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Robert deV. Frierson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Unsecured Debt of Systemically Important U.S. Bank Holding Companies

Ladies and Gentlemen:

The Institute of International Bankers ("IIB") appreciates the opportunity to provide comments on the recent proposal (the "Proposed Rules") by the Board of Governors of the Federal Reserve System (the "Board") regarding total loss-absorbing capacity ("TLAC"), long-term debt ("LTD") and clean holding company requirements for systemically important U.S. bank holding companies ("Covered BHCs") and the intermediate holding companies ("Covered IHCs") of systemically important foreign banking organizations ("FBOs").[1]

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of FBOs that conduct banking operations in the United States through branches and agencies and bank subsidiaries, and nonbanking operations through subsidiaries such as commercial lending firms, broker-dealers, investment advisers and insurance companies.

[1] 80 Fed. Reg. 74926 (November 30, 2015).

In the aggregate, our members' U.S. operations have approximately $5 trillion in assets, fund 25% of all commercial and industrial bank loans made in this country and contribute to the depth and liquidity of U.S. financial markets. Our members also contribute more than $50 billion each year to the economies of major cities across the country in the form of investments, employee compensation, contributions to local and national charities, tax payments to local, state and federal authorities and other operating and capital expenditures.

The IIB supports the work that the Board and other authorities have done to develop credible strategies for the orderly resolution of global systemically important banks ("G-SIBs"), and we recognize the utility of a TLAC framework as a mechanism to facilitate the execution of those strategies on a cross-border basis. Our comments on the Proposed Rules are focused primarily on aspects that apply to Covered IHCs and the requirement for FBOs to preposition loss-absorbing capacity in the United States.

Since the recent financial crisis, the FBO parents of Covered IHCs have taken significant steps to enhance their ability to withstand losses and ensure that they would be resolvable were the need to arise. These steps include significantly increasing capitalization levels and liquidity resources, simplifying organizational structures, streamlining business mixes and enhancing affiliate and third-party service arrangements. Through their home country and U.S. resolution planning processes, these FBOs are demonstrating that they are resolvable on a global basis, and that their U.S. operations are separately resolvable on a stand-alone basis. The IIB supports the TLAC standards developed by the Financial Stability Board (the "FSB")[2] as a means of reinforcing these changes and promoting durable structures that improve the resolvability of G-SIBs.

The Proposed Rules equate the risks posed to U.S. financial stability by Covered IHCs with those of Covered BHCs, rather than those of similarly sized non-G-SIB U.S.-headquartered institutions, which would not be to subject to any minimum TLAC requirement. Were the Covered IHCs standalone entities, they would not be subject to the requirements under the Proposed Rules, implying—counterintuitively—that ownership by and support from a foreign parent somehow increases their potential risk to U.S. financial stability. The resulting onerous TLAC requirements put Covered IHCs at a significant competitive disadvantage compared with comparably sized non-G-SIB U.S. bank holding companies, many of which are direct competitors of Covered IHCs.

We recognize that the imposition of TLAC requirements involves a basic trade-off: higher requirements may achieve more orderly resolutions that minimize disruptions to financial stability, but if the requirements are set too high then affected institutions will be limited in their ability to provide credit and other forms of financial intermediation to the economy. The calibration of internal TLAC involves this same basic consideration for the host country economy, and the consequences would be exacerbated if TLAC requirements introduced

[2] FSB, "Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet" (the "FSB Standards").

competitive disparities between similarly situated institutions, distinguished only by their form of ownership and affiliation with other financial institutions.

The calibration of internal TLAC introduces another trade-off. If internal TLAC requirements are set too high, the effects could include having pre-positioned TLAC resources in the wrong jurisdiction when the foreign parent approaches resolution, and impairing the types of home-host country supervisory cooperation in a cross-border resolution that TLAC requirements were meant to promote. The Board discusses the need to avoid such "misallocation risk" associated with prepositioned resources in the context of a domestic internal TLAC requirement, but the same concerns arise if an FBO prepositions excessive resources in a single jurisdiction at the expense of flexibility to address losses in other jurisdictions.[3]

An additional concern is that other jurisdictions will follow the Board's lead and impose prepositioning requirements that are higher than necessary to ensure home-host cooperation during resolution. As the first articulation of a national internal TLAC requirement, the Proposed Rules' excessively high calibration levels could result in similarly high levels of prepositioning in other jurisdictions, limiting the ability of G-SIBs—including those headquartered in the United States—to flexibly respond to losses in different jurisdictions and potentially making them less resilient. The Board should instead use its leadership to promote an approach to internal TLAC that achieves a balanced global result that ensures resilience at the international level, which ultimately will better protect the U.S. financial system.

Appropriate calibration of internal TLAC requirements is therefore critical to avoid these counterproductive results.

Executive Summary

While supportive of the overall objectives of the FSB Standards and the Proposed Rules, we believe the Proposed Rules conflate the distinctly different purpose of external and internal TLAC, and we have several fundamental concerns about how the Board proposes to implement the FSB Standards in the United States.

In our view, the Proposed Rules would impose excessive costs on Covered IHCs, unduly constrain Covered IHCs' ability to participate in U.S. credit and financial markets, lead to competitive disparities and unfair treatment in international banking without commensurate

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3 See 80 Fed. Reg. at 74949 (discussing the difference between "contributable" and "prepositioned" resources, the Board explains that the "principal benefit of contributable resources is that they avoid the 'misallocation risk' associated with prepositioned resources: Whereas an investment that has been prepositioned with a particular subsidiary cannot easily be used to recapitalize a different subsidiary that incurs unexpectedly high losses, contributable resources can be flexibly allocated among subsidiaries in light of the losses they suffer.").

benefits to resolvability or U.S. financial stability, limit, rather than promote, home-host coordination in a cross-border resolution of an FBO and potentially make FBOs less resilient.

For Covered IHCs whose parent FBOs have a single-point-of-entry ("SPOE") resolution strategy ("SPOE IHCs"), our principal objections relate to the calibration of the internal TLAC requirements in the Proposed Rules, including the calibration level and the Board's proposed methodology, the requirement for a fixed portion of internal TLAC to be internal LTD and the overly restrictive requirements for eligible TLAC and LTD instruments, such as the requirement that LTD contain a contractual conversion trigger. We also recommend that the Board allow for a portion of internal TLAC to be satisfied through legally binding guarantees or contribution agreements, which could provide strong support both during periods of stress and in resolution.

For Covered IHCs whose parent FBOs have a multiple-point-of-entry ("MPOE") resolution strategy ("MPOE IHCs") we have similar concerns with the Board's calibration, as well as a more fundamental objection to the concept of forcing MPOE IHCs to maintain internal TLAC issued solely to a parent entity, which would be inconsistent with the design of an MPOE strategy.

A. Concerns Regarding the Basic Approach of the Proposed Rules for Covered IHCs

The Proposed Rules appear to have been developed in the first instance with Covered BHCs in mind, and the application of internal TLAC requirements to Covered IHCs appears to represent an attempt to retrofit the Covered BHC framework for Covered IHCs. In several places, the preamble notes that the justifications for imposing internal TLAC requirements on Covered IHCs are the same as those for external TLAC requirements applied to Covered BHCs.

We understand that the Board intends to regulate IHCs in a manner similar to U.S. BHCs, but in our view this aspect of the Proposed Rules ignores essential differences in the purposes that internal and external TLAC are designed to serve, as reflected in the FSB Standards.

- External TLAC is a tool to support the recovery and resolution of entities that, in accordance with the resolution strategy for a G-SIB, would be subject to resolution powers during resolution. Here, the primary driver of the calibration of a TLAC requirement is the size of the G-SIB and the potential losses it might incur during recovery and resolution.

- By contrast, internal TLAC is applied to material subgroups of a G-SIB that are expected not to be the subject of resolution powers during the resolution of the G-SIB. The primary purpose of this prepositioning is to "facilitate co-operation between home and host authorities and the implementation of effective cross-border resolution strategies."[4] Accordingly, internal TLAC calibration levels should be gauged to facilitate home-host cooperation and should not necessarily be based on assumed stand-alone losses at an SPOE IHC.

The Proposed Rules appear to conflate these two distinct purposes and, as a result, would establish unnecessarily high calibration levels for internal TLAC based on the need to absorb losses during the separate resolution of the Covered IHC, even for SPOE IHCs. With respect to MPOE IHCs, the Proposed Rules would depart from the fundamental distinctions of the FSB Standards in a different way—by subjecting the MPOE IHCs to an internal-only TLAC requirement, requiring all of their TLAC and LTD instruments to be held by a foreign parent.

In our view, the Proposed Rules' imposition of an internal LTD requirement is also inconsistent with the purpose of internal TLAC. First, the stated purpose of the LTD requirement in the preamble is to end too-big-to-fail. Applying this requirement to Covered IHCs highlights the fundamental problem with retrofitting the requirements applicable to Covered BHCs for Covered IHCs because Covered IHCs, which are far smaller, cannot be reasonably equated with Covered BHCs in terms of systemic risk profile or resolvability.

In addition, the preamble to the Proposed Rules makes clear that the Board is attempting to facilitate two distinct approaches to the resolution of SPOE IHCs. The first treats such IHCs as <u>non-resolution entities</u> that would continue as going concerns during the resolution of their parent FBOs. This approach is consistent with the FBOs' global resolution strategies and the FSB Standards' approach to internal TLAC. The second, which the Board describes as a "contingency," treats such IHCs as <u>resolution entities</u> that would enter proceedings in the United States. This approach is contrary to both the FBOs' global resolution strategies and the FSB Standards.

The Board's attempt to accommodate both approaches to resolution has resulted in contradictory requirements that only serve to increase the complexity of the Proposed Rules and the cost of compliance. In particular, the LTD requirement is justified solely by reference to the "contingency" of an SPOE IHC entering proceedings and the desire to convert LTD into equity in such proceedings. By contrast, the requirement that such LTD contain a contractual feature allowing the Board to convert the LTD to equity <u>outside</u> of insolvency proceeding is justified as necessary to enable the Board to ensure it can avoid a separate insolvency proceeding for an IHC. As we describe below, neither LTD nor a conversion feature are necessary to ensure an SPOE IHC can withstand losses and avoid a separate resolution. While SPOE IHCs would likely use internal LTD to meet some of their TLAC requirements, there is no need for a separate requirement that Covered IHCs hold a specified minimum level of internal LTD when other TLAC instruments (such as equity or preferred stock) would be equally loss absorbing. We therefore urge the Board to streamline its approach to internal TLAC in a way that is consistent

[4] FSB Standards, Term Sheet Section 16. Internal TLAC, p. 17.

with the resolution strategies of SPOE IHCs and the FSB Standards and eliminate the internal LTD requirement.

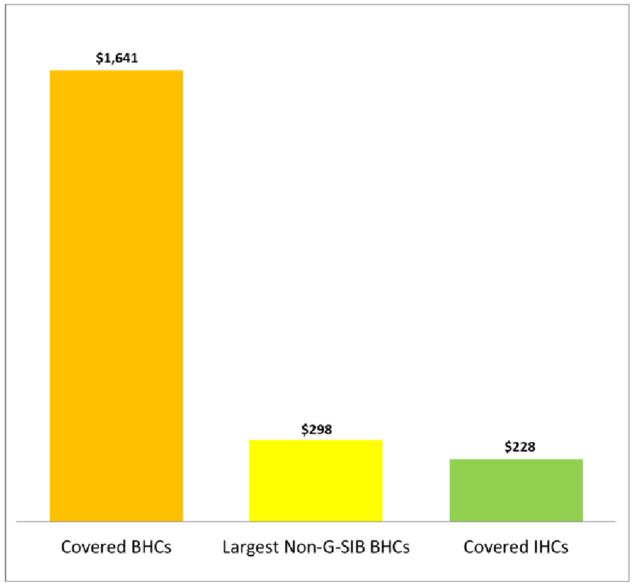
B. Failure to Consider Covered IHCs' U.S. Systemic Risk Profile

The Proposed Rules apply to Covered IHCs as though they pose the same level of risk to U.S. financial stability as Covered BHCs or could be considered "too big to fail." The internal TLAC calibration for MPOE IHCs is identical to the calibration for Covered BHCs (taking into account that IHCs are not subject to the enhanced supplementary leverage ratio or the G-SIB surcharge), while the Board describes the calibration for SPOE IHCs as only "slightly lower." In our view, this approach grossly overstates the potential risks of Covered IHCs and results in TLAC calibration levels that are excessive.

