.230(c) in the proposed rule) would require 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, to establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time. The foreign banking organization must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this

section. The 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.

Recordkeeping and Disclosure Requirements

Section 252.153(e)(5) (formerly section 252.262 in the proposed rule) would require a U.S. intermediate holding company to comply with the requirements of this subparts E and F of this part and any successor regulation in the same manner as a bank holding company.

Other Changes

The following subparts have been renumbered, no content has been changed. "Subpart F – Supervisory Stress Test Requirements for Covered Companies" is now "Subpart E – Supervisory Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board." "Subpart G – Company-Run Stress Test Requirements for Covered Companies" is now "Subpart F – Company-Run Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board." "Subpart H – Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion That Are Not Covered Companies" is now "Subpart B – Company-Run Stress Test Requirements for Certain U.S. Banking Organizations with Total Consolidated Assets Over $10 Billion and less than $50 Billion."

Estimated Paperwork Burden

Estimated Burden per Response:

Reporting burden

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

Section 252.143(a) and (b) – 1 hour.

Section 252.143(c) – 10 hours.

Section 252.144(a) and (b)– 1 hour.

Section 252.144(d) – 10 hours.

Section 252.145(a) – 50 hours.

Section 252.146(c)(1)(iii) – 80 hours.

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

Section 252.154(a) and (b) – 1 hour.

Section 252.154(c) – 10 hours.

Section 252.157(b) – 40 hours.

Section 252.158(c)(1) – 40 hours.

Section 252.158(c)(2) – 40 hours.

Section 252.158(d)(1)(ii) – 80 hours.

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

Section 252.153(a)(3) – 20 hours.

Section 252.153(c)(3) – 160 hours.

Section 252.153(d) – Initial setup 750 hours.

Foreign banking organizations and foreign savings and loan holding companies with total consolidated assets over $10 billion and less than $50 billion

Section 252.122(b)(1)(iii) – 80 hours.

Publicly traded foreign banking organizations with total consolidated assets equal to or greater than $10 billion and less than $50 billion

Section 252.132(a) and (b) – 1 hour.

Section 252.132(d) – 10 hours.

Recordkeeping burden

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

Sections 252.34(e)(3), 252.34(f), 252.34(h), and 252.35(a)(7) – 200 hours (Initial setup 160 hours).

Intermediate holding companies

Section 252.153(e)(5) – 40 hours (Initial setup 280 hours)

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

Sections 252.156(e), 252.156(g), and 252.157(a)(7) – 200 hours (Initial setup 160 hours)

Disclosure burden

Intermediate holding companies

Section 252.153(e)(5) – 80 hours (Initial setup 200 hours)

Number of respondents: 24 U.S. bank holding companies with total consolidated assets of $50 billion or more, 46 U.S. bank holding companies with total consolidated assets over $10 billion and less than $50 billion, 21 state member banks with total consolidated assets over $10 billion, 39 savings and loan holding companies with total consolidated assets over $10 billion, 24 foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more, 17 U.S. intermediate holding companies, and 102 foreign

banking organizations with total consolidated assets of more than $10 billion and combined U.S. assets of less than $50 billion.

Current estimated annual burden: 59,320 hours (48,080 hours for initial setup and 11,240 hours for ongoing compliance).

Proposed revisions only estimated annual burden: 59,226 hours (31,990 hours for initial setup and 27,236 hours for ongoing compliance).

Total estimated annual burden: 118,546 hours (80,070 hours for initial setup and 38,476 hours for ongoing compliance).

C. Plain Language

Section 722 of the Gramm-Leach Bliley Act (Pub L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on whether the proposed rule was written plainly and clearly, or whether there were ways the Board could make the rule easier to understand. The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 252 and 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 amends 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, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 3101 et seq., 3101 note, 3904, 3906-3909, 4808, 5362, 5365, 5367, and 5368.

2. Part 252 is amended to read as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

Subpart A—General Provisions.

§ 252.1 Authority and purpose.

§ 252.2 General Definitions.

§ 252.3 Reservation of Authority.

§ 252.4 Nonbank Financial Companies Supervised by the Board.

DOMESTIC

Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations with Total Consolidated Assets Over $10 Billion and less than $50 Billion.

§ 252.10 [Reserved].

§ 252.11 Authority and purpose.

§ 252.12 Definitions.

§ 252.13 Applicability.

§ 252.14 Annual stress test.

§ 252.15 Methodologies and practices.

§ 252.16 Reports of stress test results.

§ 252.17 Disclosure of stress test results.

Subpart C—Risk Committee Requirement for Publicly Traded Bank Holding Companies with Total Consolidated Assets Equal to or Greater than $10 Billion and less than $50 Billion.

§ 252.20 [Reserved].

§ 252.21 Applicability.

§ 252.22 Risk Committee Requirement for Publicly Traded Bank Holding Companies with Total Consolidated Assets equal to or Greater than $10 Billion and less than $50 Billion.

Subpart D—Enhanced Prudential Standards for Bank Holding Companies with Total Consolidated Assets of $50 Billion or More.

§ 252.30 Scope.

§ 252.31 Applicability.

§ 252.32 Risk-based and Leverage Capital and Stress Test Requirements.

§ 252.33 Risk-management and Risk Committee Requirements.

§ 252.34 Liquidity Risk-management Requirements.

§ 252.35 Liquidity Stress Testing and Buffer Requirements.

Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial

Companies Supervised by the Board.

§ 252.40 [Reserved].

§ 252.41 Authority and purpose.

§ 252.42 Definitions.

§ 252.43 Applicability.

§ 252.44 Annual analysis conducted by the Board.

§ 252.45 Data and information required to be submitted in support of the Board's analyses.

§ 252.46 Review of the Board's analysis; publication of summary results.

§ 252.47 Use requirement.

Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board.

§ 252.50 [Reserved].

§ 252.51 Authority and purpose.

§ 252.52 Definitions.

§ 252.53 Applicability.

§ 252.54 Annual stress test.

§ 252.55 Mid-cycle stress test.

§ 252.56 Methodologies and practices.

§ 252.57 Reports of stress test results.

§ 252.58 Disclosure of stress test results.

Subpart G—[Reserved]

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—[Reserved]

Subpart K—[Reserved]

FOREIGN

Subpart L—Company-Run Stress Test Requirements for Foreign Banking Organizations and Foreign Savings and Loan Holding Companies with Total Consolidated Assets Over $10 Billion and less than $50 Billion.

§ 252.120 Definitions.

§ 252.121 Applicability.

§ 252.122 Capital Stress Testing Requirements.

Subpart M—Risk Committee Requirement for Publicly Traded Foreign Banking Organizations with Total Consolidated Assets equal to or greater than $10 Billion and less than $50 Billion.

§ 252.130 Definitions.

§ 252.131 Applicability.

§ 252.132 Risk Committee Requirement for Publicly Traded Foreign Banking Organizations with Total Consolidated Assets equal to or greater than $10 Billion and less than $50 Billion.

Subpart N—Enhanced Prudential Standards for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More But Combined U.S. Assets of Less than $50 Billion.

§ 252.140 Scope.

§ 252.141 [Reserved].

§ 252.142 Applicability.

§ 252.143 Risk-based and Leverage Capital Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

§ 252.144 Risk-management and Risk Committee Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

§ 252.145 Liquidity Risk-management Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

§ 252.146 Capital Stress Testing Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

Subpart O—Enhanced Prudential Standards for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More.

§ 252.150 Scope.

§ 252.151 [Reserved].

§ 252.152 Applicability.

§ 252.153 U.S. Intermediate Holding Company Requirement For Foreign Banking Organizations with U.S. Non-branch Assets of $50 Billion or More.

§ 252.154 Risk-based and Leverage Capital Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

§ 252.155 Risk-management and Risk Committee Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

§ 252.156 Liquidity Risk-management Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

§ 252.157 Liquidity Stress Testing and Buffer Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

§ 252.158 Capital Stress Testing Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

Subpart P—[Reserved]

Subpart Q—[Reserved]

Subpart R—[Reserved]

Subpart S—[Reserved]

Subpart T—[Reserved]

Subpart U—Debt-to-equity Limits for U.S. and Foreign Banking Organizations.

§ 252.220 Debt-to-equity Limits for U.S. Bank Holding Companies.

§ 252.221 Debt-to-equity Limits for Foreign Banking Organizations.

Subpart A—General Provisions.

§ 252.1 Authority and purpose.

(a) Authority. This part is issued by the Board of Governors of the Federal Reserve System (the Board) under sections 162, 165, 167, and 168 of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. No. 111-203, 124 Stat. 1376, 1423-1432, 12 U.S.C. 5362, 5365, 5367, and 5368); section 9 of the Federal Reserve Act (12 U.S.C. 321-338a); section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)); section 10(g) of the Home Owners' Loan Act, as amended (12 U.S.C. 1467a(g)); sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b) and 1831p-1); the International Banking Act (12 U.S.C. 3101 et seq.); the Foreign Bank Supervision Enhancement Act (12 U.S.C. 3101 note); and 12 U.S.C. 3904, 3906-3909, and 4808.

(b) Purpose. This part implements certain provisions of section 165 of the Dodd-Frank Act (12 U.S.C. 5365), which require the Board to establish enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more, nonbank financial companies supervised by the Board, and certain other companies.

§ 252.2 Definitions.

Unless otherwise specified, the following definitions apply for purposes of this part:

(a) Affiliate has the same meaning as in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)) and section 225.2(a) of the Board's Regulation Y (12 CFR 225.2(a)).

(b) Applicable accounting standards means U.S. generally accepted accounting principles, international financial reporting standards, or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial

statements.(c) 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)).

(d) Board means the Board of Governors of the Federal Reserve System.

(e) Combined U.S. operations of a foreign banking organization means:

(1) Its U.S. branches and agencies, if any; and

(2)(i) If the foreign banking organization has established a U.S. intermediate holding company, the U.S. intermediate holding company and the subsidiaries of such U.S. intermediate holding company; or

(ii) If the foreign banking organization has not established a U.S. intermediate holding company, the U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company, if applicable), and subsidiaries of such U.S. subsidiaries.

(f) Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(g) 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.

(h) Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(i) DPC branch subsidiary means any subsidiary of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency.

(j) Foreign banking organization has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), provided that if the top-tier foreign banking organization is incorporated in or organized under the laws of any State, the foreign banking organization shall not be treated as a foreign banking organization for purposes of this part.

(k) FR Y-7Q means the Capital and Asset Report for Foreign Banking Organizations reporting form.

(l) FR Y-7 means the Annual Report of Foreign Banking Organizations reporting form.

(m) FR Y-9C means the Consolidated Financial Statements for Holding Companies reporting form.

(n) 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.

(o) Non-U.S. affiliate means any affiliate of a foreign banking organization that is incorporated or organized in a country other than the United States.

(p) Publicly traded means an instrument that is traded on:

(1) 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

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a non-U.S. national securities regulatory authority; and

(ii) 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 price within a reasonable time period conforming with trade custom.

(3) A company can rely on its determination that a particular non-U.S.-based securities exchange provides a liquid two-way market unless the Board determines that the exchange does not provide a liquid two-way market.

(q) 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)).

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

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

(t) 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) 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)).

(v) U.S. branches and agencies means the U.S. branches and U.S. agencies of a foreign banking organization.

(w) U.S. government agency means an agency or instrumentality of the United States whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States.

(x) U.S. government-sponsored enterprise 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 United States.

(y) U.S. intermediate holding company means the top-tier U.S. company that is required to be established pursuant to § 252.153.

(z) U.S. subsidiary means any subsidiary that is incorporated in or organized under the laws of the United States or in any State, commonwealth, territory, or possession of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the North Mariana Islands, the American Samoa, Guam, or the United States Virgin Islands.

§ 252.3 Reservation of Authority.

(a) 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 or leverage 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.

(b) Modifications or extensions of this part. The Board may extend or accelerate any compliance date of this part if the Board determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Board will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the company is taking to come into compliance with this part.

§ 252.4 Nonbank Financial Companies Supervised by the Board.

(a) U.S. nonbank financial companies supervised by the Board. The Board will establish enhanced prudential standards for a nonbank financial company supervised by the Board that is incorporated in or organized under the laws of the United States or any State (U.S. nonbank financial company) by rule or order. In establishing such standards, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act, including:

(1) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the U.S. nonbank financial company;

(2) The degree to which the U.S. nonbank financial company is already regulated by one or more primary financial regulatory agencies; and

(3) Any other risk-related factor that the Board determines is appropriate.

(b) Foreign nonbank financial companies supervised by the Board. The Board will establish enhanced prudential standards for a nonbank financial company supervised by the Board that is organized or incorporated in a country other than the United States (foreign nonbank financial company) by rule or order. In establishing such standards, the Board will consider the factors set forth in sections 165(a)(2), (b)(2), and (b)(3) of the Dodd-Frank Act, including:

(1) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the foreign nonbank financial company;

(2) 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

(3) Any other risk-related factor that the Board determines is appropriate.

Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations with Total Consolidated Assets Over $10 Billion and less than $50 Billion.

§ 252.10 [Reserved].

§ 252.11 Authority and purpose.

(a) Authority. 12 U.S.C. 321-338a, 1467a(g), 1818, 1831o, 1831p-1, 1844(b), 1844(c), 3906-3909, 5365.

(b) Purpose. This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires a bank holding company with total consolidated assets of greater than $10 billion but less than $50 billion and savings and loan holding companies and state member banks with total consolidated assets of greater than $10 billion to conduct annual stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

§ 252.12 Definitions.