Covered IHCs should instead be treated more like non-G-SIB U.S. bank holding companies, none of which would be subject to TLAC or LTD requirements under the Proposed Rules. Figure 1 below illustrates this point by showing the relative size and significance of Covered IHCs, based on consolidated, U.S. non-branch assets, in relation to Covered BHCs and the five largest non-G-SIB U.S. bank holding companies. The scale of the operations of Covered IHCs are a fraction of those of Covered BHCs (other than those Covered BHCs that were designated as G-SIBs primarily based on their custodial bank activities, which is not a relevant consideration for Covered IHCs), with the largest Covered IHC having consolidated assets that are less than 40% of the consolidated assets of such Covered BHCs. Although some Covered IHCs are important providers of financial services in certain sectors, they cannot be equated with Covered BHCs. Likewise, Covered IHCs are less complex and interconnected than Covered BHCs. As demonstrated by Figure 1, the systemic footprints of the Covered IHCs are much more comparable to those of the largest non-G-SIB U.S. bank holding companies. However, even though Covered IHCs are much more similar to non-G-SIB U.S. bank holding companies, under the Proposed Rules, such non-G-SIB U.S. bank holding companies would not be subject to any minimum TLAC requirements, whereas Covered IHCs may have to maintain effective levels of internal TLAC as high as 25.5% of risk weighted-assets ("RWA"), as discussed in Section II.B.

The Proposed Rules also ignore the many other ways in which the potential threats to U.S. financial stability posed by Covered IHCs already are being addressed, including the capital, liquidity, stress testing and risk management requirements of the Board's enhanced prudential standards ("Enhanced Prudential Standards"),[5] as well as the early remediation framework being developed by the Board for Covered IHCs. Together, these prudential standards are more stringent than those applicable to material subgroups located in any other host jurisdiction. To ensure effective home-host supervisory coordination, internal TLAC requirements in particular must be evaluated in the broader context of the comprehensive regulatory regime already applicable to Covered IHCs.

Figure 1: Comparison of Consolidated Assets of Covered BHCs, Largest Non-G-SIB U.S. BHCs and Covered IHCs (in billion USD)



For information about the source of the data in this chart as well as additional information about these categories of entities, see Figure 2 and the accompanying discussion in Section I.A.

The Board should follow the approach described by the FSB Standards and establish internal TLAC calibration levels only for SPOE IHCs and based only on the need to ensure home-host cooperation. Doing so should result in significantly lower calibration levels, as both the FBO parents of SPOE IHCs and their home authorities have significant structural incentives to support the IHC during both periods of stress and resolution. In establishing the internal TLAC levels, the Proposed Rules correctly exclude the effects of the G-SIB surcharge and the enhanced supplementary leverage ratio requirements (the external TLAC calibration less such exclusions, the "Equivalent External TLAC"). However, in our view, internal TLAC calibration levels should be no higher than 75% of the Equivalent External TLAC requirement, the low end of the range provided under the FSB Standards.[6] These levels should be further decreased on an institution-specific basis for a Covered IHC based on individual characteristics that reduce the potential risks to U.S. financial stability or based on characteristics of the Covered IHC's home regulatory regime that increase the likelihood of home-host cooperation.

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[5] Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17240 (Mar. 27, 2014).

[6] See Annex I for more detail on how we developed our proposed internal TLAC calibrations.

C. Inconsistency and Complexity in the Board's Calibration Methodologies Leading to Substantial Super-equivalence

We also have specific concerns regarding the methodologies the Board has proposed for calculating internal TLAC and LTD requirements for Covered IHCs. For example, in establishing the internal LTD calibration levels, the Board did not apply the "balance sheet depletion" methodology that it used for determining the calibration levels for Covered BHCs' external LTD. In the context of determining external LTD calibration levels, the Board correctly recognized that the balance sheet for an entity in resolution would be reduced, or "depleted," due to losses. However, the internal LTD calibration levels fail to reflect such a balance sheet depletion. Regardless of whether the Board re-calibrates the internal TLAC requirement more generally, it should at least give Covered IHCs the benefit of the adjustment for asset depletion.

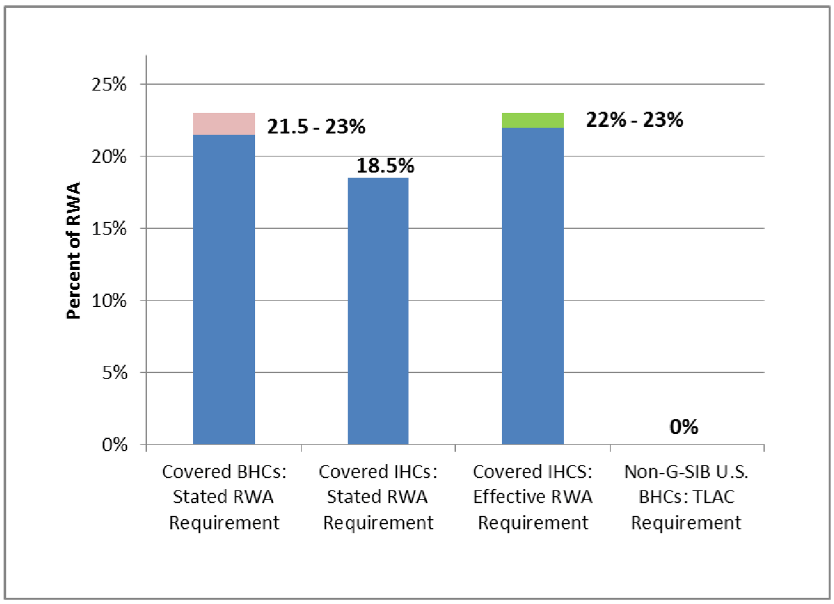
Further, the Board appears to have established LTD calibration levels for Covered IHCs, as compared to Covered BHCs, inconsistently. While the Proposed Rules would set the leverage components of the internal LTD requirement at approximately 90% of that for external LTD, it provides effectively no reduction for the RWA component. Instead, the RWA threshold and the leverage thresholds should each be reduced by the same percentage to reflect this consistency.

The Proposed Rules would also unnecessarily subject certain Covered IHCs to two separate leverage thresholds, one based on the U.S. Tier 1 leverage ratio, the other on the supplementary leverage ratio ("SLR") (in addition to an RWA threshold). Especially because the de facto buffer that institutions will manage above will be compounded by the number of minimums, the Board should simplify the calibration thresholds by clarifying in the final rule that, if a Covered IHC is subject to the SLR, it would be subject to only the SLR-based component of the leverage threshold.

The interplay of these multiple factors could result in an effective calibration for internal TLAC that is significantly higher than what is proposed in the FSB Standards. In addition, the stated levels in the Proposed Rules obscure what the effective levels of TLAC will be since they do not demonstrate how the multiple components of the Proposed Rules would affect a Covered IHC's capital management, as confirmed by data provided by certain of our members. As we discuss in greater detail in Section II and Annex II, the average effective internal TLAC requirement for members that provided data would be approximately equal to 23% of their RWA and certain members report that they would have to maintain internal TLAC as high as 25.5% of their RWA. These levels are significantly higher than what the Proposed Rules would appear to require on their face.

In Section II.B and Annex II, we set out an example of what the levels of TLAC would be for a Covered IHC with a balance sheet that reflects the approximate mean of data provided by certain of our members. Figure 2 compares the effective TLAC levels for this "composite Covered IHC" to the stated levels in the Proposed Rules for Covered IHCs, Covered BHCs (taking into account the range of possible calibrations as a result of the G-SIB surcharge, as shown in the pink bar in Figure 2) and non-GSIB U.S. BHCs (which would not be subject to any TLAC requirements under the Proposed Rules). This composite Covered IHC would be required to maintain internal TLAC equal to 22% of its RWA and would, as a practical matter, need to hold a maintenance buffer of additional LTD to ensure that it did not breach its requirements, which could increase its effective TLAC levels to 23% of its RWA, as shown in the green bar in Figure 2. This high level of effective TLAC excludes any effects of the 50% amortization haircut for LTD with a maturity between one and two years under the Proposed Rules, which could increase effective TLAC levels for Covered IHCs by as much as 1.5% of RWA.

Figure 2: Comparison of Proposed Rules to Effective RWA Requirements



Although the Board proposes to establish an internal TLAC requirement for SPOE IHCs that is less than the external TLAC requirement for Covered BHCs, the Proposed Rules establish effective requirements for Covered IHCs that are in practice equal to or greater than the stated levels for Covered BHCs. Accordingly, Covered IHCs may be required to maintain internal TLAC at levels well above those provided under the FSB Standards. This could complicate cross-border cooperation, which is the primary purpose of internal TLAC under the FSB Standards. It is critical for both resilience and fairness to reduce these requirements to a reasonable and transparent level. A simple way to correct this distortion would be to eliminate the standalone LTD requirement in favor of a TLAC-oriented rule. The TLAC elements of the Proposed Rules alone are more than sufficient to ensure the resolvability of Covered IHCs, and such a change would help reduce the additional complexity, cost and unnecessary burden on internal treasury management.

We therefore suggest that the Board establish the internal TLAC calibration at levels equal to 75% of the Equivalent External TLAC calibration levels and eliminate the standalone LTD requirement. Taking all of the considerations discussed above into account would result in internal TLAC calibrations equal to the following:

Minimum Internal TLAC and LTD Levels for SPOE IHCs			
	RWA	**SLR (for Covered IHCs subject to the SLR)**	**U.S. Tier 1 Leverage Ratio (for Covered IHCs not subject to the SLR)**
Minimum Internal TLAC	13.5% (rather than 16%)	4.125% (rather than 6%)	5.625% (rather than 8%)
Minimum Internal LTD	0%	0%	0%

If the Board does not fully eliminate the standalone LTD requirement, we urge the Board to establish a regulatory expectation (rather than a formal minimum requirement—consistent with the FSB Standard) that internal LTD comprise no more than 33% of internal TLAC. This would result in internal LTD expectations of: 4.5% of RWA, 1.375% of total leverage exposure and 1.875% of average total consolidated assets.

D. A Fixed Level of LTD Should Not be Required for Covered IHCs

The Proposed Rules note that the rationale for the internal LTD requirement imposed on Covered IHCs "is generally parallel to the rationale for the proposed external…LTD requirement[]."[7] Yet, the rationale given for the separate LTD requirement is to address the "too-big-to-fail problem." While this may be a relevant objective for an external LTD requirement as a component of external TLAC, it is wholly inapposite for an internal TLAC requirement that is designed for material subgroups of a G-SIB that are expected not to be the subject of resolution powers during the resolution of the G-SIB parent. In addition, the proposed internal LTD requirement for Covered IHCs represents a complete departure from the FSB Standards, which do not include any expectation or recommendation that any portion of internal TLAC consist of long-term debt instruments.[8] Other forms of loss-absorbing instruments, such as common equity and preferred stock, would provide the parent FBO of a Covered IHC with the necessary incentive to support the Covered IHC during times of stress and in resolution.

Requiring a fixed level of debt in anticipation of resolution of a Covered IHC is not only inconsistent with the concept of an SPOE resolution of the parent, but we would also respectfully suggest that the Board's approach fails to account for the structural difference between a Covered IHC and a Covered BHC. As a wholly owned subsidiary of an FBO, a

7 80 Fed. Reg. at 74940.

8 Contrast FSB Standards, Term Sheet Section 6, p. 12 (establishing the expectation that 33% or more of a G-SIB's minimum external TLAC requirement will be met with long-term debt).

Covered IHC would—in the Board's assumed scenario—enter Chapter 11 bankruptcy proceedings or a Title II orderly liquidation in a circumstance where the FBO parent (and not market holders of LTD) would effectively bail in the institution. In the case of a Covered IHC, this would basically preserve the status quo in a way that would be comparable if the internal TLAC requirement did not have an LTD component, since either way the FBO parent will remain the Covered IHC's ultimate equity holder. In addition, an internal LTD requirement would not serve the market discipline or observability objectives of external LTD and so should be unnecessary for a Covered IHC.

E. Unnecessary Costs of LTD for Covered IHCs Due to Eligibility Requirements

In developing the LTD eligibility requirements for Covered IHCs, the Board appears to have assumed that a Covered IHC would have more flexibility than a Covered BHC to price its LTD because the pricing would not need to reflect market demand or pricing (that is, because the LTD is "just" internal). This assumption apparently supports the Board's proposal to impose more onerous eligibility criteria on Covered IHCs. However, this assumption is incorrect and the imposition of such eligibility criteria will result in additional costs for Covered IHCs and their parent FBOs.

One such additional cost is that the requirements of the contractual conversion feature under the Proposed Rules could result in adverse tax treatment of eligible LTD. In particular, this required feature poses a substantial risk of the LTD being characterized as equity, rather than debt, for U.S. tax purposes, further increasing the cost of compliance for Covered IHCs and imposing compliance costs on Covered IHCs that Covered BHCs would not need to bear. This adverse tax treatment for Covered IHCs will result in an increase in the aggregate tax cost for the FBO because in some jurisdictions, the coupon payments on such instruments would not qualify for tax preferences accorded to dividends on equity securities. The overall result is that the cost of eligible LTD would, for some FBOs, substantially exceed the cost that would arise from either conventional debt or conventional equity.

The Board justifies the contractual conversion feature as necessary to ensure that recapitalization support would be provided by the foreign parent. We disagree. An FBO parent, as the sole holder of, and therefore in the first-loss position with respect to, all of its Covered IHC's TLAC and LTD, would have every incentive to preserve the franchise value of the IHC and to therefore recapitalize the IHC to avoid its insolvency or resolution. Historically, this incentive has been sufficient, as demonstrated by FBOs' support for their foreign operations even in periods of distress.

Further, Covered IHCs transact with their foreign parent entities on an arm's-length basis and will therefore bear the full market costs of the more restrictive internal TLAC and LTD eligibility requirements. If they were to issue the securities in the market, Covered IHCs would need to pay a significant premium for instruments that are deeply subordinated, that contain a conversion or cancelation feature or that lack any acceleration provisions (as the Proposed Rules would require). When issuing these instruments to affiliates under arm's-length arrangements, Covered IHCs would need to pay similar premiums. These costs are especially concerning when they arise from requirements, like the conversion or cancelation feature, that are unnecessary as a practical matter due to the internal nature of the instrument.

The costs associated with the contractual conversion feature and other costly and unnecessary eligibility criteria for internal TLAC and LTD put Covered IHCs and their parent FBOs at a competitive disadvantage relative to Covered BHCs and to other U.S. banking groups that are not subject to any TLAC requirements. In our view these costs are unnecessary to meet the Board's policy objectives. We therefore urge the Board to eliminate requirements for a contractual conversion feature and other costly and unnecessary features.

F. Contravention of MPOE Resolution Strategy

Several Covered IHCs have developed, in consultation with the Board and their home country resolution authorities, an MPOE resolution strategy. These MPOE IHCs have expended significant resources to facilitate this strategy, which have included costly changes to global operations and funding arrangements. Contrary to the business model of MPOE IHCs and their parent FBOs, the Proposed Rules would force these IHCs to create cross-border funding linkages and interconnections with their parent entities by requiring that all TLAC and LTD instruments be issued to a parent. As a practical matter, these cross-border linkages would inextricably tie the MPOE IHCs to their parent FBOs during resolution (as is the Board's stated objective for internal TLAC), making it impossible to pursue an MPOE strategy for the IHCs. We urge the Board to undo this significant and unjustified divergence from the FSB Standards, and permit MPOE IHCs to satisfy any TLAC and LTD requirements with instruments issued either to unaffiliated third parties or to affiliates.

However, if the Board continues to treat MPOE IHCs like SPOE IHCs by requiring all of their TLAC and LTD to be issued to a foreign parent, then there is no basis for subjecting MPOE IHCs to higher TLAC requirements. The Board notes that the TLAC calibration levels for SPOE IHC are premised in part on the failure of the IHC and the need to be able to effectively recapitalize the IHC upon its failure. If the lower TLAC and LTD calibration levels for SPOE IHCs are sufficient to address the Board's concerns regarding the separate resolution of the SPOE IHCs, they should also be sufficient to address the separate resolution of the MPOE IHCs. We therefore urge the Board, if it does not permit MPOE IHCs to satisfy their TLAC and LTD requirements with externally issued instruments, to subject MPOE IHCs to the same calibration levels as SPOE IHCs, which, as we argue below, should be significantly reduced.

G. The Board Should Not Impose a Further Domestic Prepositioning Requirement on Covered IHCs

In our view, a domestic prepositioning requirement would be contrary to the Board's objectives of promoting the resolvability of the subsidiaries of Covered IHCs and reducing risks to U.S. financial stability. Any prepositioning requirement leads to the fragmentation of capital and undermines the global resiliency of G-SIBs. But when applied to a Covered IHC, these effects would be compounded, as resources would be prepositioned in a multi-tiered structure—first from the foreign parent to the IHC, then from the IHC to its subsidiaries—which would reduce the resiliency not just of the U.S. operations, but of the FBO as a whole. Further, since Covered IHCs and their subsidiaries typically do not have non-U.S. operations, there would be no risk that loss-absorbing capacity would be trapped outside of the United States in a period of financial stress, as could be the case for Covered BHCs. To the extent that the Board has concerns about the effectiveness of structures allowing a Covered IHC to deploy loss-absorbing resources dynamically and as needed, we believe such concerns should be addressed through enforceable contractual mechanisms rather than an ex ante prepositioning requirement. We therefore urge the Board not to propose an additional, domestic prepositioning requirement for Covered IHCs.

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We appreciate your consideration of our comments. Please contact the undersigned (646-213-1149; smiller@iib.org) or our General Counsel, Richard Coffman (646-213-1149; rcoffman@iib.org), if we can provide any additional information.

Sincerely,

Sarah A. Miller
Chief Executive Officer

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INSTITUTE OF INTERNATIONAL BANKERS

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I. The Internal TLAC and LTD Calibrations Are Far Higher Than Necessary to Meet the Board's Policy Goals and Do Not Reflect the Risk Profiles of Covered IHCs

Under the Proposed Rules, Covered IHCs would need to maintain levels of TLAC and LTD that are essentially equivalent to those for Covered BHCs. The internal TLAC calibration for MPOE IHCs is identical to the calibration for Covered BHCs (taking into account that IHCs are not subject to the enhanced supplementary leverage ratio or the G-SIB surcharge), while the Board describes the calibration for SPOE IHCs as only "slightly lower"—approximately 90% of the levels applicable to MPOE IHCs, the upper end of the range established by the FSB Standards.[9] By applying the same methodology to set the external and internal TLAC levels, the Board ignores the different purposes for each. As articulated by the FSB, the level of internal TLAC should be set based on what is necessary to ensure cooperation in the event of a cross-border resolution of an FBO. This methodology would result in significantly lower levels of internal TLAC than the Board's proposal.

In addition, the Board's approach implies that Covered IHCs pose similar levels of risk to U.S. financial stability as do Covered BHCs, which, in our view, is demonstrably not the case. The Board's approach fails to take into account that the systemic footprints of Covered IHCs are a fraction of those of Covered BHCs. Further, such high calibration levels disregard the significant risk-reducing effects of the robust supervisory and regulatory framework applicable to Covered IHCs and the support that parent FBOs can provide to Covered IHCs during periods of stress or resolution.

As a result, the Proposed Rules would require minimum levels of internal TLAC that are far higher than necessary to address the Board's policy goals of promoting the resolvability and resiliency of Covered IHCs and guarding against potential risks to U.S. financial stability posed by the failure or resolution of these IHCs. Calibration levels that are set too high unnecessarily increase the cost of complying with the TLAC requirements and trap resources in the United States that could be deployed on a global basis to dynamically respond to financial stresses when and where they appear. Such fragmentation of recovery resources diminishes the resilience of the FBOs subject to the Proposed Rules and has the potential to increase the likelihood that recovery or resolution actions would be necessary, which could have adverse implications for U.S. financial stability.

Instead, the calibration of internal TLAC should start from a significantly lower level to more accurately reflect the lower risk to U.S. financial stability posed by Covered IHCs. The starting point for SPOE IHCs should be no higher than 75% of the applicable external TLAC requirement—the lower end of the range provided under the FSB Standards. In fact, the Board would have discretion as a host country regulator to set the baseline internal TLAC calibration below 75%, which, in our view, the specific characteristics of Covered IHCs would justify. The Board should also consider differences among Covered IHCs that would support

[9] 80 Fed. Reg. at 74940-74941; FSB Standards, Term Sheet Section 18, p.19.

lowering the calibration levels on an institution-specific basis. This approach would preserve the resolvability benefits of TLAC while more accurately reflecting the risks of Covered IHCs. Further, it would create an incentive for Covered IHCs, their parent FBOs and their home authorities to continue to increase the resolvability of the IHCs and reduce any risks they pose to U.S. financial stability.

A. Calibration of the Internal TLAC Requirement Should Take Into Account the Smaller Size and Systemic Footprints of Covered IHCs

The Proposed Rules' calibration of internal TLAC requirements at essentially the same levels as for external TLAC implies that the Board views internal TLAC as serving the same function as external TLAC and views the risks to U.S. financial stability posed by Covered IHCs to be essentially equivalent to those posed by Covered BHCs. We strongly disagree.

As explained by the FSB, the "primary objective" of internal TLAC is "facilitating co-operation between home and host authorities and the implementation of effective cross-border resolution strategies."[10] This is a different policy objective than for external TLAC, and accordingly, the required level of internal TLAC could be substantially less than external TLAC requirements. Despite these differences, the Proposed Rules elides the purposes of internal TLAC and external TLAC. It appears the Board is proposing to set the internal TLAC calibration primarily based on the risks posed to U.S. financial stability by a Covered IHC if it were to enter resolution proceedings. In doing so, however, the Board has set the calibration of internal TLAC at unnecessarily high levels, which could make an effective global resolution more difficult by fragmenting capital and reducing flexibility. This undermines the FSB's stated objective of having internal TLAC foster cooperation and effective cross-border resolution planning.