For purposes of this subpart, the following definitions apply:

(a) Advanced approaches means the regulatory capital requirements at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) Adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) Asset threshold means—

(1) For a bank holding company, average total consolidated assets of greater than $10 billion but less than $50 billion, and

(2) For a savings and loan holding company or state member bank, average total consolidated assets of greater than $10 billion.

(d) Average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company, savings and loan holding company, or state member bank on its Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) or Consolidated Report of Condition and Income (Call Report), as applicable, for the four most recent consecutive quarters. If the bank holding company, savings and loan holding company, or state member bank has not filed the FR Y-9C or Call Report, as applicable, for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C or Call Report, as applicable, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y-9C or Call Report, as applicable, used in the calculation of the average.

(e) Bank holding company has the same meaning as in section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(f) Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank, and that reflect the consensus views of the economic and financial outlook.

(g) Capital action has the same meaning as in section 225.8(c)(2) of the Board's Regulation Y (12 CFR 225.8(c)(2)).

(h) Covered company subsidiary means a state member bank that is a subsidiary of a covered company as defined in subpart F of this part.

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

(j) Foreign banking organization has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(k) Planning horizon means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1) over which the relevant projections extend.

(l) Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(m) Provision for loan and lease losses means the provision for loan and lease losses as reported by the bank holding company, savings and loan holding company, or state member bank on the FR Y-9C or Call Report, as appropriate.

(n) Regulatory capital ratio means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, a company's tier 1 and supplementary leverage ratio and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under the Board's regulations, including appendices A, D, E, and G to 12 CFR part 225 and appendices A, B, E, and F to 12 CFR part 208 and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation. For state member banks other than covered company subsidiaries and for all bank holding companies, for the stress test cycle that commences on October 1, 2013, regulatory capital ratios must be calculated pursuant to the regulatory capital framework set forth in 12 CFR part 225, appendix A, and not the regulatory capital framework set forth in 12 CFR part 217.

(o) Savings and loan holding company has the same meaning as in § 238.2(m) of the Board's Regulation LL (12 CFR 238.2(m)).

(p) Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank that the Board annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(q) Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(r) State member bank has the same meaning as in § 208.2(g) of the Board's Regulation H (12 CFR 208.2(g)).

(s) Stress test means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a bank holding company, savings and loan holding company, or state member bank over the planning horizon, taking into account the current condition, risks, exposures, strategies, and activities.

(t) Stress test cycle means the period between October 1 of a calendar year and September 30 of the following calendar year.

(u) Subsidiary has the same meaning as in § 225.2(o) the Board's Regulation Y (12 CFR 225.2(o)).

§ 252.13 Applicability.

(a) Compliance date for bank holding companies and state member banks that meet the asset threshold on or before December 31, 2012. (1) Bank holding companies—(i) In general.

Except as provided in paragraph (a)(1)(ii) of this section, a bank holding company that meets the asset threshold on or before December 31, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.[158]

(ii) SR Letter 01-01. A U.S.-domiciled bank holding company that is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing.

(2) State member banks. (i) A state member bank that meets the asset threshold as of November 15, 2012, and is a subsidiary of a bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle that commences on November 15, 2012, unless that time is extended by the Board in writing.

(ii) A state member bank that meets the asset threshold on or before December 31, 2012, and is not described in paragraph (a)(2)(i) of this section must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing. [159]

(b) Compliance date for bank holding companies and state member banks that meet the asset threshold after December 31, 2012. A bank holding company or state member bank that

---

[158] See § 252.12(c).

[159] See § 252.12(c).

meets the asset threshold after December 31, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company meets the asset threshold, unless that time is extended by the Board in writing.

(c) Compliance date for savings and loan holding companies. (1) A savings and loan holding company that meets the asset threshold on or before the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(2) A savings and loan holding company that meets the asset threshold after the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital requirements, unless that time is extended by the Board in writing.

(d) Ongoing application. A bank holding company, savings and loan holding company, or state member bank that meets the asset threshold will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $10 billion for each of four consecutive quarters, as reported on the FR Y-9C or Call Report, as applicable. The calculation will be effective on the as-of date of the fourth consecutive FR Y-9C or Call Report, as applicable.

(e) Interaction with 12 CFR part 252, subpart F. Notwithstanding paragraph (d) of this section, a bank holding company or savings and loan holding company that becomes a covered

company as defined in subpart F of this part and conducts a stress test pursuant to that subpart is not subject to the requirements of this subpart.

(f) Advanced approaches. Notwithstanding any other requirement in this section, for a given stress test cycle, a bank holding company, savings and loan holding company, or state member bank's estimates of its pro forma regulatory capital ratios over the planning horizon shall not include estimates using the advanced approaches if the company is notified on or after the first day of that stress test cycle that it is required to calculate its risk-based capital requirements using the advanced approaches.

§ 252.14 Annual stress test.

(a) General requirements. (1) Savings and loan holding companies with average total consolidated assets of $50 billion or more and state member banks that are covered company subsidiaries. A savings and loan holding company with average total consolidated assets of $50 billion or more or a state member bank that is a covered company subsidiary or must conduct a stress test by January 5 of each calendar year based on data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(2) Bank holding companies, savings and loan holding companies with total consolidated assets of less than $50 billion, and state member banks that are not covered company subsidiaries. Except as provided in paragraph (a)(1), a bank holding company, savings and loan holding company, or state member bank must conduct a stress test by March 31 of each calendar year using financial statement data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) Scenarios provided by the Board. (1) In general. In conducting a stress test under this section, a bank holding company, savings and loan holding company, or state member bank

must use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each bank holding company, savings and loan holding company, or state member bank no later than November 15 of that calendar year.

(2) Additional components. (i) The Board may require a bank holding company, savings and loan holding company, or state member bank with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y-14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section. The Board may also require a state member bank that is subject to 12 CFR part 208, appendix E and that is a subsidiary of a bank holding company subject to this paragraph (b)(2)(i) or § 252.54(b)(2)(i) to include a trading and counterparty component in the state member bank's adverse and severely adverse scenarios in the stress test required by this section. The data used in this component will be as of a date between October 1 and December 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than December 1 of the calendar year.

(ii) The Board may require a bank holding company, savings and loan holding company, or state member bank to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) Additional scenarios. The Board may require a bank holding company, savings and loan holding company, or state member bank to include one or more additional scenarios in the

stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) Notice and response. If the Board requires a bank holding company, savings and loan holding company, or state member bank to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2)(ii) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than September 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the bank holding company, savings and loan holding company, or state member bank may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(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. The Board will provide the bank holding company, savings and loan holding company, or state member bank with a description of any additional component(s) or additional scenario(s) by December 1.

§ 252.15 Methodologies and practices.

(a) Potential impact on capital. In conducting a stress test under § 252.14, for each quarter of the planning horizon, a bank holding company, savings and loan holding company, or state member bank must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for loan and lease losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) Assumptions regarding capital actions. In conducting a stress test under § 252.14 of this part, a bank holding company or savings and loan holding company is required to make the following assumptions regarding its capital actions over the planning horizon—

(A) For the first quarter of the planning horizon, the bank holding company or savings and loan holding company must take into account its actual capital actions as of the end of that quarter; and

(B) For each of the second through ninth quarters of the planning horizon, the bank holding company or savings and loan holding company must include in the projections of capital—

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(iii) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.

(c) Controls and oversight of stress testing processes. (1) In general. The senior management of a bank holding company, savings and loan holding company, or state member

bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance.

(2) Oversight of stress testing processes. The board of directors, or a committee thereof, of a bank holding company, savings and loan holding company, or state member bank must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually. The board of directors and senior management of the bank holding company, savings and loan holding company, or state member bank must receive a summary of the results of the stress test conducted under this section.

(3) Role of stress testing results. The board of directors and senior management of a bank holding company, savings and loan holding company, or state member bank must consider the results of the stress test in the normal course of business, including but not limited to, the banking organization's capital planning, assessment of capital adequacy, and risk management practices.

§ 252.16 Reports of stress test results.

(a) Reports to the Board of stress test results. (1) Savings and loan holding companies with average total consolidated assets of $50 billion or more and state member banks that are covered company subsidiaries. A savings and loan holding company with average total consolidated assets of $50 billion or more or a state member bank that is a covered company

subsidiary must report the results of the stress test to the Board by January 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(2) Bank holding companies, savings and loan holding companies, and state member banks. Except as provided in paragraph (a)(1) of this section, a bank holding company, savings and loan holding company, or state member bank must report the results of the stress test to the Board by March 31 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(b) Contents of reports. The report required under paragraph (a) of this section must include, under the baseline scenario, adverse scenario, severely adverse scenario, and any other scenario required under § 252.14(b)(3), a description of the types of risks being included in the stress test; a summary description of the methodologies used in the stress test; and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and regulatory capital ratios. In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the Board. This paragraph will remain applicable until such time as the Board issues a reporting form to collect the results of the stress test required under § 252.14.

(c) Confidential treatment of information submitted. The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.17 Disclosure of stress test results.

(a) Public disclosure of results. (1) In general. (i) Except as provided in paragraph (a)(1)(ii) or (b)(2) of this section, a bank holding company, savings and loan holding company, or state member bank must disclose a summary of the results of the stress test in the period beginning on June 15 and ending on June 30 unless that time is extended by the Board in writing.

(ii) Except as provided in paragraph (b)(2) of this section, a state member bank that is a covered company subsidiary or a savings and loan holding company with average total consolidated assets of $50 billion or more must disclose a summary of the results of the stress test in the period beginning on March 15 and ending on March 31, unless that time is extended by the Board in writing.

(2) Initial disclosure. A bank holding company, savings and loan holding company, or state member bank that has total consolidated assets of less than $50 billion on or before December 31, 2012, must comply with the requirements of this section beginning with the stress test cycle commencing on October 1, 2014.

(3) Disclosure method. The summary required under this section may be disclosed on the website of a bank holding company, savings and loan holding company, or state member bank, or in any other forum that is reasonably accessible to the public.

(b) Summary of results. (1) Bank holding companies and savings and loan holding companies. A bank holding company or savings and loan holding company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue;

(C) Provision for loan and lease losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board;

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios; and

(v) With respect to a stress test conducted by an insured depository institution subsidiary of the bank holding company or savings and loan holding company pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, changes in regulatory capital ratios and any other capital ratios specified by the Board of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

(2) State member banks that are subsidiaries of bank holding companies. A state member bank that is a subsidiary of a bank holding company will satisfy the public disclosure requirements under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act when the bank holding company publicly discloses summary results of its stress test pursuant to this section or § 252.58, unless the Board determines that the disclosures at the holding company level do not adequately capture the potential impact of the scenarios on the capital of the state member bank. In this case, the state member bank must make the same disclosure as required by paragraph (b)(3) of this section.

(3) State member banks that are not subsidiaries of bank holding companies. A state member bank that is not a subsidiary of a bank holding company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks being included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue

(C) Provision for loan and lease losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board; and

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios.

(c) Content of results. (1) The disclosure of aggregate losses, pre-provision net revenue, provision for loan and lease losses, and net income that is required under paragraph (b) of this section must be on a cumulative basis over the planning horizon.

(2) The disclosure of pro forma regulatory capital ratios and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value and minimum value of each ratio over the planning horizon.

Subpart C—Risk Committee Requirement for Publicly Traded Bank Holding Companies with Total Consolidated Assets of $10 Billion or Greater and Less than $50 Billion.

§ 252.20 [Reserved].

§ 252.21 Applicability.

(a) General applicability. Subject to the initial applicability provisions of paragraph (c) of this section, a bank holding company with any class of stock that is publicly traded must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the later of the date on which its total consolidated assets equal or exceed $10 billion and the date on which any class of its stock becomes publicly traded.

(b) Total consolidated assets. Total consolidated assets of a bank holding company for purposes of this subpart are equal to its consolidated assets, calculated based on the average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on its FR Y-9C. If the bank holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, total consolidated assets means the average of its total consolidated assets, as reported on the FR Y-9C, for the most recent quarter or consecutive quarters, as applicable. Total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average.

(c) Initial applicability provisions. A bank holding company that, as of June 30, 2014, has total consolidated assets of $10 billion or more and has a class of stock that is publicly traded must comply with the requirements of this subpart beginning on July 1, 2015.

(d) Cessation of requirements. A bank holding company will remain subject to the requirements of this subpart until the earlier of the date on which: (i) its reported total consolidated assets on the FR Y-9C are below $10 billion for each of four consecutive calendar quarters; (ii) it becomes subject to the requirements of subpart D of this part; and (iii) it ceases to have a class of stock that is publicly traded.

§ 252.22 Risk Committee Requirement for Publicly Traded Bank Holding Companies with Total Consolidated Assets of $10 Billion or More.

(a) Risk committee. A bank holding company with any class of stock that is publicly traded and total consolidated assets of $10 billion or more must maintain a risk committee that approves and periodically reviews the risk-management policies of its global operations and oversees the operation of its global risk-management framework.

(b) Risk-management framework. The bank holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(1) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(2) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(i) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(ii) Processes and systems for establishing managerial and employee responsibility for risk management;

(iii) Processes and systems for ensuring the independence of the risk-management function; and

(iv) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(c) Corporate governance requirements. The risk committee must:

(1) Have a formal, written charter that is approved by the bank holding company's board of directors.

(2) Meet at least quarterly, and otherwise as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(d) Minimum member requirements. The risk committee must:

(1) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms; and

(2) Be chaired by a director who:

(i) Is not an officer or employee of the bank holding company and has not been an officer or employee of the bank holding company during the previous three years;

(ii) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the bank holding company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(iii)(A) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S-K (17 CFR 229.407(a)), if the bank holding company has an outstanding class of securities traded on an 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) (national securities exchange); or

(B) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the bank holding

company does not have an outstanding class of securities traded on a national securities exchange.