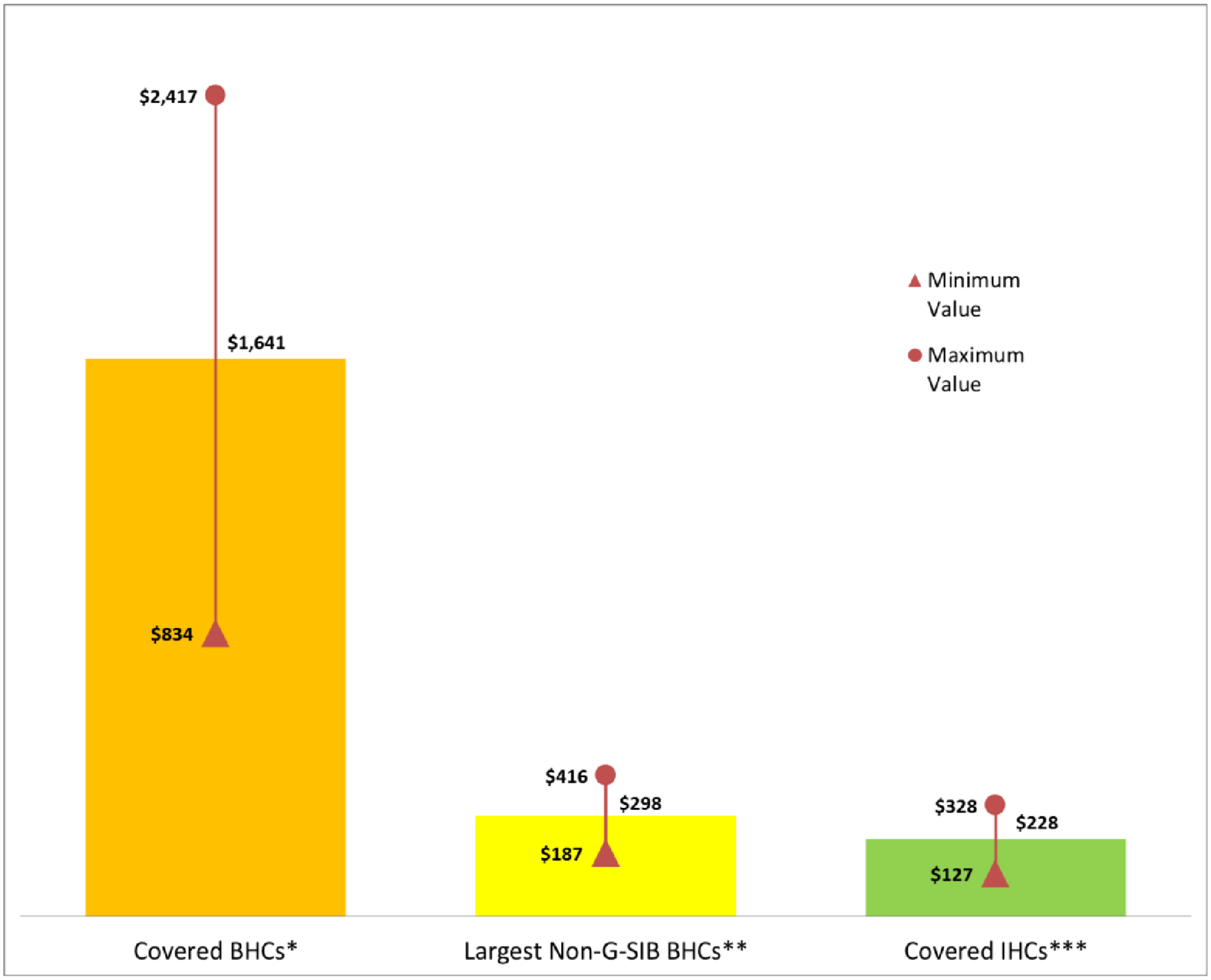
In addition, based on the Board's explanation of its calibration of Covered IHCs' internal TLAC, it appears that the Board did not separately analyze the risks to U.S. financial stability posed by Covered IHCs and instead implicitly assumed an equivalence of the risks posed by Covered IHCs and Covered BHCs. As a result, the calibration under the Proposed Rules fails to reflect the significantly smaller systemic footprint of Covered IHCs as compared to Covered BHCs and the resulting reduced risks posed to U.S. financial stability.

The Board's implicit assumption that Covered IHCs are generally like Covered BHCs disregards the significant differences between the risks posed by Covered IHCs and Covered BHCs. Covered IHCs have, collectively, a U.S. systemic footprint that is only a fraction of the U.S. systemic footprint of U.S.-headquartered G-SIBs, and Covered IHCs are smaller and less significant to U.S. financial stability than Covered BHCs. In fact, the size, composition and systemic footprint of Covered IHCs more closely resemble those of the non-G-SIB U.S. regional bank holding companies that the Board has determined do not need any

10 FSB Standards, Term Sheet Section 16. Internal TLAC, p. 17.

minimum levels of TLAC to address the risks posed by their potential failure, as shown in Figure 3 below.

Figure 3: Comparison of Consolidated Assets of Covered BHCs, Largest Non-G-SIB U.S. BHCs and Covered IHCs (in billion USD)



* Average consolidated assets of Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo as reported on the Board's National Information Center, as of September 30, 2015. Consolidated assets of Bank of New York Mellon ($377 billion) and State Street ($247 billion) were omitted because these entities were designated as G-SIBs primarily based on their custodial bank activities, which is not a relevant consideration for Covered IHCs.

** Average consolidated assets of BB&T, CapitalOne, PNC, SunTrust and US Bank as reported on the Board's National Information Center, as of September 30, 2015.

*** Estimated average consolidated assets of the Covered IHCs of Barclays, BNP Paribas, Credit Suisse, Deutsche Bank, HSBC, Mitsubishi UFJ, Santander and UBS, based on consolidated U.S. non-branch assets of the FBO parents of the Covered IHCs based on the Board's Structure Data for the U.S. offices of FBOs from December, 2014, Consolidated Financial Reports from December, 2014 and Securities and Exchange Commission FOCUS reports for 2014 (filed in 2015 or in 2014 for non-calendar year filers).

Although Covered IHCs have systemic footprints that are more comparable with non-G-SIB U.S. BHCs, the Proposed Rules would make them subject to internal TLAC requirements because they are owned and supported by FBOs, implying that their foreign ownership leads Covered IHCs to present greater risks to U.S. financial stability. However, as discussed below in Section I.C, a Covered IHC's foreign parent should be seen as a source of strength for the Covered IHC that would decrease its potential risk. The Board's implicit assumption that foreign ownership and support increase the risk of the Covered IHCs is also contrary to historical example, as there are many instances where FBOs have acted as sources of strength for their U.S. operations and ultimately as risk mitigants to the U.S. financial system.

From this perspective, the proposed internal TLAC calibrations are demonstrably unnecessary to protect against risks to U.S. financial stability. Indeed, in many cases, an analysis of the practical implications for U.S. financial stability could argue for minimal or no internal TLAC. Higher than necessary internal TLAC requirements in the United States would not only impose unnecessary costs on Covered IHCs (with the attendant consequences for the availability of credit, etc.), but also threaten to precipitate reciprocal regulation in other jurisdictions, leading to a global race to trap as many resources in one jurisdiction as possible. Such a development would impair, rather than promote, the resilience of G-SIBs, contrary to the FSB Standards. We respectfully submit that U.S. leadership in establishing a lower calibration level that ensures home-host cooperation while preserving maximum flexibility with respect to deployment of resolution resources globally would be a powerful aid in the development of a more resilient international financial system.

In addition, the U.S. operations of FBOs have historically provided an important competitive alternative to large U.S. BHCs for consumers of financial products. However, the Proposed Rules would unfairly disadvantage such FBOs and their Covered IHCs relative to similarly sized U.S. institutions and potentially undermine their role in the U.S. financial markets.

B. The Board's Existing Supervisory and Regulatory Framework Applicable to Covered IHCs and Their Parent FBOs Addresses Concerns about Threats to U.S. Financial Stability

In our view, the Board should consider the internal TLAC requirement as but one of many tools available to address the potential risks to U.S. financial stability posed by Covered IHCs and should calibrate the internal TLAC requirements in the context of the Board's overall framework for the supervision and regulation of IHCs. The Board already applies robust capital, liquidity, stress testing and risk-management requirements to Covered IHCs and their FBO parents under the Board's Enhanced Prudential Standards. These requirements are more comprehensive and protective than those applicable to any other material subgroup of G-SIBs.

Additionally, the Board and the Federal Deposit Insurance Corporation ("FDIC") have developed tools to ensure that Covered IHCs may be resolved in an orderly fashion. In particular, all FBO parents of Covered IHCs must develop U.S. resolution plans (independent of their global recovery and resolution plans) that, among other things, demonstrate that the IHCs can be resolved under the Bankruptcy Code "in a manner that substantially mitigates the risk that the failure of the [IHC] would have serious adverse effects on financial stability in the United States."[11] Further, the FDIC has entered into formal memoranda of understanding with foreign resolution and regulatory authorities to help plan for and coordinate resolution actions and ensure cooperation during resolution.[12] In addition, the Board and the FDIC participate in the Crisis Management Groups ("CMGs") of virtually all of the FBO parents of Covered IHCs. The CMGs meet regularly, review the authorities' resolution strategies for the FBO and its subsidiaries and develop tools for cooperation in the event of financial distress and/or the FBO's recovery and resolution.[13]

These measures already provide the Board with an effective supervisory and regulatory toolkit to ensure the financial soundness of Covered IHCs and that financial distress in respect of a Covered IHC or its parent FBO does not create threats to U.S. financial stability. The Board's residual concerns about the resolvability and resilience of Covered IHCs can therefore be addressed with significantly lower levels of TLAC.

C. Covered IHCs Have Parent Entities That Can Provide Support to Covered IHCs in Times of Financial Stress

In our view, the support of a Covered IHC's parent FBO is critical to understanding the reduced risks to U.S. financial stability posed by such IHCs. In particular, basing TLAC calibrations on the counterfactual assumption that such parent support will not be provided to SPOE IHCs during periods of stress or during resolution results in calibrations levels that are unjustifiably high.

In the case of SPOE IHCs, the Proposed Rules are calibrated to preposition internal TLAC sufficient to absorb losses and recapitalize IHCs upon their separate resolution, notwithstanding the SPOE strategy for the IHCs' parent FBOs.[14] By assuming the separate resolution of SPOE IHCs, the Board disregards the support that such IHCs are likely to receive from their foreign parents during periods of stress and during resolution. The Proposed Rules effectively treat SPOE IHCs as standalone groups, comparable to Covered BHCs, providing at

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[11] 12 CFR § 243.2(o).

[12] See, e.g., Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Resolution of Insured Depository Institutions with Cross-Border Operations in the United States and the United Kingdom, *available at*, https://www.fdic.gov/news/news/press/2010/pr10013a.pdf.

[13] See FSB, "Key Attributes of Effective Resolution Regimes for Financial Institutions," Section 8.

[14] The preamble to the Proposed Rules notes that the proposed calibration for SPOE IHCs is based in large part on "the need to ensure sufficient loss absorbing capacity is prepositioned with the covered IHC to ensure that it can be kept operating as a going concern or subjected to an orderly resolution in the United States if the foreign GSIB is not subjected to an SPOE resolution." 80 Fed. Reg. at 74941.

best only a slight reduction in the calibration of TLAC to reflect their status as a material subgroup of their FBO parents.[15]

To the contrary, an SPOE resolution strategy articulates an intention and ability to support subsidiary operations, such as the SPOE IHC, during resolution. Under an SPOE strategy, losses incurred by a G-SIB's foreign operations, such as the SPOE IHC, ultimately would be borne by shareholders and creditors of the G-SIB parent. Yet the Proposed Rules essentially assume that, but for a prepositioning requirement, the FBO parent of an SPOE IHC would abandon its U.S. operations. In addition to being contrary to the relevant FBOs' resolution plans, abandoning their U.S. operations would be contrary to the interests of the FBO parents and their resolution authorities, given the substantial investment these FBOs have made in their U.S. operations and the consequences of losing access to U.S. financial markets. Indeed, it would be reasonable to expect that home country authorities would seek to maintain the U.S. operations as a viable enterprise in order to facilitate the resolution of the parent.

Likewise, the FBO parents of MPOE IHCs have similar incentives to provide support to their U.S. operations to avoid their failure and resolution. An MPOE resolution strategy does not imply that resolution of a subgroup is the first, best option when encountering stress. Rather, an MPOE strategy reflects the approach that would be taken when options for recovery—on a local basis and a group basis—have been exhausted.

However, the Proposed Rules' approach to the calibration of TLAC disregards the risk-mitigating effect of the support that can be provided by a Covered IHC's parent FBO. The Board has ample tools available to assess the likelihood of an FBO acting as a source of strength for an IHC. The Board also participates, as discussed above, in the CMG for virtually all of the FBO parents of the Covered IHCs, where home-country plans for recovery and resolution are discussed.

We respectfully suggest that the Board should evaluate the actual risk that these FBOs would be unable or unwilling to support their U.S. operations when calibrating the IHC's internal TLAC requirement. To the extent existing tools for assessing parent support are insufficient for the purposes of calibrating TLAC, we urge the Board to enhance these capabilities rather than disregard the possibility of parent support altogether.

D. The Board Should Set the Internal TLAC Calibration No Higher than 75% of the Applicable External Requirements, Eliminate the Internal LTD Requirement and

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15 As discussed in Section I.D, the RWA component of the internal LTD calibration is essentially equivalent to the RWA component of the external LTD calibration and, unlike the leverage components, does not reflect a reduction off of the equivalent external LTD calibration.

Further Reduce the Calibration on an Institution-Specific Basis to Reflect the Risk Profile of Individual Covered IHCs

To the extent the Board does consider risks to U.S. financial stability when determining calibration levels for internal TLAC, the effect of this consideration should be reduced due to the substantially smaller systemic footprints of Covered IHCs as compared to Covered BHCs, the existing regulatory framework applicable to Covered IHCs and the availability of parent FBO support. The proposed internal TLAC requirements applicable to SPOE IHCs are currently calibrated at approximately 90% of the TLAC requirements applicable to Covered BHCs, although, as discussed below in Section II.B, the effective levels can be in excess of 100% of the stated external requirements for Covered BHCs because of the complexities of the Proposed Rules. In our view, the Board should set the internal TLAC requirements and the internal TLAC buffer applicable to SPOE IHCs at a level no higher than 75% of the requirements applicable to Covered BHCs.[16]

As we discuss in Section II, it is our view that the Board should eliminate the requirement for a portion of internal TLAC to be in the form of LTD. While many Covered IHCs may choose to meet some of the TLAC requirements with eligible LTD, there is no need to establish a formal minimum internal LTD requirement. However, if the internal LTD requirement for Covered IHCs is preserved, the Board should, consistent with the approach under the FSB Standards with respect to external TLAC, establish a regulatory expectation that up to 33% of a Covered IHC's internal TLAC be in the form of debt.[17]

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16 As noted in the introduction to Section I above, in our view the totality of the considerations affecting Covered IHCs would justify a baseline requirement well below 75% of the calibration applicable to Covered BHCs.

17 If the Board does not adopt either of these approaches and retains a calibration for internal LTD as a percentage of external LTD, we urge the Board, at a minimum, to determine the calibration for each component of the internal LTD requirement by multiplying the corresponding equivalent external LTD requirement by the same percentage (and, as discussed in Section III below, by incorporating the assumption of balance-sheet depletion), which was not reflected in the Proposed Rules. In particular, the RWA threshold for the minimum internal LTD requirement (which, as proposed, is essentially equal to the RWA threshold for the minimum external LTD requirement) should be reduced to equal the same percentage of the RWA threshold for external LTD as the leverage thresholds are of the corresponding external LTD requirements. Under the RWA component of the internal LTD requirement, Covered IHCs would be required to maintain LTD equal to at least 7% of their RWA. The analogous requirement for Covered BHCs sets the external LTD minimum at 6% of RWA (i.e., the sum of the 4.5% minimum of RWA that G-SIBs must maintain plus a 2.5% capital conservation buffer, less a 1% allowance for balance sheet depletion) plus the Covered BHC's G-SIB surcharge. Because the minimum G-SIB surcharge is 1% of RWA, Covered IHCs would be subject to an RWA threshold (7%) that is equal to that of a Covered BHC subject to the minimum G-SIB surcharge (7%). This equivalence is in contrast to the leverage components of the internal LTD requirement, which establishes thresholds for Covered IHCs that are lower than those applicable to Covered BHCs.

The table below sets out the minimum TLAC requirements (and, if retained in the final rule, minimum LTD requirements) for SPOE IHCs that would result if the Board were to recalibrate the Proposed Rules' current requirements to reflect (i) a reduction of the levels of internal TLAC for SPOE IHCs from 90% to 75% of the Equivalent External TLAC requirements and (ii) a reduction to the levels of internal LTD for SPOE IHCs to 33% of the corresponding internal TLAC requirement. In Annex I, we provide a more detailed explanation of the methodology used to determine the calibration set out below. Of course, if the Board makes any adjustments in the final rules to the TLAC requirements for Covered BHCs, we believe that comparable adjustments should be made to the requirements for Covered IHCs. Although the below table discusses both the SLR and U.S. Tier 1 leverage ratio, as discussed in Section VII, if an SPOE IHC is subject to the SLR, it should not be otherwise subject to the U.S. Tier 1 leverage ratio component.

Minimum Internal TLAC and LTD Levels for SPOE IHCs			
	RWA	**SLR (for SPOE IHCs subject to the SLR)**	**U.S. Tier 1 Leverage Ratio (for SPOE IHCs not subject to the SLR)**
Minimum Internal TLAC	13.5% (rather than 16%)	4.125% (rather than 6%)	5.625% (rather than 8%)
Minimum Internal LTD (if retained)	4.5% (rather than 7%)	1.375% (rather than 3%)	1.875% (rather than 4%)

Further, the Covered IHCs are a diverse group of institutions that are treated the same solely because they are all subsidiaries of non-U.S. G-SIBs. The Board should consider the differences among Covered IHCs in determining whether lower calibration levels should apply on an institution-specific basis, including: (1) risk-reducing attributes of a Covered IHC's parent FBO; (2) robust home-country capital, prudential or resolution regulations applicable to the parent FBO or Covered IHC; and (3) heightened confidence in cooperation by the FBO's home-country resolution authority with the Board and FDIC in a resolution.

An institution-specific approach would allow the allocation of internal TLAC to be more effectively coordinated with, and responsive to, an FBO's global resolution strategy, its ability to support its Covered IHC and any concerns about the willingness or ability of the FBO's home authorities to cooperate during resolution. The ability to make institution-specific adjustments would be necessary for the Board to be able to participate meaningfully in exercises envisaged by the FSB to balance internal TLAC levels to address issues such as consolidation effects. Further, making the calibration of internal TLAC institution-specific would have the added benefit of aligning the incentives of home authorities with those of the Board, and of the FBOs with those of the home and host authorities. Tailoring internal TLAC requirements to take account of the resolvability of an FBO's U.S. operations would provide an incentive for FBOs to continue to become more resolvable. Likewise, such tailoring would provide an incentive for home authorities to enhance their demonstrated ability and commitment to provide support for the Covered IHCs of their FBOs during resolution.

II. The Requirement That a Fixed Portion of Internal TLAC Be in the Form of LTD Is Unnecessary and Should Be Eliminated or at Least Significantly Reduced

Under the Proposed Rules, Covered IHCs would be required to maintain up to half of their TLAC in the form of LTD (as opposed to common equity or other capital instruments). We disagree with the Board's stated rationale for this requirement, which is based on "the need to plan for the contingency in which the covered IHC enters a U.S. resolution proceeding."[18] In our view, the costs that would be imposed by such a requirement (which the Board appears to have significantly underestimated) are not justified by such a contingency scenario. This is especially the case for SPOE IHCs, whose parent FBOs' global resolution strategies, and the other aspects of the Proposed Rules, are all aimed at avoiding such a separate resolution. Further, this approach is inconsistent with the purpose of internal TLAC, which is to promote cooperation with home authorities and ensure that non-resolution entities, such as the SPOE IHCs, will be supported during resolution. Notably, when the FSB Standards discuss an expectation that a portion of TLAC be in the form of debt, it is only in the context of external TLAC, not internal TLAC. In our view, this is the correct approach, and the one that the Board should take.

A. Requiring Minimum Amounts of LTD to Be Issued by Covered IHCs Is Unnecessary to Satisfy the Board's Objectives

The Proposed Rules note that the rationale for the proposed internal LTD requirement is "generally parallel to the rationale for the proposed external … LTD requirement[]."[19] However, the rationale given for the separate LTD requirement is to address the "too-big-to-fail" problem.[20] While this may be a relevant objective for an external LTD requirement as a component of external TLAC, it is wholly inapposite for an internal TLAC requirement that is designed for material subgroups of a G-SIB that are expected not to be the subject of resolution powers during the resolution of the G-SIB parent. In addition, the proposed internal LTD requirement for Covered IHCs represents a complete departure from the FSB standards, which do not include any expectation or recommendation that any portion of internal TLAC consist of long-term debt instruments.[21]

Moreover, imposing a parallel LTD requirement for Covered IHCs ignores the fact that these IHCs are in fact subsidiaries of strongly capitalized and prudentially regulated

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[18] 80 Fed. Reg. at 74941.

[19] 80 Fed. Reg. at 74940.

[20] 80 Fed. Reg. at 74931.

[21] Contrast FSB Standards, Term Sheet Section 6, p. 12 (establishing the expectation that 33% or more of a G-SIB's minimum external TLAC requirement will be met with long-term debt).

FBOs, as well as the significant differences in the eligibility requirements for external and internal TLAC, such as the prohibition on issuing internal TLAC (including LTD) to non-affiliates. Further, requiring such high levels of LTD would reduce the amount of losses of the Covered IHCs that could be absorbed before the LTD would need to be forgiven or converted to equity, or the IHC placed into proceedings. Each of these occurrences could have negative signaling effects for the IHC and its parent FBO and could potentially be destabilizing. As such, the LTD requirement would distort perceptions of the loss-absorbing capacity of a Covered IHC. Given the ability to convert LTD to equity and the significant amount of TLAC that is required in excess of existing regulatory capital, a Covered IHC would in reality remain effectively highly capitalized if it met the internal LTD requirement, even if it might have significantly depleted its common equity. This distortion could force a Covered IHC into resolution proceedings and disrupt its business-as-usual operations even though it ultimately would be sufficiently capitalized. Considering that internal LTD has the same loss-absorbing properties as regulatory capital, the potential downsides of LTD are not justified by any possible added improvements to resolvability.

The different requirements with respect to internal LTD in the Proposed Rules reflect conflicting policy objectives that have not been reconciled in a unified approach to an internal TLAC framework for SPOE IHCs. On the one hand, the eligibility criteria for internal LTD, and the related rationales, are premised on the assumption that the FBO parent of an SPOE IHC will be placed into resolution proceedings and the IHC will itself remain outside of resolution proceedings as a going concern. This is the Board's stated rationale for requiring Covered IHCs to issue internal TLAC only to their foreign parent (the "Internal Issuance Requirement") and why internal LTD must contain a contractual conversion provision: "[t]he principal purpose of this requirement is to ensure that losses incurred by the covered IHC are shifted to a foreign parent without the covered IHC's having to enter a resolution proceeding."[22] This approach is generally consistent with the FSB Standards. On the other hand, the Board bases the internal TLAC calibration levels on an assumption that an SPOE IHC would enter resolution proceedings in the United States.[23] Further, the entire concept of an LTD requirement

[22] 80 Fed. Reg. at 74943 (emphasis added).