Subpart D—Enhanced Prudential Standards for Bank Holding Companies with Total Consolidated Assets of $50 Billion or More.

§ 252.30 Scope.

This subpart applies to bank holding companies with total consolidated assets of $50 billion or more. Total consolidated assets of a bank holding company are equal to the consolidated assets of the bank holding company, as calculated in accordance with § 252.31(b).

§ 252.31 Applicability.

(a) General applicability. Subject to the initial applicability provisions of paragraphs (c) and (e) of this section, a bank holding company must comply with the risk-management and risk-committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in § 252.34 and § 252.35 beginning on the first day of the fifth quarter following the date on which its total consolidated assets equal or exceed $50 billion.

(b) Total consolidated assets. Total consolidated assets of a bank holding company for purposes of this subpart are equal to its consolidated assets, calculated based on the average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the FR Y-9C. If the bank holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, total consolidated assets means the average of its total consolidated assets, as reported on the FR Y-9C, for the most recent quarter or consecutive quarters, as applicable. Total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average.

(c) Initial applicability. A bank holding company that, as of June 30, 2014, has total consolidated assets of $50 billion or more, as calculated according to paragraph (b) of this section, must comply with the risk-management and risk-committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in § 252.34 and § 252.35, beginning on January 1, 2015.

(d) Cessation of requirements. Except as provided in paragraph (e) of this section, a bank holding company is subject to the risk-management and risk committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in § 252.34 and § 252.35 until its reported total consolidated assets on the FR Y-9C are below $50 billion for each of four consecutive calendar quarters.

(e) Applicability for bank holding companies that are subsidiaries of foreign banking organizations. In the event that a bank holding company that has total consolidated assets of $50 billion or more is controlled by a foreign banking organization, such bank holding company is subject to the risk-management and risk committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in § 252.34 and § 252.35 beginning on January 1, 2015 and ending on June 30, 2016. Beginning on July 1, 2016, the U.S. intermediate holding company established or designated by the foreign banking organization must comply with the risk-management and risk committee requirements set forth in § 252.153(e)(3) and the liquidity risk-management and liquidity stress test requirements set forth in § 252.153(e)(4).

§ 252.32 Risk-based and Leverage Capital and Stress Test Requirements.

A bank holding company with total consolidated assets of $50 billion or more must comply with, and hold capital commensurate with the requirements of, any regulations adopted

by the Board relating to capital planning and stress tests, in accordance with the applicability provisions set forth therein.

§ 252.33 Risk-management and Risk Committee Requirements.

(a) Risk committee. (1) General. A bank holding company with total consolidated assets of $50 billion or more must maintain a risk committee that approves and periodically reviews the risk-management policies of the bank holding company's global operations and oversees the operation of the bank holding company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in § 252.34(b).

(2) Risk-management framework. The bank holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) Corporate governance requirements. The risk committee must:

(i) Have a formal, written charter that is approved by the bank holding company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the bank holding company's global operations and oversight of the operation of the bank holding company's global risk-management framework;

(iii) Report directly to the bank holding company's board of directors;

(iv) Receive and review regular reports on not less than a quarterly basis from the bank holding company's chief risk officer provided pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) Minimum member requirements. The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the bank holding company and has not been an officer or employee of the bank holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last

three years, an executive officer of the bank holding company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(C)(1) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S-K (17 CFR 229.407(a)), if the bank holding company has an outstanding class of securities traded on an 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) (national securities exchange); or

(2) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the bank holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) Chief risk officer. (1) General. A bank holding company with total consolidated assets of $50 billion or more must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) Responsibilities. (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and

emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) Corporate governance requirements. (i) The bank holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the bank holding company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

§ 252.34 Liquidity Risk-management Requirements.

(a) Responsibilities of the board of directors. (1) Liquidity risk tolerance. The board of directors of a bank holding company with total consolidated assets of $50 billion or more must:

(i) Approve the acceptable level of liquidity risk that the bank holding company may assume in connection with its operating strategies (liquidity risk tolerance) at least annually, taking into account the bank holding company's capital structure, risk profile, complexity, activities, and size; and

(ii) Receive and review at least semi-annually information provided by senior management to determine whether the bank holding company is operating in accordance with its established liquidity risk tolerance.

(2) Liquidity risk-management strategies, policies, and procedures. The board of directors must approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior management pursuant to paragraph (c)(1) of this section.

(b) Responsibilities of the risk committee. The risk committee (or a designated subcommittee of such committee composed of members of the board of directors) must approve

the contingency funding plan described in paragraph (f) of this section at least annually, and must approve any material revisions to the plan prior to the implementation of such revisions.

(c) Responsibilities of senior management. (1) Liquidity risk. (i) Senior management of a bank holding company with total consolidated assets of $50 billion or more must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the bank holding company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

(ii) Senior management must oversee the development and implementation of liquidity risk measurement and reporting systems, including those required by this section and § 252.35.

(iii) Senior management must determine at least quarterly whether the bank holding company is operating in accordance with such policies and procedures and whether the bank holding company is in compliance with this section and § 252.35 (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition warrant), and establish procedures regarding the preparation of such information.

(2) Liquidity risk tolerance. Senior management must report to the board of directors or the risk committee regarding the bank holding company's liquidity risk profile and liquidity risk tolerance at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(3) Business lines or products. (i) Senior management must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product that could have a significant effect on the company's liquidity risk profile.

The approval is required before the company implements the business line or offers the product. In determining whether to approve the new business line or product, senior management must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the company's established liquidity risk tolerance.

(ii) Senior management must review at least annually significant business lines and products to determine whether any line or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product is within the company's established liquidity risk tolerance.

(4) Cash-flow projections. Senior management must review the cash-flow projections produced under paragraph (e) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the bank holding company warrant) to ensure that the liquidity risk is within the established liquidity risk tolerance.

(5) Liquidity risk limits. Senior management must establish liquidity risk limits as set forth in paragraph (g) of this section and review the company's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(6) Liquidity stress testing. Senior management must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.35(a) at least quarterly, and whenever the bank holding company materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.35(a) at least quarterly;

(iii) Review the independent review of the liquidity stress tests under § 252.34(d) periodically; and

(iv) Approve the size and composition of the liquidity buffer established under § 252.35(b) at least quarterly.

(d) Independent review function. (1) A bank holding company with total consolidated assets of $50 billion or more must establish and maintain a review function that is independent of management functions that execute funding to evaluate its liquidity risk management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk management processes, including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(iii) Report material liquidity risk management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law.

(e) Cash-flow projections. (1) A bank holding company with total consolidated assets of $50 billion or more must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The bank holding company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The bank holding company must establish a methodology for making cash-flow projections that results in projections that:

(i) Include cash flows arising from contractual maturities, intercompany transactions,

new business, funding renewals, customer options, and other potential events that may impact liquidity;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the bank holding company and include analyses by business line, currency, or legal entity as appropriate.

(3) The bank holding company must adequately document its methodology for making cash flow projections and the included assumptions and submit such documentation to the risk committee.

(f) Contingency funding plan. (1) A bank holding company with total consolidated assets of $50 billion or more must establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) Components of the contingency funding plan.

(i) Quantitative assessment. The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the bank holding company's liquidity;

(B) Assess the level and nature of the impact on the bank holding company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the bank holding company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.35(a) of this subpart.

(ii) Liquidity event management process. The contingency funding plan must include an event management process that sets out the bank holding company's procedures for managing liquidity during identified liquidity stress events. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies the company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan described in paragraph (f)(2)(ii)(A) of this section;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the

bank holding company and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) 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 company's capital structure, risk profile, complexity, activities, and size.

(iv) Testing. The bank holding company must periodically test:

(A) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(B) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(C) The methods the bank holding company will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

(g) Liquidity risk limits. (1) General. A bank holding company with total consolidated assets of $50 billion or more must monitor sources of liquidity risk and establish limits on liquidity risk, including limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(2) Size of limits. Each limit established pursuant to paragraph (g)(1) of this section

must be consistent with the company's established liquidity risk tolerance and must reflect the company's capital structure, risk profile, complexity, activities, and size.

(h) Collateral, legal entity, and intraday liquidity risk monitoring. A bank holding company with total consolidated assets of $50 billion or more must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) Collateral. The bank holding company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the bank holding company:

(i) Calculates all of its collateral positions on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the bank holding company's funding patterns, such as 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).

(2) Legal entities, currencies and business lines. The bank holding company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and

funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) Intraday exposures. The bank holding company must establish and maintain procedures for monitoring intraday liquidity risk exposure. These procedures must address how the management of the bank holding company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the bank holding company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Manage the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the bank holding company's overall liquidity needs.

§ 252.35 Liquidity Stress Testing and Buffer Requirements.

(a) Liquidity stress testing requirement. (1) General. A bank holding company with total consolidated assets of $50 billion or more must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

(i) The bank holding company must take into consideration its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics of the bank holding company that affect its liquidity risk profile in conducting its stress test.

(ii) In conducting a liquidity stress test using the scenarios described in paragraphs

(a)(3)(i) and (iii) of this section, the bank holding company must address the potential direct adverse impact of associated market disruptions on the bank holding company and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would adversely affect the bank holding company.

(2) Frequency. The liquidity stress tests required under paragraph (a)(1) of this section must be performed at least monthly. The Board may require the bank holding company to perform stress testing more frequently.

(3) Stress scenarios. Each liquidity stress test conducted under paragraph (a)(1) of this section must include, at a minimum: (i) a scenario reflecting adverse market conditions, (ii) a scenario reflecting an idiosyncratic stress event for the bank holding company, and (iii) a scenario reflecting combined market and idiosyncratic stresses. The bank holding company must incorporate additional liquidity stress scenarios into its liquidity stress test, as appropriate, based on its financial condition, size, complexity, risk profile, scope of operations, or activities. The Board may require the bank holding company to vary the underlying assumptions and stress scenarios.

(4) Planning horizon. Each stress test conducted under paragraph (a)(1) of this section must include an overnight planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the bank holding company's liquidity risk profile. For purposes of this section, a "planning horizon" is the period over which the relevant stressed projections extend. The bank holding company must use the results of the stress test over the 30-day planning horizon to calculate the size of the liquidity buffer under paragraph (b) of this section.

(5) Requirements for assets used as cash-flow sources in a stress test. (i) To the extent

an asset is used as a cash flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during a planning horizon must be diversified by collateral, counterparty, borrowing capacity, and other factors associated with the liquidity risk of the assets.

(iii) A line of credit does not qualify as a cash flow source for purposes of a stress test with a planning horizon of 30 days or less. A line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days.

(6) Tailoring. Stress testing must be tailored to, and provide sufficient detail to reflect, a bank holding company's capital structure, risk profile, complexity, activities, and size.

(7) Governance. (i) Policies and procedures. A bank holding company with total consolidated assets of $50 billion or more must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) Controls and oversight. A bank holding company with total consolidated assets of $50 billion or more must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity 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 bank holding company's capital structure, risk profile, complexity, activities,

size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the U.S. chief risk officer and be subject to the independent review under § 252.34(d) of this subpart.

(iii) Management information systems. The bank holding company 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 liquidity stress testing.

(b) Liquidity buffer requirement. (1) A bank holding company with total consolidated assets of $50 billion or more must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3)(i) through (iii) of this section.

(2) Net stressed cash-flow need. The net stressed cash-flow need for a bank holding company is the difference between the amount of its cash-flow need and the amount of its cash flow sources over the 30-day planning horizon.

(3) Asset requirements. The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (3)(ii) of this section:

(i) Highly liquid asset. A highly liquid asset includes:

(A) Cash;

(B) Securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise; or

(C) Any other asset that the bank holding company demonstrates to the satisfaction of the Board:

(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 has been impaired.

(ii) Unencumbered. An asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(1) Not pledged or used to secure or provide credit enhancement to any transaction; or

(2) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) Calculating the amount of a highly liquid asset. In calculating the amount of a highly liquid asset included in the liquidity buffer, the bank holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) Diversification. The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the bank holding company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board.

§ 252.40 [Reserved].

§ 252.41 Authority and purpose.

(a) Authority. 12 U.S.C. 321-338a, 1467a(g), 1818, 1831p-1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) Purpose. This subpart implements section 165(i)(1) of the Dodd-Frank Act (12 U.S.C. 5365(i)(1)), which requires the Board to conduct annual analyses of nonbank financial companies supervised by the Board and bank holding companies with $50 billion or more in total consolidated assets to evaluate whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

§ 252.42 Definitions.

For purposes of this subpart F, the following definitions apply:

(a) Advanced approaches means the risk-weighted assets calculation methodologies at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) Adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) Average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) for the four most recent consecutive quarters. If the bank

holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average.

(d) Bank holding company has the same meaning as in section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(e) Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

(f) Covered company means:

(1) A bank holding company (other than a foreign banking organization) with average total consolidated assets of $50 billion or more; and

(2) A nonbank financial company supervised by the Board.

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

(h) Foreign banking organization has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(i) Nonbank financial company supervised by the Board means a nonbank financial company that the Financial Stability Oversight 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.

(j) Planning horizon means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1) over which the relevant projections extend.

(k) Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(l) Provision for loan and lease losses means the provision for loan and lease losses as reported by the covered company on the FR Y–9C.

(m) Regulatory capital ratio means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, the company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, E, and G to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR § 217.300, or any successor regulation.

(n) Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually determines are appropriate for use in the supervisory stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(o) Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(p) Stress test cycle means the period between October 1 of a calendar year and September 30 of the following calendar year.

(q) Subsidiary has the same meaning as in section 225.2(o) the Board's Regulation Y (12 CFR 225.2).