[23] 80 Fed. Reg. at 74941 ("However, the Board also recognizes the need to plan for the contingency in which the covered IHC enters a U.S. resolution proceeding. The proposed calibration for such a covered IHC is based on the desirability of providing support for the preferred SPOE resolution of the foreign GSIB, which requires that the foreign GSIB be allowed to have some internal loss-absorbing capacity at the parent level that can be freely allocated to whichever subsidiaries have incurred the greatest losses (including non-U.S. subsidiaries), balanced with the need to ensure that sufficient loss-absorbing capacity is prepositioned with the covered IHC to ensure that it can be kept operating as a going concern or subjected to an orderly resolution in the United States if the foreign GSIB is not subjected to an SPOE resolution.").

is premised on the notion that an SPOE IHC's entry into bankruptcy or resolution proceedings would be necessary to convert LTD to equity.[24]

However, in attempting to accommodate the SPOE resolution strategy while providing for the contingency that the SPOE IHC will enter resolution proceedings, the Board has created unnecessary requirements that would impose costs on Covered IHCs without benefiting resolvability. The clearest example is imposing an internal LTD requirement at all. The theory supporting an LTD requirement may be relevant for Covered BHCs, which would have LTD held by non-affiliates that could be restructured, but in the case of SPOE IHCs, their LTD would be required to be held solely by their parent FBOs. As a result, the outcome of bankruptcy or resolution proceedings for an SPOE IHC would be the same as if the IHC did not enter proceedings—losses would ultimately be imposed on the FBO parent and its creditors. This outcome eliminates any benefit to the parent FBO of such proceedings (seeking relief from creditors and invoking a legal regime that facilitates the restructuring of liabilities), incentivizing an FBO to support its SPOE IHC and ensure it does not enter proceedings.

Even if proceedings for an SPOE IHC were initiated under Title II of the Dodd-Frank Act ("Orderly Liquidation Authority") and the IHC's assets and operations were transferred to a bridge holding company, the ultimate ownership structure that existed immediately prior to the initiation of proceedings would be preserved. Following the transfer of the assets to the bridge, the LTD and other liabilities of the IHC would be bailed in (i.e., the claims in respect of the LTD and other liabilities would be satisfied with equity in the new bridge holding company). As a result, the equity in the bridge would be issued to the non-U.S. affiliates of the IHC that held its LTD, eliminating any potential for "de-grouping."

Further, to the extent it were desirable for an SPOE IHC to be placed into proceedings under Orderly Liquidation Authority, the Board generally would be required to trigger the contractual conversion of LTD to equity before proceedings could be initiated.[25] This requirement suggests that such proceedings could not be initiated while an SPOE IHC's LTD remained outstanding and that, if proceedings were initiated, there would not be any LTD to bail in during resolution.

To the extent the minimum internal LTD requirement is motivated by a desire to ensure that U.S. authorities would be able to "intervene" (i.e., initiate resolution proceedings

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[24] The Board notes that the "internal LTD requirements are based on the capital refill framework discussed above with respect to the proposed external LTD requirements." 80 Fed. Reg. at 74941. As explained in the Board's discussion of the proposed external LTD requirement, the "capital refill" theory is premised on entry into bankruptcy or resolution proceedings, which would not be the case for SPOE IHCs whose resolution strategies are designed to keep the IHCs out of proceedings.

[25] See Section 203(b)(6) of the Orderly Liquidation Authority, 12 U.S.C. 5383(b)(6) (requiring the Secretary of the U.S. Treasury to determine that "a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order" in order to initiate proceedings under Orderly Liquidation Authority).

under the Orderly Liquidation Authority and assume active management of a troubled Covered IHC) before the loss-absorbing capacity of a Covered IHC has been exhausted, this goal can be achieved in other, less burdensome ways. For example, the Board's proposed early remediation framework could be adapted for this purpose, and other rules that place limitations on capital distributions and discretionary bonus payments, such as the capital conservation buffer, already provide substantive remedies when a Covered IHC experiences financial stress. Such going-concern intervention would be far more preferable and less destabilizing to a parent FBO's operations or resolution than the initiation of insolvency proceedings for the Covered IHCs in contradiction to the FBO's global resolution strategy.

In the preamble, the Board notes that one of the benefits of LTD over equity is that it represents a "known and observable quantity of loss-absorbing capacity at the point of failure."[26] However, as noted above, the existence of this loss-absorbing capacity in the form of debt at the point of failure is highly unlikely, given that it could be written off or contributed by the parent FBO or converted or canceled by the Board's exercise of the contractual conversion provision in order to avoid failure. Only if neither of these events occurred would there remain LTD at the point of failure. Further, as we discuss below in Section V.C, preferred stock would offer the Board the same going-concern ability to observe levels of loss absorbency.

Finally, unlike in the context of external LTD, the internal LTD requirement does nothing to promote market discipline. External LTD issued by a publicly traded parent BHC can incentivize market participants to analyze the downside risks of a firm, providing useful information to both supervisors and bank management. However, under the Proposed Rules, all LTD of a Covered IHC would be required to be held by a non-U.S. company that, directly or indirectly, controls the Covered IHC. As an affiliate with control over the IHC, such an entity would already have an incentive to prudently monitor the IHC.

In sum, we respectfully submit that an LTD requirement applied to Covered IHCs is not supported by the rationales provided by the Board. Given the significant costs and burden associated with the requirement, discussed below, and its deviation from the FSB Standards, we urge the Board to eliminate this requirement from the final rule.

B. The Internal LTD Requirement Would Increase Covered IHCs' Effective TLAC Requirements above the Proposed Minimum and Buffer Requirements Without a Commensurate Benefit to Resolvability

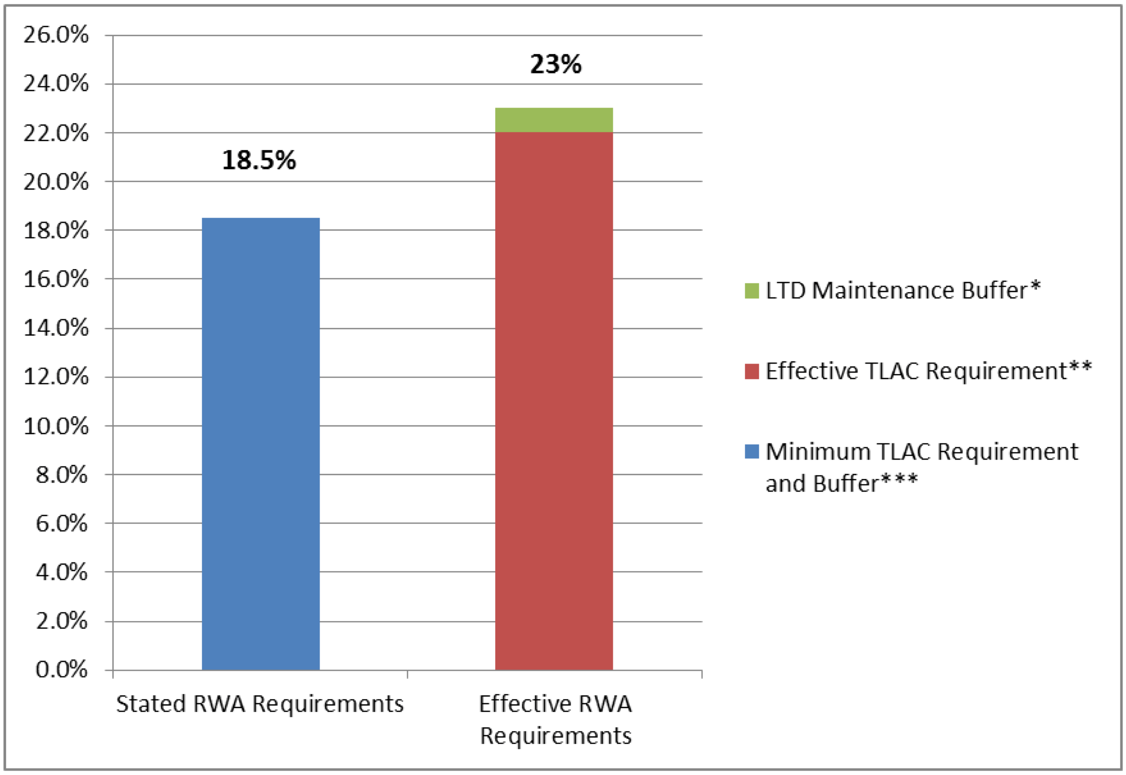
The practical consequence of the minimum internal LTD requirement in the Proposed Rules is that many Covered IHCs would in fact be required to maintain actual levels of internal TLAC that are significantly above the proposed minimum TLAC and buffer requirements. This distortion occurs because any Tier 1 capital that a Covered IHC maintains in

[26] 80 Fed. Reg. at 74931.

excess of the fixed percentage of its TLAC requirement that may be satisfied with Tier 1 capital would not count towards the LTD portion of its TLAC requirement.

The following graph illustrates the significant discrepancy between what the Board states are the minimum levels of TLAC in the Proposed Rules, and what the effective levels would be for some Covered IHCs as a result of the standalone LTD requirement.

Figure 4: Comparison of Proposed Rules to Effective RWA Requirements



* This graph assumes that Covered IHCs would keep an LTD Maintenance Buffer equal to 1% of RWA

** This graph assumes that Covered IHCs would have an effective RWA requirement equal to 22% of RWA. This is consistent with data received from several of our members, as we discuss below and in Annex II.

*** The stated requirements in this graph are based on the assumption that the RWA prong of the TLAC requirement would be the binding constraint.

The levels indicated above disregard the effects of the 50% amortization haircut applied to eligible LTD with a remaining maturity of between one and two years, which could further increase effective LTD requirement by as much as 1.5% of RWA by disqualifying a portion of the Covered IHCs' outstanding eligible LTD. In Annex II below, we set out the details of how the additional regulatory capital requirements applicable to Covered IHCs, in combination with the standalone internal LTD requirement, could lead to effective TLAC levels for Covered IHCs that would be significantly higher than the stated levels.

Likewise, data provided by a number of our members indicate that the leverage prongs of the proposed LTD requirement could further increase the effective TLAC requirements for Covered IHCs. In the process of developing this comment letter, we received data from a number of our members that would be Covered IHCs regarding their capital levels, the binding constraints under the Proposed Rules and the resulting levels of internal TLAC that they would be required to maintain. Based on this data, we created a composite Covered IHC that has features approximately equal to the mean data provided by our members (although the numbers do not match any particular Covered IHC and are rounded for ease of exposition) (see Annex II for more detail). This composite Covered IHC shows how the leverage prong of the internal LTD requirement would lead to a Covered IHC needing to hold significantly more LTD than the RWA prong would have required. The effect of the standalone LTD requirement is that the composite Covered IHC in our example would need to maintain internal TLAC equal to 22% of RWA, significantly higher than both the minimum plus buffer requirement of 18.5% in the Proposed Rules and the calibration under the FSB Standards. Indeed, it effectively contravenes the upper limit on internal LTD under the FSB Standards.

Moreover, this projected effective internal TLAC requirement of 22% likely understates the actual level of TLAC the composite Covered IHC would be required to maintain. This calculation does not take into account the additional amounts of LTD the Covered IHC would hold to ensure it does not breach the LTD requirements. From a practical perspective, in order to ensure that it will not fall below the prescribed LTD and TLAC levels, a Covered IHC would generally maintain levels of LTD greater than required to ensure it has a satisfactory buffer to remain in compliance at all times, particularly considering ordinary-course fluctuations in its assets. In addition, the effective TLAC amount could be pushed even higher as a result of the 50% amortization haircut on internal LTD. If internal LTD is held to maturity, this haircut could require the composite Covered IHC to maintain as much as an additional 1.5% of RWA in LTD, bringing its effective TLAC level to 23.5% of RWA (without taking into consideration the maintenance buffer discussed above).

In our view, such high effective TLAC levels are wholly unnecessary from a systemic risk perspective and will cost Covered IHCs far more than any commensurate benefit to resolvability that may result. First, LTD and Tier 1 capital are equally loss absorbing in a resolution context, so imposing a standalone LTD requirement will not provide a practical benefit in resolution. This is especially true in the context of internal TLAC because the Board's stated preference for LTD over regulatory capital is inapplicable for non-resolution entities.

Second, as illustrated above, the effective TLAC ratios as a percentage of RWA for Covered IHCs will be far in excess of the levels of TLAC that the Board believes are necessary for a Covered IHC to maintain, given where the requirements are ostensibly set in the Proposed Rules. As we discuss in Section I, these proposed TLAC requirements are already far in excess of what is necessary for Covered IHCs considering their limited systemic footprints in the United States. The LTD requirement serves to increase those levels even further, multiplying the costs to Covered IHCs.

The example above also demonstrates the distortionary effect that a three-pronged LTD requirement can have for Covered IHCs that are subject to the SLR. In the above example, even though the composite Covered IHC is subject to the SLR, the Tier 1 leverage prong is the determinative LTD requirement and is higher than what the LTD level would be under the SLR prong. The result is higher LTD and TLAC requirements, which is an unnecessary and unfair result that disadvantages Covered IHCs subject to the SLR.

In the absence of any clear resolvability or other benefit, we respectfully submit that the minimum internal LTD requirement for SPOE IHCs should be eliminated in alignment with the FSB Standards. If the Board does retain an internal LTD component, it should do so in a manner that is consistent with the FSB Standards' approach to external LTD.[27] It should establish, on a firm-by-firm basis, a supervisory expectation (rather than a formal requirement) that Covered IHCs maintain up to 33% of their internal TLAC in the form of debt. Further, as discussed below in Section V.C, preferred stock should be permitted to satisfy the LTD requirement. This added flexibility would substantially reduce the cost to Covered IHCs of complying with internal TLAC requirements while still addressing the Board's stated objectives.

III. The Proposed Rules are Inconsistent with the Principle of National Treatment Because They Do Not Incorporate the Assumption of Balance Sheet Depletion to the Calculation of Internal TLAC and LTD

As discussed in Section II, the Board should eliminate the standalone internal LTD requirement or, alternatively, set a regulatory expectation that Covered IHCs maintain 33% of their internal TLAC in the form of LTD. However, if the Board does not accept these suggestions then, at a minimum, internal LTD requirements and other TLAC requirements applicable to Covered IHCs should incorporate the same assumption of balance sheet depletion that is reflected in the Board's proposed methodology for Covered BHCs.[28] Incorporating this assumption would reduce the LTD and leverage-based TLAC requirements for Covered IHCs. The Board provides no basis for its differential treatment of Covered IHCs in this regard, and we urge the Board, as a matter of fundamental fairness and consistency with the principle of national treatment, to include this adjustment to the calibration of the LTD and leverage-based TLAC requirements for Covered IHCs if such minimum requirements are imposed in a final rule.

The Board states that "the proposed internal LTD requirements [for Covered IHCs] are based on the capital refill framework discussed [for Covered BHCs] with respect to the proposed external LTD requirements."[29] The capital refill framework includes as a central

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27 See FSB Standards, Term Sheet Section 6, p. 11.

28 This adjustment would result in a 1% decrease in the minimum risk-based internal LTD ratio and a 0.5% reduction in the minimum leverage-based internal LTD ratios, consistent with the balance sheet depletion adjustments made in the proposal's calibration of the minimum LTD requirements for Covered BHCs.

29 80 Fed. Reg. at 74941.

assumption a reduction in the resulting LTD requirement to recognize anticipated balance-sheet depletion. The Board explains that such a reduction in LTD requirements is appropriate for a Covered BHC "because the losses that the covered BHC incurs leading to its failure will deplete its risk-weighted assets as well as its capital … meaning that a smaller amount of capital would be required to restore the covered BHC's pre-stress capital level."[30] However, the proposal would not apply a similar reduction to the proposed LTD requirements applicable to Covered IHCs even though the balance sheet of a Covered IHC at the point of failure would be reduced by losses in the same manner as that of a Covered BHC. Indeed, the Board acknowledges that the internal TLAC and LTD requirements are designed "to plan for the contingency in which the covered IHC enters a U.S. resolution proceeding" regardless of whether its parent is organized under an SPOE resolution strategy.[31] While we disagree with this premise, Covered IHCs, like Covered BHCs, should at least benefit from the same reduction in any resulting LTD requirement to recognize anticipated balance sheet depletion at the point of failure.[32]

IV. The Requirement for Eligible Internal LTD to Contain a Conversion Provision is Unnecessary and Costly and Should be Eliminated

The Proposed Rules would require eligible internal LTD to contain a contractual conversion provision that would allow the Board to cancel internal LTD or convert it to equity, in both cases on a going-concern basis outside of resolution proceedings. The Board describes the principal purpose of this requirement as ensuring "that losses incurred by the covered IHC are shifted to a foreign parent without the covered IHC's having to enter a resolution proceeding."[33] In our view, a cancelation and conversion provision is not necessary to ensure that the losses of an SPOE IHC would be borne by its parent FBO, but would significantly increase the costs of complying with the internal TLAC requirement.

As discussed above, the structure of the internal TLAC requirement would ensure that the parent FBO bears the losses of its Covered IHC, even without a conversion trigger. Any losses of the Covered IHC would first be passed on to the IHC's equity holder (its parent FBO), prior to the IHC entering proceedings, and then to its creditors. If LTD is required to be issued to a Covered IHC's parent FBO, the parent FBO would also be the sole creditor in respect of such LTD. Were the Covered IHC to incur losses, the IHC's parent FBO, being in the first-loss position with respect to the entirety of the IHC's TLAC, would have every incentive to cancel or write down the LTD repayment obligation to avoid the IHC entering insolvency proceedings. As we discuss in Section V.B, in our view Covered IHCs should be able to issue internal TLAC to

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30 80 Fed. Reg. at 74932.

31 80 Fed. Reg. at 74941.

32 We support the Board's determination in the proposal not to incorporate any G-SIB surcharges or enhanced SLR requirements in the calibration of internal TLAC and LTD requirements for Covered IHCs.

33 80 Fed. Reg. at 74943.

non-U.S. affiliates other than the Covered IHC's parent FBO. Even with that flexibility, because the losses would be borne by entities within the same corporate group, the ultimate parent FBO would have the same incentives to ensure the Covered IHC avoids insolvency proceeding as if the internal TLAC were issued only to the parent FBO.

Further, if the parent FBO did not cancel or write down the internal LTD repayment obligation, and the Covered IHC entered Bankruptcy Code or Orderly Liquidation Authority proceedings, its losses would be imposed first on the parent FBO, even without a contractual conversion trigger. Only if the Covered IHC's losses exceeded the sum of all of its TLAC (which seems extremely unlikely given the substantial internal TLAC levels that would be required) would losses be imposed on anyone other than the parent FBO. Allowing the Covered IHC to enter such proceedings would only result in the additional costs associated with such proceedings being borne by the parent FBO, in addition to the losses of the IHC, and the FBO ceding control over the recapitalization process to a bankruptcy court or resolution authority. Therefore, the foreign parent would have every incentive to recapitalize the Covered IHC on a going-concern basis and keep it out of proceedings.

Even though not necessary to accomplish the Board's desired policy outcome, a requirement for LTD to include a contractual conversion provision comes at a significant and unnecessary cost to SPOE IHCs. The Board appears to assume that requiring internal LTD instruments to have certain characteristics, such as the contractual conversion provision, would not materially increase the cost of issuing such instruments. For example, in the discussion of the subordination requirement for LTD in the preamble to the Proposed Rules, the Board asserts that "the cost of imposing this contractual subordination requirement on covered IHCs should be substantially lower than the cost of imposing the same requirement on covered BHCs because a covered BHC must issue its long-term debt to third-party market participants, some of which do not invest in contractually subordinated debt instruments, whereas a covered IHC would issue its long-term debt to a parent entity in an internal transaction."[34]

This assumption is incorrect. Covered IHCs and their non-U.S. affiliates generally transact on arm's-length terms. Accordingly, the pricing for internal LTD generally would need to be established by reference to the pricing for a similar instrument issued to third parties. As a result, features that would increase the cost of instruments issued to third parties would also increase the cost of instruments issued to affiliates. This significant additional cost would be borne by Covered IHCs, further increasing the cost of complying with the Board's internal TLAC requirements.

A contractual conversion provision like the one described by the Proposed Rules may well also impose tax-related costs on the Covered IHCs not borne by Covered BHCs. In particular, such a feature poses a substantial risk of the LTD being characterized as equity, rather than debt, for tax purposes. Determining whether an instrument is debt or equity for tax

[34] 80 Fed. Reg. at 74943.

purposes requires a fact-specific weighing of a variety of factors. However, the applicable law requires adequate creditor remedies and other terms intended to ensure that debt always has priority over equity, on both a going-concern and gone-concern basis. Consequently, it is difficult to see how an instrument that can bear losses prior to or pari passu with an instrument that is treated as equity for tax purposes can be treated as debt for tax purposes. The contractual conversion provision that would be required by the Proposed Rules would appear to enable LTD to bear losses while the equity of a Covered IHC still has value (meaning that the LTD would be junior to or, at best, pari passu with the equity of the Covered IHCs). Under the Proposed Rules, a contractual conversion provision must provide for "the immediate conversion or exchange of the instrument into common equity tier 1 of the Covered IHC, or the cancelation of the instrument."[35] Likewise, the debt conversion order provided for under the Proposed Rules would enable the Board to "convert or exchange all eligible internal debt securities of the Covered IHC to common equity tier 1 capital or immediately cancel all eligible internal debt securities of the Covered IHC."[36]

Even absent this concern, the mere presence of a contractual feature that provides for the mandatory (from the perspective of an investor) conversion of a nominally debt instrument to equity weighs in favor of characterizing the instrument as equity for tax purposes. Under long-standing judicial precedent, a critical characteristic of debt for tax purposes is that there is an unqualified promise to repay principal. While the courts have also given deference to regulatory rules for regulated financial institutions that permit a financial institution to suspend payment or fail to pay on debt instruments without causing an event of default, there is no precedent for a provision that mandates conversion into equity or cancelation outside of and in the absence of a regulatory or insolvency proceeding.

Were the LTD of a Covered IHC to be characterized as equity for tax purposes, the Covered IHCs would not be able to deduct interest payments on such debt, and, in some cases, the interest and principal also will be subject to U.S. withholding tax. Additionally, we understand that coupon payments will not qualify for tax preferences accorded to dividends on equity securities in some FBOs' jurisdictions. The result in those cases will be that the aggregate tax cost associated with the payment of interest on LTD of a Covered IHC will substantially exceed the cost that would arise from either conventional debt or conventional equity. These tax implications would not only increase the costs for Covered IHCs and their parent organizations of complying with the TLAC requirements, but would impose a cost on Covered IHCs and FBOs that Covered BHCs would not have to bear. Such tax treatment would make LTD far more costly for Covered IHCs than for Covered BHCs, placing Covered IHCs at an unfair and unnecessary disadvantage.

Finally, the contractual conversion feature described in the Proposed Rules is inconsistent with the policy of "no creditor worse off than in liquidation." This policy is

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35 Proposed Rules § 252.161, definition of eligible internal debt security (emphasis added).

36 Proposed Rules § 252.161, definition of internal debt conversion order (emphasis added).

embodied in both the FSB's "Key Attributes of Effective Resolution Regimes for Financial Institutions"[37] and the Dodd-Frank Act. The policy reflects the view that regulators should not disturb the normal creditor hierarchy in addressing financial distress in respect of a financial institution. Requiring debt holders to have their claims canceled before equity holders' claims are written down would be inconsistent with this principle.

In our view, the internal TLAC framework already sufficiently ensures the going-concern recapitalization of a Covered IHC even without a contractual conversion provision, particularly where the LTD of an IHC is held by its affiliates. Absent a benefit that outweighs the significant costs of requiring this kind of provision in eligible LTD, we believe that the Board should eliminate the contractual conversion provision requirement.