(r) Tier 1 common ratio has the same meaning as in the Board's Regulation Y (12 CFR 225.8).

§ 252.43 Applicability.

(a) Compliance date for bank holding companies that are covered companies as of November 15, 2012. (1) In general. Except as provided in paragraph (a)(2) or (a)(3) of this section, a bank holding company that is a covered company as of November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.

(2) 2009 Supervisory Capital Assessment Program. A bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such a bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle that commences on November 15, 2012, unless that time is extended by the Board in writing.

(3) SR Letter 01–01. A U.S.-domiciled bank holding company that is a covered company as of November 15, 2012, and is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing.

(b) Compliance date for institutions that become covered companies after November 15, 2012. (1) Bank holding companies. A bank holding company that becomes a covered company after November 15, 2012, must comply with the requirements of this subpart beginning with the

stress test cycle that commences in the calendar year after the year in which the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) Nonbank financial companies supervised by the Board. A company that becomes a nonbank financial company supervised by the Board must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(c) Ongoing application. A bank holding company that is a covered company will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y-9C. The calculation will be effective on the as-of date of the fourth consecutive FR Y-9C.

(d) Advanced approaches. Notwithstanding any other requirement in this section, the Board's analysis of a covered company's capital in a given stress test cycle will not include estimates using the advanced approaches if the covered company is notified on or after the first day of that stress test cycle (October 1) that the covered company is required to calculate its risk-based capital requirements using the advanced approaches.

§ 252.44 Annual analysis conducted by the Board.

(a) In general. (1) On an annual basis, the Board will conduct an analysis of each covered company's capital, on a total consolidated basis, taking into account all relevant exposures and activities of that covered company, to evaluate the ability of the covered company to absorb losses in specified economic and financial conditions.

(2) The analysis will include an assessment of the projected losses, net income, and pro forma capital levels and regulatory capital ratios, tier 1 common ratio, and other capital ratios for

the covered company and use such analytical techniques that the Board determines are appropriate to identify, measure, and monitor risks of the covered company that may affect the financial stability of the United States.

(3) In conducting the analyses, the Board will coordinate with the appropriate primary financial regulatory agencies and the Federal Insurance Office, as appropriate.

(b) Economic and financial scenarios related to the Board's analysis. The Board will conduct its analysis under this section using a minimum of three different scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle by no later than November 15 of each year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than December 1.

§ 252.45 Data and information required to be submitted in support of the Board's analyses.

(a) Regular submissions. Each covered company must submit to the Board such data, on a consolidated basis, that the Board determines is necessary in order for the Board to derive the relevant pro forma estimates of the covered company over the planning horizon under the scenarios described in § 252.44(b).

(b) Additional submissions required by the Board. The Board may require a covered company to submit any other information on a consolidated basis that the Board deems necessary in order to:

(1) Ensure that the Board has sufficient information to conduct its analysis under this subpart; and

(2) Project a company's pre-provision net revenue, losses, provision for loan and lease losses, and net income; and, pro forma capital levels, regulatory capital ratios, tier 1 common ratio, and any other capital ratio specified by the Board under the scenarios described in § 252.44(b).

(c) Confidential treatment of information submitted. The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.46 Review of the Board's analysis; publication of summary results.

(a) Review of results. Based on the results of the analysis conducted under this subpart, the Board will conduct an evaluation to determine whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses and continue its operation by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary under baseline, adverse and severely adverse scenarios, and any additional scenarios.

(b) Communication of results to covered companies. The Board will convey to a covered company a summary of the results of the Board's analyses of such covered company within a reasonable period of time, but no later than March 31.

(c) Publication of results by the Board. By March 31 of each calendar year, the Board will disclose a summary of the results of the Board's analyses of a covered company.

§ 252.47 Use requirement.

(a) In general. The board of directors and senior management of each covered company must consider the results of the analysis conducted by the Board under this subpart, as appropriate:

(1) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital);

(2) When assessing the covered company's exposures, concentrations, and risk positions; and

(3) In the development or implementation of any plans of the covered company for recovery or resolution.

(b) Resolution plan updates. Each covered company must update its resolution plan as the Board determines appropriate, based on the results of the Board's analyses of the covered company under this subpart.

Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board.

§ 252.50 [Reserved].

§ 252.51 Authority and purpose.

(a) Authority. 12 U.S.C. 321-338a, 1467a(g), 1818, 1831p-1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) Purpose. This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires a covered company to conduct annual and semi-annual

stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

§ 252.52 Definitions.

For purposes of this subpart, the following definitions apply:

(a) Advanced approaches means the risk-weighted assets calculation methodologies at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) Adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) Average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average.

(d) Bank holding company has the same meaning as in section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(e) Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

(f) Capital action has the same meaning as in section 225.8(c)(2) of the Board's Regulation Y (12 CFR 225.8(c)(2)).

(g) Covered company means:

(1) A bank holding company (other than a foreign banking organization) with average total consolidated assets of $50 billion or more; and

(2) A nonbank financial company supervised by the Board.

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

(i) Foreign banking organization has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(j) Nonbank financial company supervised by the Board means a nonbank financial company that the Financial Stability Oversight 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.

(k) Planning horizon means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1 or April 1, as appropriate) over which the relevant projections extend.

(l) Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(m) Provision for loan and lease losses means the provision for loan and lease losses as reported by the covered company on the FR Y–9C.

(n) Regulatory capital ratio means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, the

company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, E, and G to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR § 217.300, or any successor regulation.

(o) Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board, or with respect to the mid-cycle stress test required under § 252.55, the covered company, annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(p) Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(q) Stress test means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered company over the planning horizon, taking into account its current condition, risks, exposures, strategies, and activities.

(r) Stress test cycle means the period between October 1 of a calendar year and September 30 of the following calendar year.

(s) Subsidiary has the same meaning as in section 225.2(o) the Board's Regulation Y (12 CFR 225.2).

(t) Tier 1 common ratio has the same meaning as in section 225.8 of the Board's Regulation Y (12 CFR 225.8).

§ 252.53 Applicability.

(a) Compliance date for bank holding companies that are covered companies as of November 15, 2012. (1) In general. Except as provided in paragraph (a)(2) or (a)(3) of this section, a bank holding company that is a covered company as of November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle commencing on October 1, 2013, unless that time is extended by the Board in writing.

(2) 2009 Supervisory Capital Assessment Program. A bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such a bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle commencing on November 15, 2012, unless that time is extended by the Board in writing.

(3) SR Letter 01–01. A U.S.-domiciled bank holding company that is a covered company as of November 15, 2012, and is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle commencing on October 1, 2015, unless that time is extended by the Board in writing.

(b) Compliance date for institutions that become covered companies after November 15, 2012. (1) Bank holding companies. A bank holding company that becomes a covered company after November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) Nonbank financial companies supervised by the Board. A company that becomes a nonbank financial company supervised by the Board must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(c) Ongoing application. A bank holding company that is a covered company will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y-9C. The calculation will be effective on the as-of date of the fourth consecutive FR Y-9C.

(d) Advanced approaches. Notwithstanding any other requirement in this section, for a given stress test cycle, a covered company's estimates of its pro forma regulatory capital ratios and the estimate of its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches if the company is notified on or after the first day of that stress test cycle (October 1) that it is required to calculate its risk-based capital requirements using the advanced approaches.

§ 252.54 Annual stress test.

(a) In general. A covered company must conduct an annual stress test by January 5 during each stress test cycle based on data as of September 30 of the preceding calendar year, unless the time or the as of date is extended by the Board in writing.

(b) Scenarios provided by the Board.

(1) In general. In conducting a stress test under this section, a covered company must use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (b)(3) of

this section, the Board will provide a description of the scenarios to each covered company no later than November 15 of that calendar year.

(2) Additional components. (i) The Board may require a covered company with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y-14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section. The data used in this component will be as of a date between October 1 and December 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than December 1 of the calendar year.

(ii) The Board may require a covered company to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) Additional scenarios. The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) Notice and response. If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2)(ii) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than September 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14

calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(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. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by December 1.

§ 252.55 Mid-cycle stress test.

(a) Mid-cycle stress test requirement. In addition to the stress test required under § 252.54, a covered company must conduct a stress test by July 5 during each stress test cycle based on data as of March 31 of that calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) Scenarios related to mid-cycle stress tests. (1) In general. A covered company must develop and employ a minimum of three scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario, that are appropriate for its own risk profile and operations, in conducting the stress test required by this section.

(2) Additional components. The Board may require a covered company to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) Additional scenarios. The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) Notice and response. If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2) of this section or one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than March 31. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(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. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by June 1.

§ 252.56 Methodologies and practices.

(a) Potential impact on capital. In conducting a stress test under §§ 252.54 and 252.55, for each quarter of the planning horizon, a covered company must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for loan and lease losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios, the tier 1 common ratio, and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) Assumptions regarding capital actions. In conducting a stress test under §§ 252.54 and 252.55, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon—

(1) For the first quarter of the planning horizon, the covered company must take into account its actual capital actions as of the end of that quarter; and

(2) For each of the second through ninth quarters of the planning horizon, the covered company must include in the projections of capital:

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(iii) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.

(c) Controls and oversight of stress testing processes. (1) In general. The senior management of a covered company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered company's stress testing practices and methodologies, and processes for validating and updating the company’s stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance. Policies

of covered companies must also describe processes for scenario development for the mid-cycle stress test required under § 252.55.

(2) Oversight of stress testing processes. The board of directors, or a committee thereof, of a covered company must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered company may warrant, but no less than annually. The board of directors and senior management of the covered company must receive a summary of the results of any stress test conducted under this subpart.

(3) Role of stress testing results. The board of directors and senior management of each covered company must consider the results of the analysis it conducts under this subpart, as appropriate:

(i) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital);

(ii) When assessing the covered company's exposures, concentrations, and risk positions; and

(iii) In the development or implementation of any plans of the covered company for recovery or resolution.

§ 252.57 Reports of stress test results.

(a) Reports to the Board of stress test results. (1) A covered company must report the results of the stress test required under § 252.54 to the Board by January 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(2) A covered company must report the results of the stress test required under § 252.55 to the Board by July 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(b) Confidential treatment of information submitted. The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.58 Disclosure of stress test results

(a) Public disclosure of results. (1) In general. (i) A covered company must disclose a summary of the results of the stress test required under § 252.54 in the period beginning on March 15 and ending on March 31, unless that time is extended by the Board in writing.

(ii) A covered company must disclose a summary of the results of the stress test required under § 252.55 in the period beginning on September 15 and ending on September 30, unless that time is extended by the Board in writing.

(2) Disclosure method. The summary required under this section may be disclosed on the website of a covered company, or in any other forum that is reasonably accessible to the public.

(b) Summary of results. A covered company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(1) A description of the types of risks included in the stress test;

(2) A general description of the methodologies used in the stress test, including those employed to estimate losses, revenues, provision for loan and lease losses, and changes in capital positions over the planning horizon;

(3) Estimates of—

(i) Pre-provision net revenue and other revenue;

(ii) Provision for loan and lease losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes;

(iv) Loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by subportfolio, including: domestic closed-end first-lien mortgages; domestic junior lien mortgages and home equity lines of credit; commercial and industrial loans; commercial real estate loans; credit card exposures; other consumer loans; and all other loans; and

(v) Pro forma regulatory capital ratios and the tier 1 common ratio and any other capital ratios specified by the Board;

(4) An explanation of the most significant causes for the changes in regulatory capital ratios and the tier 1 common ratio; and

(5) With respect to a stress test conducted pursuant to section 165(i)(2) of the Dodd-Frank Act by an insured depository institution that is a subsidiary of the covered company and that is required to disclose a summary of its stress tests results under applicable regulations, changes in regulatory capital ratios and any other capital ratios specified by the Board of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) Content of results. (1) The following disclosures required under paragraph (b) of this section must be on a cumulative basis over the planning horizon:

(i) Pre-provision net revenue and other revenue;

(ii) Provision for loan and lease losses, realized losses/gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes; and

(iv) Loan losses in the aggregate and by subportfolio.

(2) The disclosure of pro forma regulatory capital ratios, the tier 1 common ratio, and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

Subpart G—[Reserved]

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—[Reserved]

Subpart K—[Reserved]

Subpart L—Company-Run Stress Test Requirements for Foreign Banking Organizations and Foreign Savings and Loan Holding Companies with Total Consolidated Assets Over $10 Billion but less than $50 billion.

§ 252.120 Definitions.

For purposes of this subpart, the following definitions apply: (a) Eligible asset means any asset of the U.S. branch or U.S. agency held in the United States that is recorded on the general ledger of a U.S. branch or U.S. agency of the foreign banking organization (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets), subject to the

following exclusions and, for purposes of this definition, as modified by the rules of valuation set forth in paragraph (b)(2) of this section.

(1) The following assets do not qualify as eligible assets:

(i) Equity securities;

(ii) Any assets classified as loss at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(iii) 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;

(iv) Any amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts;

(v) 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;

(vi) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(vii) Any other asset that the Board determines should not qualify as an eligible asset.

(2) The following rules of valuation apply:

(i) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(ii) 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 80 percent, respectively;

(iii) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve that would be required for such exposure at a domestically chartered bank is valued at 0 and the residual exposure is valued at 80 percent; and

(iv) Real estate located in the United States and carried on the accounting records as an asset are valued at net book value or appraised value, whichever is less.

(b) 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.

(c) Liabilities of all U.S. branches and agencies of a foreign banking organization means all liabilities of all U.S. branches and agencies of the foreign banking organization, including acceptances and any other liabilities (including contingent liabilities), but excluding:

(1) 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

(2) Reserves for possible loan losses and other contingencies.

(d) Pre-provision net revenue means revenue less expenses before adjusting for total loan loss provisions.

(e) Stress test cycle has the same meaning as in subpart F of this part.

(f) 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.

§ 252.121 Applicability.

(a) Applicability for foreign banking organizations with total consolidated assets of more than $10 billion but less than $50 billion.

(1) General applicability. Subject to the initial applicability provisions of paragraph (a)(3) of this section, a foreign banking organization must comply with the stress test requirements set forth in this section beginning on the first day of the ninth quarter following the date on which its total consolidated assets exceed $10 billion.

(2) Total consolidated assets. For purposes of this subpart, total consolidated assets of a foreign banking organization are equal to the average of the total assets for the two most recent periods as reported by the foreign banking organization on the FR Y-7. Total consolidated assets are measured on the as-of date of the most recent FR Y-7 used in the calculation of the average.

(3) Initial applicability. A foreign banking organization that, as of June 30, 2015, has total consolidated assets of $10 billion or more must comply with the requirements of this subpart beginning on July 1, 2016.

(4) Cessation of requirements. A foreign banking organization will remain subject to the requirements of this subpart until the earlier of the date on which: (i) its reported total consolidated assets on the FR Y-7 are below $10 billion for each of four consecutive calendar quarters; and (ii) it becomes subject to the requirements of subpart N or subpart O of this subpart, as applicable.

(b) Applicability for foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

(1) General. A foreign savings and loan holding company must comply with the stress test requirements set forth in this section beginning on the first day of the ninth quarter following the date on which its total consolidated assets exceed $10 billion.

(2) Total consolidated assets. Total consolidated assets of a foreign savings and loan holding company for purposes of this subpart are equal to the average of total assets for the four most recent consecutive quarters as reported by the foreign savings and loan holding company on its applicable regulatory report. If the foreign savings and loan holding company has not filed four regulatory reports, total consolidated assets are equal to the average of total assets as reported for the most recent period or consecutive periods. Total consolidated assets are measured on the as-of date of the most recent regulatory reporting form used in the calculation of the average.

(3) Cessation of requirements. A foreign savings and loan holding company will remain subject to requirements of this subpart until the date on which the foreign savings and loan holding company's total consolidated assets on its applicable regulatory report are below $10 billion for each of four consecutive calendar quarters.

§ 252.122 Capital Stress Testing Requirements.

(a) In general. (1) A foreign banking organization with total consolidated assets of more than $10 billion but less than $50 billion and a foreign savings and loan holding company with total consolidated assets of more than $10 billion must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (a)(2) of this section; and

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

(2) The capital stress testing regime of a foreign banking organization or foreign savings and loan holding company's home-country supervisor must include:

(i) An annual supervisory capital stress test conducted by the relevant home-country supervisor or an annual evaluation and review by the home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization; and

(ii) Requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof).

(b) Additional standards. (1) Unless the Board otherwise determines in writing, a foreign banking organization or a foreign savings and loan holding company that does not meet each of the requirements in paragraph (a)(1) and (2) of this section must:

(i) Maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 105 percent of the average value over each day of the previous calendar quarter of the total liabilities of all branches and agencies operated by the foreign banking organization in the United States;

(ii) Conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and

(iii) Report on an annual basis a summary of the results of the stress test to the Board that includes 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 aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization or foreign savings

and loan holding company and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (b)(1)(ii) of this section.

Subpart M—Risk Committee Requirement for Publicly Traded Foreign Banking Organizations with Total Consolidated Assets of at Least $10 Billion but Less than $50 Billion.

§ 252.131 Applicability.

(a) General applicability. Subject to the initial applicability provisions of paragraph (c) of this section, a foreign banking organization with total consolidated assets of at least $10 billion but less than $50 billion and any class of stock (or similar interest) that is publicly traded must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the later of the date on which its total consolidated assets equal or exceed $10 billion and the date on which any class of its stock (or similar interest) becomes publicly traded.

(b) Total consolidated assets. For purposes of this subpart, total consolidated assets of a foreign banking organization for purposes of this subpart are equal to the average of the total assets for the two most recent periods as reported by the foreign banking organization on the FR Y-7. Total consolidated assets are measured on the as-of date of the most recent FR Y-7 used in the calculation of the average.

(c) Initial applicability. A foreign banking organization that, as of June 30, 2015, has total consolidated assets of $10 billion or more and has a class of stock (or similar interest) that is

publicly traded must comply with the risk-committee requirements of this section beginning on July 1, 2016.

(d) Cessation of requirements. A foreign banking organization will remain subject to the risk-committee requirements of this section until the earlier of the date on which: (i) its reported total consolidated assets on the FR Y-7 are below $10 billion for each of four consecutive calendar quarters; (ii) it becomes subject to the requirements of subpart N of this part; and (iii) it ceases to have a class of stock (or similar interest) that is publicly traded.

§ 252.132 Risk-Committee Requirements for Foreign Banking Organizations with Total Consolidated Assets of $10 Billion or More but Less than $50 Billion.

(a) U.S. risk committee certification. A foreign banking organization with a class of stock (or similar interest) that is publicly traded and total consolidated assets of at least $10 billion but less than $50 billion, must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

(1) Oversees the risk management policies of the combined U.S. operations of the foreign banking organization; and

(2) Includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(b) 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 FR Y-7.

(c) 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 policies overseen by the U.S. risk committee described in

paragraph (a) of this section, 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.

(d) Noncompliance with this section. If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, 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 State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Subpart N—Enhanced Prudential Standards for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More But Combined U.S. Assets of Less than $50 Billion.

§ 252.140 Scope.

This subpart applies to foreign banking organizations with total consolidated assets of $50 billion or more, but combined U.S. assets of less than $50 billion. Total consolidated assets of a foreign banking organization are equal to the consolidated assets of the foreign banking organization, and combined U.S. assets of a foreign banking organization are equal to the sum of

the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, each as defined in section § 252.142(b).

§ 252.141 [Reserved].

§ 252.142 Applicability

(a) General applicability. Subject to the initial applicability provisions in paragraph (c) of this section, a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must comply with the capital requirements, risk-management and risk committee requirements, liquidity risk-management requirements, and the capital stress testing requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its total consolidated assets equal or exceed $50 billion.

(b) Asset measures. (1) Total consolidated assets. Total consolidated assets of a foreign banking organization are equal to the consolidated assets of the foreign banking organization. For purposes of this subpart, "total consolidated assets" are calculated as the average of the foreign banking organization's total assets for the four most recent consecutive quarters as reported by the foreign banking organization on the FR Y-7Q. If the foreign banking organization has not filed the FR Y–7Q for the four most recent consecutive quarters, the Board shall use an average of the foreign banking organization's total consolidated assets reported on its most recent two FR Y–7Qs. Total consolidated assets are measured on the as-of date of the most recent FR Y-7Q used in the calculation of the average.

(2) Combined U.S. assets. Combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking

organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization. For purposes of this subpart, combined U.S. assets are calculated as the average of the total combined assets of U.S. operations for the four most recent consecutive quarters as reported by the foreign banking organization on the FR Y-7Q, or, if the foreign banking organization has not reported this information on the FR Y-7Q for each of the four most recent consecutive quarters, the average of the combined U.S. assets for the most recent quarter or consecutive quarters as reported on the FR Y-7Q. Combined U.S. assets are measured on the as-of date of the most recent FR Y-7Q used in the calculation of the average.

(c) Initial applicability. A foreign banking organization that, as of June 30, 2015, has total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion must comply with the capital requirements, risk-management requirements, liquidity requirements, and the capital stress test requirements set forth in this subpart beginning on July 1, 2016.

(d) Cessation of requirements. A foreign banking organization will remain subject to the requirements set forth in this subpart until its reported total assets on the FR Y-7Q are below $50 billion for each of four consecutive calendar quarters, or it becomes subject to the requirements of subpart O of this part.

§ 252.143 Risk-Based and Leverage Capital Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

(a) General requirements. (1) A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must certify to the

Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework).

(i) For purposes of this paragraph, home-country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in "Basel III: A global regulatory framework for more resilient banks and banking systems" (2010) (Basel III Accord), each as applicable and as implemented in accordance with the Basel III Accord, including any transitional provisions set forth therein.

(ii) [Reserved]

(2) In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards on a consolidated basis that are consistent with the Basel Capital Framework were it subject to such standards.

(b) Reporting. A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must provide to the Board reports relating to its compliance with the capital adequacy measures described in paragraph (a) of this section concurrently with filing the FR Y-7Q.

(c) Noncompliance with the Basel Capital Framework. If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions, including risk-based or leverage capital requirements, relating to the activities or

business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

§ 252.144 Risk-management and Risk Committee Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

(a) U.S. risk committee certification. A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

(1) Oversees the risk management policies of the combined U.S. operations of the foreign banking organization; and

(2) Includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(b) 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 FR Y-7.

(c) 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 policies overseen by the U.S. risk committee described in paragraph (a) of this section, and that 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.

(d) Noncompliance with this section. If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, 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 State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition, or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

§ 252.145 Liquidity Risk-management Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but 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 foreign banking organization or the combined U.S. operations of the foreign banking organization. Such liquidity stress test must be conducted consistently with the Basel Committee principles for liquidity risk management and must incorporate 30-day, 90-day, and one-year stress-test horizons. The "Basel Committee 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.

(b) A foreign banking organization that does not comply with paragraph (a) of this section must limit the net aggregate amount owed by the foreign banking organization's non-U.S. offices 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.

§ 252.146 Capital Stress Testing Requirements for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Eligible asset means any asset of the U.S. branch or U.S. agency held in the United States that is recorded on the general ledger of a U.S. branch or U.S. agency of the foreign banking organization (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets), subject to the following exclusions and, for purposes of this definition, as modified by the rules of valuation set forth in paragraph (a)(1)(ii) of this section.

(i) The following assets do not qualify as eligible assets:

(A) Equity securities;

(B) Any assets classified as loss at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(C) 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;

(D) Any amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts;

(E) 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;

(F) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(G) Any other asset that the Board determines should not qualify as an eligible asset.

(ii) The following rules of valuation apply:

(A) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(B) 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 80 percent, respectively;

(C) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve that would be required for such exposure at a domestically chartered bank is valued at 0 and the residual exposure is valued at 80 percent; and

(D) Real estate located in the United States and carried on the accounting records as an asset are valued at net book value or appraised value, whichever is less.

(2) Liabilities of all U.S. branches and agencies of a foreign banking organization means all liabilities of all U.S. branches and agencies of the foreign banking organization, including acceptances and any other liabilities (including contingent liabilities), but excluding:

(i) 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

(ii) Reserves for possible loan losses and other contingencies.

(3) Pre-provision net revenue means revenue less expenses before adjusting for total loan loss provisions.

(4) Stress test cycle has the same meaning as in subpart F of this part.

(5) 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.

(b) In general. (1) A foreign banking organization with total consolidated assets of more than $50 billion and combined U.S. assets of less than $50 billion must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (b)(2) of this section; and

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

(2) The capital stress testing regime of a foreign banking organization's home-country supervisor must include:

(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 stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization;

(c) Additional standards. (1) Unless the Board otherwise determines in writing, a foreign banking organization that does not meet each of the requirements in paragraphs (b)(1) and (2) of this section must:

(i) Maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 105 percent of the average value over each day of the previous calendar quarter of the total liabilities of all branches and agencies operated by the foreign banking organization in the United States;

(ii) Conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and

(iii) Report on an annual basis a summary of the results of the stress test to the Board that includes 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 aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and 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 an explanation of the most significant causes for any changes in regulatory capital ratios.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (c)(1)(ii) of this section.

Subpart O—Enhanced Prudential Standards for Foreign Banking Organizations with Total Consolidated Assets of $50 Billion or More And Combined U.S. Assets of $50 Billion or More.

§ 252.150 Scope.

This subpart applies to foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more. Foreign banking organizations with combined U.S. assets of $50 billion or more and U.S. non-branch assets of $50 billion or more are also subject to the U.S. intermediate holding company requirement contained in § 252.153.

Total consolidated assets of a foreign banking organization are equal to the consolidated assets of the foreign banking organization. Combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization. U.S. non-branch assets are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary, if applicable).

§ 252.151 [Reserved].

§ 252.152 Applicability.

(a) General applicability. Subject to the initial applicability provisions in paragraph (c) of this section, a foreign banking organization must:

(1) Comply with the requirements of this subpart (other than the U.S. intermediate holding company requirement set forth in § 252.153) beginning on the first day of the ninth quarter following the date on which its combined U.S. assets equal or exceed $50 billion; and

(2) Comply with the U.S. intermediate holding company requirement set forth in § 252.153 beginning on the first day of the ninth quarter following the date on which its U.S. non-branch assets equal or exceed $50 billion.

(b) Asset measures. (1) Combined U.S. assets. Combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization. For purposes of this subpart, "combined U.S. assets" are calculated as the average of the total combined assets of U.S. operations for the four most recent consecutive quarters as reported by the foreign banking organization on the FR Y-7Q, or, if the foreign banking organization has not reported this information on the FR Y-7Q for each of the four most recent consecutive quarters, the average of the combined U.S. assets for the most recent quarter or consecutive quarters as reported on the FR Y-7Q. Combined U.S. assets are measured on the as-of date of the most recent FR Y-7Q used in the calculation of the average.

(2) U.S. non-branch assets. U.S. non-branch assets are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary, if applicable).

(i) For purposes of this subpart, U.S. non-branch assets of a foreign banking organization are calculated as the average of the sum of the total consolidated assets of the top-tier U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary) for the four most recent consecutive quarters, as reported to the Board on the FR Y-7Q, or, if the foreign banking organization has not reported this information on the FR Y-7Q for each of the four most recent consecutive quarters, the average for the most recent quarter or consecutive quarters as reported on the FR Y-7Q.

(ii) In calculating U.S. non-branch assets, a foreign banking organization must reduce its U.S. non-branch assets calculated under this paragraph by the amount corresponding to balances and transactions between a top-tier U.S. subsidiary and any other top-tier U.S. subsidiary (excluding any 2(h)(2) company or DPC branch subsidiary) to the extent such items are not already eliminated in consolidation.

(iii) U.S. non-branch assets are measured on the as-of date of the most recent FR Y-7Q used in the calculation of the average.

(c) Initial applicability. (1) A foreign banking organization that, as of June 30, 2015, has combined U.S. assets of $50 billion or more must comply with the requirements of this subpart, as applicable, beginning on July 1, 2016.

(2) A foreign banking organization that, as of June 30, 2015, has U.S. non-branch assets of $50 billion or more must comply with the requirements of this subpart beginning on July 1, 2016. In addition, the foreign banking organization must:

(i) By July 1, 2016, establish a U.S. intermediate holding company and transfer its entire ownership interest in any bank holding company subsidiary (if not designated as its U.S. intermediate holding company), any insured depository institution subsidiary, and U.S.

subsidiaries holding at least 90 percent of its U.S. non-branch assets not owned by such subsidiary bank holding company or insured depository institution subsidiary, if any, as such assets are measured as of June 30, 2015, to the U.S. intermediate holding company; and

(ii) By July 1, 2017, hold its ownership interest in all U.S. subsidiaries (other than section 2(h)(2) companies and DPC branch subsidiaries) through its U.S. intermediate holding company.

(d) Cessation of requirements. (1) Enhanced prudential standards applicable to the foreign banking organization. Subject to paragraph (d)(2) of this section, a foreign banking organization will remain subject to the applicable requirements of this subpart until its reported combined U.S. assets on the FR Y-7Q are below $50 billion for each of four consecutive calendar quarters.

(2) Intermediate holding company requirement. A foreign banking organization will remain subject to the U.S. intermediate holding company requirement set forth in § 252.153 until the sum of the total consolidated assets of the top-tier U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary) is below $50 billion for each of four consecutive calendar quarters.

§ 252.153 U.S. Intermediate Holding Company Requirement For Foreign Banking Organizations with U.S. Non-Branch Assets of $50 Billion or More.

(a) Requirement to form a U.S. intermediate holding company. (1) A foreign banking organization with U.S. non-branch assets of $50 billion or more must establish a U.S. intermediate holding company, or designate an existing subsidiary that meets the requirements of paragraph (a)(2) of this section, as its U.S. intermediate holding company.

(2) The U.S. intermediate holding company must be:

(i) Organized under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia; and

(ii) Be governed by a board of directors or managers that is elected or appointed by the owners and that operates in an equivalent manner, and has equivalent rights, powers, privileges, duties, and responsibilities, to a board of directors of a company chartered as a corporation under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia.

(3) Notice. Within 30 days of establishing or designating a U.S. intermediate holding company under this section, a foreign banking organization must provide to the Board:

(i) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure;

(ii) A certification that the U.S. intermediate holding company meets the requirements of this subpart; and

(iii) Any other information that the Board determines is appropriate.

(b) Holdings and regulation of the U.S. intermediate holding company. (1) Subject to paragraph (c) of this section, a foreign banking organization that is required to form a U.S. intermediate holding company under paragraph (a) of this section must hold its entire ownership interest in any U.S. subsidiary (excluding each section 2(h)(2) company or DPC branch subsidiary, if any) through its U.S. intermediate holding company.

(2) Reporting. Each U.S. intermediate holding company shall submit information in the manner and form prescribed by the Board.

(3) 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.

(c) Alternative organizational structure. (1) General. Upon a written request by a foreign banking organization, the Board may permit the foreign banking organization: to establish or designate multiple U.S. intermediate holding companies; use an alternative organizational structure to hold its combined U.S. operations; or not transfer its ownership interests in certain subsidiaries to its U.S. intermediate holding company.

(2) Factors. In making a determination under paragraph (c)(1) of this section, the Board may consider whether applicable law would prohibit the foreign banking organization from owning or controlling one or more of its U.S. subsidiaries through a single U.S. intermediate holding company, or whether circumstances otherwise warrant an exception based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

(3) Request. A request under this section to establish or designate multiple U.S. intermediate holding companies must be submitted to the Board 180 days before the foreign banking organization must form a U.S. intermediate holding company. A request not to transfer any ownership interest in a subsidiary must be submitted to the Board either 180 days before the foreign banking organization acquires the ownership interest in such U.S. subsidiary, or in a shorter period of time if permitted by the Board. The request must include a description of why the request should be granted and any other information the Board may require.

(4) Conditions. (i) The Board may grant relief under this section upon such conditions as the Board deems appropriate, including, but not limited to, requiring the U.S. operations of the relevant foreign banking organization to comply with additional enhanced prudential standards, or requiring such foreign banking organization to enter into supervisory agreements governing such alternative organizational structure.

(ii) If the Board permits a foreign banking organization to form two or more U.S. intermediate holding companies under this section and one or more of those U.S. intermediate holding companies does not meet an asset threshold governing applicability of any section of this subpart, such U.S. intermediate holding company shall be required to comply with those subparts as though it met or exceeded the applicable thresholds.

(iii) The Board may modify the application of any section of this subpart to a foreign banking organization that is required to form a U.S. intermediate holding company or to such U.S. intermediate holding company if appropriate to accommodate the organizational structure of the foreign banking organization or characteristics specific to such foreign banking organization and such modification is appropriate and consistent with the capital structure, size, complexity, risk profile, scope of operations, or financial condition of each U.S. intermediate holding company, safety and soundness, and the financial stability mandate of section 165 of the Dodd-Frank Act.

(d) Implementation plan. (1) General. A foreign banking organization must, by January 1, 2015, submit an implementation plan to the Board, if the sum of the total consolidated assets of the U.S. subsidiaries of the foreign banking organization, in aggregate, exceed $50 billion as of June 30, 2014 (excluding any section 2(h)(2) company and DPC branch subsidiary and reduced by amounts corresponding to balances and transactions between a top-tier U.S. subsidiary and any other top-tier U.S. subsidiary (excluding any 2(h)(2) company or DPC branch subsidiary) to the extent such items are not already eliminated in consolidation). The Board may accelerate or extend the date by which the implementation plan must be filed.

(2) Mandatory elements of implementation plan. An implementation plan must contain:

(i) A list of all U.S. subsidiaries controlled by the foreign banking organization setting

forth the ownership interest in each subsidiary and an organizational chart showing the ownership hierarchy;

(ii) For each U.S. subsidiary that is a section 2(h)(2) company or a DPC branch subsidiary, the name, asset size, and a description of why the U.S. subsidiary qualifies as a section 2(h)(2) or a DPC branch subsidiary;

(iii) For each U.S. subsidiary for which the foreign banking organization expects to request an exemption from the requirement to transfer all or a portion of its ownership interest in the subsidiary to the U.S. intermediate holding company, the name, asset size, and a description of the reasons why the foreign banking organization intends to request that the Board grant it an exemption from the U.S. intermediate holding company requirement;

(iv) A projected timeline for the transfer by the foreign banking organization of its ownership interest in U.S. subsidiaries to the U.S. intermediate holding company, and quarterly pro forma financial statements for the U.S. intermediate holding company, including pro forma regulatory capital ratios, for the period from December 31, 2015 to January 1, 2018;

(v) A projected timeline for, and description of, all planned capital actions or strategies for capital accretion that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements set forth in paragraph (e)(2) of this section;

(vi) A description of the risk-management practices of the combined U.S. operations of the foreign banking organization and a description of how the foreign banking organization and U.S. intermediate holding company will come into compliance with § 252.155; and

(vii) A description of the current liquidity stress testing practices of the U.S. operations of the foreign banking organization and a description of how the foreign banking organization and U.S. intermediate holding company will come into compliance with §§ 252.156 and

252.157.

(3) If a foreign banking organization plans to reduce its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, the foreign banking organization may submit a plan that describes how it intends to reduce its U.S. non-branch assets below $50 billion and any other information the Board determines is appropriate, instead of the information described in paragraph (d)(2) of this section.

(4) The Board may require a foreign banking organization that meets or exceeds the threshold for application of this section after June 30, 2014 to submit an implementation plan containing the information described in paragraph (d)(2) of this section if the Board determines that an implementation plan is appropriate.

(e) Enhanced prudential standards for U.S. intermediate holding companies.

(1) Applicability. (i) Ongoing application. Subject to the initial applicability provisions in paragraph (e)(1)(ii) of this section, a U.S. intermediate holding company must comply with the capital, risk management, and liquidity requirements set forth in paragraphs (e)(2) through (4) of this section beginning on the date it is required to be established, and must comply with the stress test requirements set forth in paragraph (e)(5) beginning with the stress test cycle the calendar year following that in which it becomes subject to regulatory capital requirements.

(ii) Initial applicability. (A) General. A U.S. intermediate holding company required to be established by July 1, 2016 must comply with the risk-based capital and capital plan requirements, risk management, and liquidity requirements set forth in paragraphs (e)(2) through (4) of this section beginning on July 1, 2016.

(B) Transition provisions for leverage. (1) A U.S. intermediate holding company required to be established by July 1, 2016 must comply with the leverage capital requirements set

forth in paragraph (e)(2)(i) of this section beginning on January 1, 2018, provided that each subsidiary bank holding company and insured depository institution controlled by the foreign banking organization immediately prior to the establishment or designation of the U.S. intermediate holding company, and each bank holding company and insured depository institution acquired by the foreign banking organization after establishment of the intermediate holding company, is subject to leverage capital requirements under 12 CFR part 217 until December 31, 2017.

(2) The Board may accelerate the application of the leverage ratio to a U.S. intermediate holding company if it determines that the foreign banking organization has taken actions to evade the application of this subpart.

(C) Transition provisions for stress testing. (1) A U.S. intermediate holding company required to be established by July 1, 2016 must comply with the stress test requirements set forth in paragraph (e)(5) of this section beginning on October 1, 2017, provided that each subsidiary bank holding company and insured depository institution controlled by the foreign banking organization immediately prior to the establishment or designation of the U.S. intermediate holding company, and each bank holding company and insured depository institution acquired by the foreign banking organization after establishment of the intermediate holding company, must comply with the stress test requirements in subparts B, E, or F of this subpart, as applicable, until September 30, 2017.

(2) The Board may accelerate the application of the stress testing requirements to a U.S. intermediate holding company if it determines that the foreign banking organization has taken actions to evade the application of this subpart.

(2) Capital requirements for a U.S. intermediate holding company.

(i) Risk-based capital and leverage requirements. (A) A U.S. intermediate holding company must calculate and meet all applicable capital adequacy standards set forth in 12 CFR part 217 and any successor regulation, other than subpart E of 12 CFR part 217 and any successor regulation, and comply with all restrictions associated with applicable capital buffers, in the same manner as a bank holding company.

(B) A U.S. intermediate holding company may choose to comply with subpart E of 12 CFR part 217.

(C) Notwithstanding 12 CFR 217.100(b), if a bank holding company is a subsidiary of a foreign banking organization that is subject to this section and the bank holding company is subject to subpart E of 12 CFR part 217, the bank holding company, with the Board's prior written approval, may elect not to comply with subpart E of 12 CFR 217.

(ii) Capital planning. A U.S. intermediate holding company must comply with section 225.8 of Regulation Y and any successor regulation in the same manner as a bank holding company.

(3) Risk management and risk committee requirements. (i) General. A U.S. intermediate holding company must establish and maintain a risk committee that approves and periodically reviews the risk management policies and oversees the risk-management framework of the U.S. intermediate holding company. The risk committee must be a committee of the board of directors of the U.S. intermediate holding company (or equivalent thereof). The risk committee may also serve as the U.S. risk committee for the combined U.S. operations required pursuant to § 252.155(a).

(ii) Risk-management framework. The U.S. intermediate holding company's risk-management framework must be commensurate with the structure, risk profile, complexity,

activities, and size of the U.S. intermediate holding company and consistent with the risk management policies for the combined U.S. operations of the foreign banking organization. The framework must include:

(A) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the U.S. intermediate holding company; and

(B) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(1) Processes and systems for identifying and reporting risks and risk-management deficiencies at the U.S. intermediate holding company, including regarding emerging risks and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(2) Processes and systems for establishing managerial and employee responsibility for risk management of the U.S. intermediate holding company;

(3) Processes and systems for ensuring the independence of the risk-management function of the U.S. intermediate holding company; and

(4) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the U.S. intermediate holding company.

(iii) Corporate governance requirements. The risk committee of the U.S. intermediate holding company must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(iv) Minimum member requirements. The risk committee must:

(A) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(B) 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 foreign banking organization or its affiliates during the previous three years; and

(2) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(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 foreign banking organization or its affiliates.

(v) The U.S. intermediate holding company must take appropriate measures to ensure that it implements the risk management policies for the U.S. intermediate holding company and it provides sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(4) Liquidity requirements. A U.S. intermediate holding company must comply with the liquidity risk-management requirements in § 252.156 and conduct liquidity stress tests and hold a liquidity buffer pursuant to § 252.157.

(5) Stress test requirements. A U.S. intermediate holding company must comply with the requirements of subparts E and F of this part and any successor regulation in the same manner as a bank holding company.

§ 252.154 Risk-based and Leverage Capital Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

(a) General requirements. (1) A foreign banking organization with combined U.S. assets of $50 billion or more must certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the

regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework).

(i) For purposes of this paragraph, home-country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in "Basel III: A global regulatory framework for more resilient banks and banking systems" (2010) (Basel III Accord), each as applicable and as implemented in accordance with the Basel III Accord, including any transitional provisions set forth therein.

(ii) [Reserved]

(2) In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework were it subject to such standards.

(b) Reporting. A foreign banking organization with combined U.S. assets of $50 billion or more must provide to the Board reports relating to its compliance with the capital adequacy measures described in paragraph (a) of this section concurrently with filing the FR Y-7Q.

(c) Noncompliance with the Basel Capital Framework. If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, 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 State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph,

the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

§ 252.155 Risk-Management and Risk-Committee Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion.

(a) U.S. risk committee. (1) General. Each foreign banking organization with combined U.S. assets of $50 billion or more must maintain a U.S. risk committee that approves and periodically reviews the risk management policies of the combined U.S. operations of the foreign banking organization and oversees the risk-management framework of such combined U.S. operations. The U.S. risk committee's responsibilities include the liquidity risk-management responsibilities set forth in § 252.156(a).

(2) Risk-management framework. The foreign banking organization's risk-management framework for its combined U.S. operations must be commensurate with the structure, risk profile, complexity, activities, and size of its combined U.S. operations and consistent with its enterprise-wide risk management policies. The framework must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the combined U.S. operations of the foreign banking organization; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, on a combined U.S. operations basis and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(B) Processes and systems for establishing managerial and employee responsibility for risk management of the combined U.S. operations;

(C) Processes and systems for ensuring the independence of the risk-management function of the combined U.S. operations; and

(D) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the combined U.S. operations.

(3) Placement of the U.S. risk committee. (i) A foreign banking organization that conducts its operations in the United States solely through a U.S. intermediate holding company must maintain its U.S. risk committee as a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof).

(ii) A foreign banking organization that conducts its operations through U.S. branches or U.S. agencies (in addition to through its U.S. intermediate holding company, if any) may maintain its U.S. risk committee either:

(A) As a committee of the global board of directors (or equivalent thereof), on a standalone basis or as a joint committee with its enterprise-wide risk committee (or equivalent thereof); or

(B) As a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof), on a standalone basis or as a joint committee with the risk committee of its U.S. intermediate holding company required pursuant to § 252.153(e)(3).

(4) Corporate governance requirements. The U.S. risk committee must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(5) Minimum member requirements. The U.S. risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Have at least one member who:

(A) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the foreign banking organization or its affiliates during the previous three years; and

(B) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(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 foreign banking organization or its affiliates.

(b) U.S. chief risk officer. (1) General. A foreign banking organization with combined U.S. assets of $50 billion or more or its U.S. intermediate holding company, if any, must appoint a U.S. chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) Responsibilities. (i) The U.S. chief risk officer is responsible for overseeing:

(A) The measurement, aggregation, and monitoring of risks undertaken by the combined U.S. operations;

(B) The implementation of and ongoing compliance with the policies and procedures for the foreign banking organization's combined U.S. operations set forth in paragraph (a)(2)(i) of

this section and the development and implementation of processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the risk-control framework for the combined U.S. operations, and the monitoring and testing of such risk controls.

(ii) The U.S. chief risk officer is responsible for reporting risks and risk-management deficiencies of the combined U.S. operations, and resolving such risk-management deficiencies in a timely manner.

(3) Corporate governance and reporting. The U.S. chief risk officer must:

(i) Receive compensation and other incentives consistent with providing an objective assessment of the risks taken by the combined U.S. operations of the foreign banking organization;

(ii) Be employed by and located in the U.S. branch, U.S. agency, U.S. intermediate holding company, if any, or another U.S. subsidiary;

(iii) Report directly to the U.S. risk committee and 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, unless the Board approves an alternative reporting structure based on circumstances specific to the foreign banking organization;

(iv) Regularly provide 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 foreign banking organization'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; and

(v) Meet regularly and as needed with the Board to assess compliance with the requirements of this section.

(4) Liquidity risk-management requirements. The U.S. chief risk officer must undertake the liquidity risk-management responsibilities set forth in § 252.156(b).

(c) 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 policies overseen by the U.S. risk committee described in paragraph (a) of this section, 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.

(d) Noncompliance with this section. If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, 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 State or Federal regulator in the implementation of such requirements, conditions, or restrictions.

§ 252.156 Liquidity Risk-management Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion.

(a) Responsibilities of the U.S. risk committee. (1) The U.S. risk committee established by a foreign banking organization pursuant to § 252.155(a) (or a designated subcommittee of such committee composed of members of the board of directors (or equivalent thereof) of the U.S. intermediate holding company or the foreign banking organization, as appropriate) must:

(i) Approve at least annually the acceptable level of liquidity risk that the foreign banking organization may assume in connection with the operating strategies for its combined U.S. operations (liquidity risk tolerance), with concurrence from the foreign banking organization's board of directors or its enterprise-wide risk committee, taking into account the capital structure, risk profile, complexity, activities, size of the foreign banking organization and its combined U.S. operations and the enterprise-wide liquidity risk tolerance of the foreign banking organization; and

(ii) Receive and review information provided by the senior management of the combined U.S. operations at least semi-annually to determine whether the combined U.S. operations are operating in accordance with the established liquidity risk tolerance and to ensure that the liquidity risk tolerance for the combined U.S. operations is consistent with the enterprise-wide liquidity risk tolerance established for the foreign banking organization.

(iii) Approve the contingency funding plan for the combined U.S. operations described in paragraph (e) of this section at least annually and whenever the foreign banking organization revises its contingency funding plan, and approve any material revisions to the contingency funding plan for the combined U.S. operations prior to the implementation of such revisions.

(b) Responsibilities of the U.S. chief risk officer. (1) Liquidity risk. 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 established by senior management of the U.S. operations for managing the risk that the financial condition or safety and soundness of the foreign banking organization's combined U.S. operations would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk).

(2) Liquidity risk tolerance. The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review information provided by the senior management of the U.S. operations to determine whether the combined U.S. operations are operating in accordance with the established liquidity risk tolerance. The U.S. chief risk officer must regularly, and, at least semi-annually, report to the foreign banking organization's U.S. risk committee and enterprise-wide risk committee, or the equivalent thereof (if any) (or a designated subcommittee of such committee composed of members of the relevant board of directors (or equivalent thereof)) on the liquidity risk profile of the foreign banking organization's combined U.S. operations and whether it is operating in accordance with the established liquidity risk tolerance for the U.S. operations, and must establish procedures governing the content of such reports.

(3) Business lines or products. (i) The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product offered, managed or sold through the foreign banking organization's combined U.S. operations that could have a significant effect on the liquidity risk profile of the U.S. operations of the foreign banking organization. The approval is required before the foreign banking organization implements the business line or offers the product through its combined U.S. operations. In determining whether to approve the new business line or product, the U.S. chief risk officer must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(ii) The U.S. risk committee must review at least annually significant business lines and

products offered, managed or sold through the combined U.S. operations to determine whether each business line or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(4) Cash-flow projections. The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review the cash-flow projections produced under paragraph (d) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the foreign banking organization or the U.S. operations warrant) to ensure that the liquidity risk of the foreign banking organization's combined U.S. operations is within the established liquidity risk tolerance.

(5) Liquidity risk limits. The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must establish liquidity risk limits as set forth in paragraph (f) of this section and review the foreign banking organization's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the U.S. operations of the foreign banking organization warrant).

(6) Liquidity stress testing. The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.157(a) at least quarterly, and whenever the foreign banking organization materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.157(a) of this subpart

at least quarterly; and

(iii) Approve the size and composition of the liquidity buffer established under § 252.157(c) of this subpart at least quarterly.

(c) Independent review function. (1) A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain a review function that is 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.

(2) The independent review function must:

(i) Regularly, but 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, including its liquidity stress test processes and assumptions;

(ii) Assess whether the foreign banking organization's liquidity risk management function of its combined U.S. operations complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(iii) Report material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee in writing for corrective action, to the extent permitted by applicable law.

(d) Cash-flow projections.

(1) 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 project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The foreign banking organization must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The foreign banking organization must establish a methodology for making cash-flow projections for its combined U.S. operations that results in projections which:

(i) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding renewals, customer options, and other potential events that may impact liquidity;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash-flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the foreign banking organization and its combined U.S. operations, and include analyses by business line, currency, or legal entity as appropriate.

(e) Contingency funding plan. (1) A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain a contingency funding plan for its combined U.S. operations that sets out the foreign banking organization'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 the established liquidity risk tolerance for the combined U.S. operations. The foreign banking organization must update the contingency funding plan for its combined U.S. operations at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) Components of the contingency funding plan. (i) Quantitative assessment. The contingency funding plan for the combined U.S. operations must:

(A) Identify liquidity stress events that could have a significant impact on the liquidity of

the foreign banking organization and its combined U.S. operations;

(B) 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;

(C) Identify the circumstances in which the foreign banking organization would implement its action plan described in paragraph (e)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board on the foreign banking organization's U.S. operations;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.157(a) of this subpart.

(ii) Liquidity event management process. The contingency funding plan for the combined U.S. operations must include an event management process that sets out the foreign banking organization's procedures for managing liquidity during identified liquidity stress events for the combined U.S. operations. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies that the foreign banking organization 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;

(B) Identify a liquidity stress event management team that would execute the action plan

in paragraph (e)(2)(i) of this section for the combined U.S. operations;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) 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.

(iii) Monitoring. The contingency funding plan for the combined U.S. operations 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, and size of the foreign banking organization and its combined U.S. operations.

(iv) Testing. A foreign banking organization must periodically test:

(A) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(B) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(C) 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.

(f) Liquidity risk limits. (1) General. A foreign banking organization with combined U.S. assets of $50 billion or more must monitor sources of liquidity risk and establish limits on liquidity risk for the combined U.S. operations, including limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty,

counterparty type, secured and unsecured funding, and if applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(2) Size of limits. Each limit established pursuant to paragraph (f)(1) of this section must be consistent with the established liquidity risk tolerance for the combined U.S. operations and reflect the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations.

(g) Collateral, legal entity, and intraday liquidity risk monitoring. A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) Collateral. The foreign banking organization must establish and maintain policies and procedures to monitor assets that have been or are available to be pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties. These policies and 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), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the foreign banking organization's funding patterns, including 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).

(2) Legal entities, currencies and business lines. The foreign banking organization must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs of its combined U.S. operations, within and across significant legal entities, currencies, and business lines and taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) Intraday exposure. The 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:

(i) Monitor and measure expected daily inflows and outflows;

(ii) Maintain, manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Control the issuance of credit to customers where necessary; and

(v) 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.

§ 252.157 Liquidity Stress Testing and Buffer Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion.

(a) Liquidity stress testing requirement. (1) General. (i) A foreign banking organization with combined U.S. assets of $50 billion or more must conduct stress tests to

separately assess the potential impact of liquidity stress scenarios on the cash flows, liquidity position, profitability, and solvency of:

(A) Its combined U.S. operations as a whole;

(B) Its U.S. branches and agencies on an aggregate basis; and

(C) Its U.S. intermediate holding company, if any.

(ii) Each liquidity stress test required under this paragraph (a)(1) must use the stress scenarios described in paragraph (a)(3) of this section and take into account the current liquidity condition, risks, exposures, strategies, and activities of the U.S. operations.

(iii) The liquidity stress tests required under this paragraph (a)(1) must take into consideration the balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure and other characteristics of the foreign banking organization and its combined U.S. operations that affect the liquidity risk profile of the U.S. operations.

(iv) In conducting a liquidity stress test using the scenarios described in paragraphs (a)(3)(i) and (iii) of this section, the bank holding company must address the potential direct adverse impact of associated market disruptions on the foreign banking organization's combined U.S. operations and the related indirect effect such impact could have on the combined U.S. operations of the foreign banking organization and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would adversely affect the foreign banking organization or its combined U.S. operations.

(2) Frequency. The liquidity stress tests required under paragraph (a)(1) of this section must be performed at least monthly. The Board may require the foreign banking organization to perform stress testing more frequently than monthly.

(3) Stress scenarios. Each liquidity stress test conducted under paragraph (a)(1) of this

section must include, at a minimum: (i) a scenario reflecting adverse market conditions; (ii) a scenario reflecting an idiosyncratic stress event for the U.S. branches/agencies and the U.S. intermediate holding company, if any, and (iii) a scenario reflecting combined market and idiosyncratic stresses. The foreign banking organization must incorporate additional liquidity stress scenarios into its liquidity stress test as appropriate based on the financial condition, size, complexity, risk profile, scope of operations, or activities of the combined U.S. operations, the U.S. branches and agencies, and the U.S. intermediate holding company, as applicable. The Board may require the foreign banking organization to vary the underlying assumptions and stress scenarios.

(4) Planning horizon. Each stress test conducted under paragraph (a)(1) of this section must include an overnight planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the liquidity risk profile of the combined U.S. operations, the U.S. branches and agencies, and the U.S. intermediate holding company, if any. For purposes of this section, a "planning horizon" is the period over which the relevant stressed projections extend. The foreign banking organization must use the results of the stress test over the 30-day planning horizon to calculate the size of the liquidity buffers under paragraph (c) of this section.

(5) Requirements for assets used as cash-flow sources in a stress test. (i) To the extent an asset is used as a cash flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during the planning horizon must be diversified by collateral, counterparty, borrowing capacity, or other factors associated with the liquidity risk of

the assets.

(iii) A line of credit does not qualify as a cash flow source for purposes of a stress test with a planning horizon of 30 days or less. A line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days.

(6) Tailoring. Stress testing must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations of the foreign banking organization and, as appropriate, the foreign banking organization as a whole.

(7) Governance. (i) 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 governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) Controls and oversight. The foreign banking organization must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity 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 U.S. chief risk officer and subject to independent review consistent with the standards set out in § 252.156(c).

(iii) Management information systems. The 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.

(b) Reporting of liquidity stress tests required by home-country regulators. A foreign banking organization with combined U.S. assets of $50 billion or more must make available to the Board, in a timely manner, the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction. The report required under this paragraph must include the results of its liquidity stress test and liquidity buffer, if required by the laws or regulations implemented in the home jurisdiction, or expected under supervisory guidance.

(c) Liquidity buffer requirement. (1) General. A foreign banking organization with combined U.S. assets of $50 billion or more must maintain a liquidity buffer for its U.S. intermediate holding company, if any, calculated in accordance with paragraph (c)(2) of this section, and a separate liquidity buffer for its U.S. branches and agencies, if any, calculated in accordance with paragraph (c)(3) of this section.

(2) Calculation of U.S. intermediate holding company buffer requirement. (i) The liquidity buffer for the U.S. intermediate holding company must be sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraphs (a)(3)(i) through (iii).

(ii) Net stressed cash-flow need. The net stressed cash-flow need for the U.S. intermediate holding company is equal to the sum of its net external stressed cash-flow need

(calculated pursuant to paragraph (c)(2)(iii) of this section) and its net internal stressed cash-flow need (calculated pursuant to paragraph (c)(2)(iv) of this section) over the 30-day planning horizon.

(iii) Net external stressed cash-flow need calculation. 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.

(iv) Net internal stressed cash-flow need calculation. (A) General. The net internal stressed cash-flow need for the U.S. intermediate holding company equals the greater of:

(1) The greatest daily cumulative net intragroup cash-flow need over the 30-day planning horizon as calculated under paragraph (c)(2)(iv)(B) of this section; and

(2) Zero.

(B) Daily cumulative net intragroup cash-flow need calculation. The daily cumulative net intragroup cash-flow need for the U.S. intermediate holding company for purposes of paragraph (c)(2)(iv)(A) of this section is calculated as follows:

(1) Daily cumulative net intragroup cash-flow need. For any given day in the stress-test horizon, the daily cumulative net intragroup cash-flow need is a daily cumulative net intragroup cash flow that is greater than zero.

(2) Daily cumulative net intragroup cash flow. For any given day of the planning horizon, the daily cumulative net intragroup cash flow equals the sum of the net intragroup cash flow calculated for that day and the net intragroup cash flow calculated for each previous day of

the stress-test horizon, as calculated in accordance with paragraph (c)(2)(iv)(C) of this section.

(C) Net intragroup cash flow. For any given day of the stress-test horizon, the net intragroup cash flow equals the difference between:

(1) The amount of cash-flow needs resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency) for that day of the planning horizon; and

(2) The amount of cash-flow sources resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency) for that day of the planning horizon.

(D) Amounts secured by highly liquid assets. For the purposes of calculating net intragroup cash flow under this paragraph, the amounts of intragroup cash-flow needs and intragroup cash-flow sources that are secured by highly liquid assets (as defined in paragraph (c)(7) of this section) must be excluded from the calculation.

(3) Calculation of U.S. branch and agency liquidity buffer requirement. (i) The liquidity buffer for the foreign banking organization's U.S. branches and agencies must be sufficient to meet the projected net stressed cash-flow need of the U.S. branches and agencies over the first 14 days of a stress test with a 30-day planning horizon, conducted in accordance with paragraph (a) of this section under the scenarios described in paragraph (a)(3)(i) through (iii) of this section.

(ii) Net stressed cash-flow need. The net stressed cash-flow need of the U.S. branches and agencies of a foreign banking organization is equal to the sum of its net external stressed cash-flow need (calculated pursuant to paragraph (c)(3)(iii) of this section) and net internal stressed cash-flow need (calculated pursuant to paragraph (c)(3)(iv) of this section) over the first 14 days of the 30-day planning horizon.

(iii) Net external stressed cash-flow need calculation. (A) The net external stressed cash-flow need of the U.S. branches and agencies equals the difference between:

(1) The projected amount of cash-flow needs that results from transactions between the U.S. branches and agencies and entities other than the foreign bank's non-U.S. offices and its U.S. and non-U.S. affiliates; and

(2) The projected amount of cash-flow sources that results from transactions between the U.S. branches and agencies and entities other than the foreign bank's non-U.S. offices and its U.S. and non-U.S. affiliates.

(iv) Net internal stressed cash-flow need calculation. (A) General. The net internal stressed cash-flow need of the U.S. branches and agencies of the foreign banking organization equals the greater of:

(1) The greatest daily cumulative net intragroup cash-flow need over the first 14 days of the 30-day planning horizon, as calculated under paragraph (c)(3)(iv)(B) of this section; and

(2) Zero.

(B) Daily cumulative net intragroup cash-flow need calculation. The daily cumulative net intragroup cash-flow need of the U.S. branches and agencies of a foreign banking organization for purposes of paragraph (c)(3)(iv) of this section is calculated as follows:

(1) Daily cumulative net intragroup cash-flow need. For any given day of the stress-test horizon, the daily cumulative net intragroup cash-flow need of the U.S. branches and agencies means a daily cumulative net intragroup cash flow that is greater than zero.

(2) Daily cumulative net intragroup cash flow. For any given day of the planning horizon, the daily cumulative net intragroup cash flow of the U.S. branches and agencies equals the sum of the net intragroup cash flow calculated for that day and the net intragroup cash flow

calculated for each previous day of the planning horizon, each as calculated in accordance with this paragraph (c)(3)(iv)(C) of this section.

(C) Net intragroup cash flow. For any given day of the planning horizon, the net intragroup cash flow must equal the difference between:

(1) The amount of projected cash-flow needs resulting from transactions between a U.S. branch or U.S. agency and the foreign bank's non-U.S. offices and its affiliates; and

(2) The amount of projected cash-flow sources resulting from transactions between a U.S. branch or U.S. agency and the foreign bank's non-U.S. offices and its affiliates.

(D) Amounts secured by highly liquid assets. For the purposes of calculating net intragroup cash flow of the U.S. branches and agencies under this paragraph, the amounts of intragroup cash-flow needs and intragroup cash-flow sources that are secured by highly liquid assets (as defined in paragraph (c)(7) of this section) must be excluded from the calculation.

(4) Location of liquidity buffer. (i) 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 banking organization or other affiliate that is not controlled by the U.S. intermediate holding company.

(ii) U.S. branches and agencies. The U.S. branches and agencies of a foreign banking organization 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 the foreign banking organization's U.S. intermediate holding company or other affiliate.

(7) Asset requirements. The liquidity buffer required in this section for the U.S. intermediate holding company or the U.S. branches and agencies must consist of highly liquid assets that are unencumbered, as set forth below:

(i) Highly liquid asset. The asset must be a highly liquid asset. For these purposes, a highly liquid asset includes:

(A) Cash;

(B) Securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise; or

(C) Any other asset that the foreign banking organization demonstrates to the satisfaction of the Board:

(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 has been impaired.

(ii) Unencumbered. The asset must be unencumbered. For these purposes, an asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(1) Not pledged or used to secure or provide credit enhancement to any transaction; or

(2) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) Calculating the amount of a highly liquid asset. In calculating the amount of a highly liquid asset included in the liquidity buffer, the bank holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) Diversification. The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the foreign banking organization's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

§ 252.158 Capital Stress Testing Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Eligible asset means any asset of the U.S. branch or U.S. agency held in the United States that is recorded on the general ledger of a U.S. branch or U.S. agency of the foreign banking organization (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets), subject to the following exclusions, and, for purposes of this definition, as modified by the rules of valuation set forth in paragraph (a)(1)(ii) of this section.

(i) The following assets do not qualify as eligible assets:

(A) Equity securities;

(B) Any assets classified as loss at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(C) 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;

(D) Any amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts;

(E) 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;

(F) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(G) Any other asset that the Board determines should not qualify as an eligible asset.

(ii) The following rules of valuation apply:

(A) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(B) 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 80 percent, respectively;

(C) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve that would be required for such exposure at a domestically chartered bank is valued at 0 and the residual exposure is valued at 80 percent; and

(D) Real estate located in the United States and carried on the accounting records as an asset are valued at net book value or appraised value, whichever is less.

(2) Liabilities of all U.S. branches and agencies of a foreign banking organization means

all liabilities of all U.S. branches and agencies of the foreign banking organization, including acceptances and any other liabilities (including contingent liabilities), but excluding:

(i) 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

(ii) Reserves for possible loan losses and other contingencies.

(3) Pre-provision net revenue means revenue less expenses before adjusting for total loan loss provisions.

(4) Stress test cycle has the same meaning as in subpart F of this part.

(5) 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.

(b) In general. (1) A foreign banking organization with combined U.S. assets of $50 billion or more and that has a U.S. branch or U.S. agency must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (b)(2) of this section;

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests; and

(iii) Provide to the Board the information required under paragraph (c) of this section.

(2) The capital stress testing regime of a foreign banking organization's home-country supervisor must include:

(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 stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization;

(c) Information requirements. (1) In general. A foreign banking organization with combined U.S. assets of $50 billion or more must report to the Board by January 5 of each calendar year, unless such date is extended by the Board, summary information 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 any changes in regulatory capital ratios.

(2) Additional information required for foreign banking organizations in a net due from position. If, on a net basis, the U.S. branches and agencies of a foreign banking organization

with combined U.S. assets of $50 billion or more provide funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking organization must report the following information to the Board by January 5 of each calendar year, unless such date is extended by the Board:

(i) A detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, and changes in capital positions;

(ii) Estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; and loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by material sub-portfolio; and

(iii) Any additional information that the Board requests.

(d) Imposition of additional standards for capital stress tests. (1) Unless the Board otherwise determines in writing, a foreign banking organization that does not meet each of the requirements in paragraph (b)(1) and (2) of this section must:

(i) Maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 108 percent of the average value over each day of the previous calendar quarter of the total liabilities of all U.S. branches and agencies of the foreign banking organization; and

(ii) To the extent that a foreign banking organization has not established a U.S. intermediate holding company, conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and report to the Board on an annual basis a summary of the results of the stress test that includes the information required under paragraph (b)(1) of this section and any other information specified by the Board.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (d)(1)(ii) of this section.

(3) Intragroup funding restrictions or liquidity requirements for U.S. operations. If a foreign banking organization does not meet each of the requirements in paragraphs (b)(1) and (2) of this section, the Board may require the U.S. branches and agencies of the foreign banking organization and, if the foreign banking organization has not established a U.S. intermediate holding company, any U.S. subsidiary of the foreign banking organization, to maintain a liquidity buffer or be subject to intragroup funding restrictions.

(e) Notice and response. If the Board determines to impose one or more conditions under paragraph (d)(3) of this section, the Board will notify the company before it applies the condition, and describe the basis for imposing the condition. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement. The Board will respond in writing to the company's request for reconsideration prior to applying the condition.

Subpart P—[Reserved]

Subpart Q—[Reserved]

Subpart R—[Reserved]

Subpart S—[Reserved]

Subpart T—[Reserved]

Subpart U—Debt-to-Equity Limits for U.S. Bank Holding Companies and Foreign Banking Organizations

§ 252.220 Debt-to-Equity Limits for U.S. Bank Holding Companies

(a) Definitions.

(1) Debt-to-equity ratio means the ratio of a company's total liabilities to a company's total equity capital less goodwill.

(2) Debt and equity have the same meaning as "total liabilities" and "total equity capital," respectively, as reported by a bank holding company on the FR Y-9C.

(b) Notice and maximum debt-to-equity ratio requirement. The Council, or the Board on behalf of the Council, will provide written notice to a bank holding company to the extent that the Council makes a determination, pursuant to section 165(j) of the Dodd-Frank Act, that a bank holding company 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. Beginning no later than 180 days after receiving written notice from the Council or from the Board on behalf of the Council, the bank holding company must achieve and maintain a debt-to-equity ratio of no more than 15-to-1.

(c) Extension. The Board may, upon request by the bank holding company 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 (b) for up to two additional periods of 90 days each, if the Board determines that the identified 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 bank holding 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.

(d) Termination. The debt-to-equity ratio requirement in paragraph (b) shall cease to apply to a bank holding company as of the date it receives notice from the Council of a determination that the bank holding 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.

§ 252.221 Debt-to-Equity Limits for Foreign Banking Organizations.

(a) Definitions. For purposes of this subpart, the following definitions apply:

(1) 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.

(2) Debt-to-equity ratio means the ratio of total liabilities to total equity capital less goodwill.

(3) Eligible assets and liabilities of all U.S. branches and agencies of a foreign bank have the same meaning as in § 252.158(a).

(b) 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, or if the foreign banking organization has not established a U.S. intermediate holding company, and any U.S. subsidiary (excluding any section 2(h)(2) company or DPC branch subsidiary, if applicable), must achieve and maintain a debt-to-equity ratio of no more than 15-to-1; and

(2) The U.S. branches and agencies of the foreign banking organization must maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 108 percent of the average value over each day of the previous calendar quarter of the total liabilities of all branches and agencies operated by the foreign banking organization in the United States.

(c) Extension. The Board may, upon request by a 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 (b) 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 foreign banking organization has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest.

(d) Termination. The requirements in paragraph (b) 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 (b) of this section are no longer necessary.