If the Board nonetheless adopts a requirement that internal LTD contain a contractual conversion provision, notwithstanding its limited utility, we respectfully request that the Board eliminate the requirements that would enable LTD to bear losses prior to or pari passu with the equity of the Covered IHC issuer and work with the U.S. Treasury Office of Tax Policy and the Internal Revenue Service to ensure that LTD would be treated as debt for tax purposes.

Further, we urge the Board to require the affirmative consent of the home-country regulator of a Covered IHC's parent FBO before triggering a conversion, unless the Board determines that conversion is necessary to avoid risks to U.S. financial stability. The currently proposed approach allows a home-country regulator only 48 hours to object to the Board's exercise of a contractual conversion trigger. This time period is too short for a home-country regulator of the Covered IHC's parent FBO to play a meaningful role in the conversion decision, especially considering that such consultations would likely occur during periods of market stress, which will ultimately affect the entire FBO's resolution.

V. Other Eligibility Criteria for Internal TLAC Instruments Are More Restrictive Than Necessary to Satisfy the Board's Policy Objectives

In addition to the contractual conversion provision, other eligibility requirements for TLAC and LTD would significantly increase the cost for Covered IHCs of complying with requirements of the Proposed Rules. As discussed above, features that would increase the cost of instruments if issued to non-affiliates would also increase the cost of instruments issued to non-U.S. affiliates because Covered IHCs and their non-U.S. affiliates generally transact on arm's-length terms. In our view, these costs are not outweighed by benefits to resolution or reductions in risks to U.S. financial stability and are therefore unjustified. As described below, we believe that the Board's stated objectives for requiring these features can be addressed in less burdensome ways.

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37 FSB, "Key Attributes of Effective Resolution Regimes for Financial Institutions," Section 5; Dodd-Frank Act § 210(a)(7)(B).

A. The TLAC Eligibility Requirements Should Be Harmonized with the Basel III Capital Requirements, and All Regulatory Capital Instruments Should Count as TLAC

We urge the Board to harmonize its TLAC requirements with the international capital framework established under Basel III and as implemented in the United States. The Proposed Rules would exclude from TLAC certain instruments that satisfy the requirements for regulatory capital under the Basel capital framework and the Board's rules implementing the Basel capital framework in the United States (the "U.S. Capital Rules"), such as minority interests in consolidated subsidiaries ("minority interests") and instruments issued to non-U.S. affiliates (discussed in greater detail in Section V.B below). Further, the requirement that LTD contain a contractual conversion provision is inconsistent with the qualifying criteria for Tier 2 capital instruments and would thus disqualify existing Tier 2 instruments from qualifying as LTD or TLAC.

1. Minority Interests in Consolidated Subsidiaries That Qualify as Regulatory Capital Can Effectively Absorb Losses Anywhere in the Banking Organization

The Board provides two rationales for disqualifying from TLAC and LTD minority interests in consolidated subsidiaries that meet the qualification requirements for inclusion in CET1, Tier 1 or Tier 2 capital under the U.S. Capital Rules. First, the Board states that "loss-absorbing debt issued by a subsidiary would … generally be available only to absorb losses incurred by that particular subsidiary" and thus could not be used to absorb losses incurred anywhere in the banking organization.[38] This rationale ignores the qualifying criteria imposed on minority interests in consolidated subsidiaries in the U.S. Capital Rules and the Basel capital framework that specifically address this concern by significantly haircutting the amount of minority interest in a consolidated subsidiary that may be included in a parent banking organization's regulatory capital. Indeed, the U.S. Capital Rules are designed to ensure that only "surplus" minority interest capital (that is, the amount of capital remaining after taking into account the minimum and buffer capital requirements that would directly or indirectly apply to the subsidiary) would be eligible for inclusion in regulatory capital, and only to the extent that the instruments meet all the other qualifying criteria. The preamble to the final U.S. Capital Rules affirms that the significant haircuts applied to minority interests in the regulatory capital context have the same objective that the Board describes as the basis for disqualifying minority interests entirely from TLAC and LTD in the proposal.[39]

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[38] 80 Fed. Reg. at 74934.

[39] 78 Fed. Reg. 62018, 62054 (Oct. 11, 2013). Specifically, the preamble notes that "the agencies continue to believe limitations on including minority interest [in regulatory capital] will prevent highly-capitalized subsidiaries from overstating the amount of capital available to absorb losses at the consolidated organization."

The second stated rationale for disqualifying from LTD minority interests in consolidated subsidiaries that otherwise qualify as Tier 2 regulatory capital similarly disregards the eligibility restrictions on such interests in the U.S. Capital Rules and the Basel capital framework. The Board notes that "[d]ebt issued by a subsidiary generally cannot be used to absorb losses even at the issuing subsidiary itself unless that subsidiary enters a resolution proceeding."[40] However, only minority interests that represent surplus capital of the subsidiary may be counted toward Tier 2 (gone-concern) regulatory capital, ensuring that the fungible proceeds from the subsidiary's issuance of debt securities are freely available to absorb losses at the parent banking organization on a consolidated basis without jeopardizing the financial stability of the subsidiary.

The Basel Committee on Banking Supervision ("BCBS") and the Board have reached a consensus on the appropriate haircut that should apply to minority interests to be eligible for inclusion in regulatory capital. In their deliberations on the calibration of this haircut, the BCBS and the Board considered the same questions facing the Board in determining whether minority interests are adequately loss-absorbing to be eligible for inclusion in TLAC and LTD. The FSB Standards affirm this approach by including all minority interests that qualify as regulatory capital in eligible TLAC. The Board provides no meaningful discussion that would explain why minority interests that qualify as regulatory capital under its joint capital rules would not adequately absorb losses in the TLAC context. Accordingly, we urge the Board to revise the TLAC and LTD eligibility requirements to ensure that minority interests that qualify as regulatory capital be eligible for inclusion in TLAC and LTD under the final rule.

2. Instruments That Qualify as Tier 2 Capital Should Be Included in Eligible LTD Without Modification

The objectives of the Basel III framework and of the TLAC framework are aligned, and instruments that satisfy the objectives of Tier 2 capital (providing loss absorption on a gone-concern basis)[41] should satisfy the stated objectives of the proposal (increasing "gone-concern LTD" to address too-big-to-fail concerns).[42] Moreover, the FSB Standards are harmonized with the Basel III framework to ensure that a banking organization's regulatory capital instruments would form the base of its TLAC requirements (and its Tier 2-qualifying instruments would count toward any LTD requirement). The Board does not articulate a meaningful rationale for departing from the Basel III framework or the U.S. Capital Rules, or why existing regulatory capital instruments should not satisfy internal TLAC requirements.

We therefore respectfully request that the LTD eligibility requirements be expanded to include all instruments that satisfy the Board's Tier 2 regulatory capital

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[40] 80 Fed. Reg. at 74934.

[41] BCBS, Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems (June 2011), para. 53.

[42] 80 Fed. Reg. at 74931.

requirements. At a minimum, Tier 2-qualifying instruments issued prior to any final rule should be eligible for inclusion in eligible LTD through maturity without modification since such instruments indisputably provide gone-concern loss-absorption. Moreover, any additional requirements for eligible LTD, such as the contractual conversion and subordination features, would be significantly more conservative than the Tier 2 qualifying criteria in the U.S. Capital Rules and could not have been reasonably foreseen.

B. Otherwise Eligible TLAC and LTD Instruments Issued to Non-U.S. Affiliates Should Count Towards the Internal TLAC and LTD Requirements

The Board articulates two rationales for the Internal Issuance Requirement: (1) preventing a conversion of eligible internal LTD into equity from effecting a change in control over the Covered IHC; and (2) ensuring that losses incurred by the Covered IHC of an FBO would be upstreamed to a foreign parent rather than being transferred to other U.S. entities, thereby minimizing the risk such losses would pose to the financial stability of the United States.[43] Requiring that internal TLAC and LTD instruments be issued only to a Covered IHC's parent FBO is an unnecessarily restrictive means of achieving these policy goals, both of which would be satisfied by instruments issued to other non-U.S. affiliates. The Board can therefore allow Covered IHCs greater flexibility in satisfying the internal TLAC requirements and still be assured that these two policy objectives would be satisfied by permitting Covered IHCs to issue otherwise eligible instruments to any non-U.S. affiliates controlled by the ultimate parent FBO (other than those affiliates controlled by the Covered IHC).

Broadening the TLAC and LTD eligibility requirements to include instruments held by any non-U.S. affiliate would provide Covered IHCs with greater flexibility in satisfying their TLAC and LTD requirements in a manner that is consistent with their global operations and funding structures. Such instruments would satisfy the Board's goal of ensuring that losses of a Covered IHC are borne by entities outside of the United States. Further, any intra-group change in control would not be meaningful so long as the ultimate parent remains the same. To the extent that the Board does have concerns about such an intra-group change in control, these concerns could be addressed by permitting Covered IHCs discretion to issue LTD to non-U.S. affiliates so long as doing so would not give rise to change-in-control concerns. For example, LTD that by its terms converts into equity of the foreign parent (or some other affiliate), rather than equity of the Covered IHC, would not pose such concerns. Similarly, LTD would not pose change-in-control concerns if it were issued in limited quantities that would preserve the parent FBO's control of the IHC issuer even following conversion.

C. The Eligibility Requirement Should be Modified to Allow Preferred Stock to Count as Eligible LTD

The Proposed Rules' objectives for imposing a minimum LTD requirement can generally be met by issuances of preferred stock. At a minimum, the Board should modify the

[43] 80 Fed. Reg. at 74941.

internal LTD requirement to allow a Covered IHC to satisfy a portion of its LTD requirement with issuances of preferred stock.

Preferred stock is equally as loss absorbing as LTD and would absorb losses prior to any creditors of the Covered IHC issuer. Further, it is a known and observable quantity of a Covered IHC's capital stack, providing the Board the transparency benefits of LTD. Allowing Covered IHCs to issue preferred stock would reduce the cost to Covered IHCs of complying with TLAC requirements by allowing instruments that would be issued to satisfy other requirements (e.g., stress-testing requirements) to count toward TLAC. This would help reduce the amount by which Covered IHCs would need to maintain additional buffers on top of required TLAC and LTD amounts in order to ensure compliance with all applicable regulatory requirements.

D. The Board Should Permit Covered IHCs to Satisfy Internal LTD Requirements with Parent Guarantees and Similar Loss-Absorbing Structures

We urge the Board, consistent with the FSB Standards, to permit collateralized guarantees from a Covered IHC's parent FBO to satisfy internal TLAC requirements.[44] Such guarantees would address the concerns motivating the proposed internal TLAC requirement in a manner less likely to lead to going-concern ring fencing and the trapping of capital. We further urge the Board to permit Covered IHCs to satisfy a portion of their internal TLAC requirements with other forms of parent support that have similar characteristics to such guarantees and satisfy the Board's policy objectives, such as keepwells and uncollateralized guarantees.

As the FSB Standards recognize, a G-SIB may preposition support by providing debt financing or a collateralized guarantee, as both structures ensure that assets will be available to support the obligations of material subgroups both during periods of stress and during resolution. Additionally, the amount of eligible LTD at a Covered IHC, in contrast to that of a Covered BHC, is not indicative of the full gone-concern, loss-absorbing capacity available to the IHC. For example, keepwells, uncollateralized guarantees and similar structures constitute contractual commitments that resources will be contributed as necessary to address losses at the Covered IHC. Further, internal guarantees are much more likely to absorb losses or lead to the contribution of recapitalization resources outside of insolvency proceedings than the LTD of Covered BHCs, which must negotiate with third-party investors to impose losses on holders of these instruments.

Covered IHCs whose obligations are supported by guarantees from their parent FBOs are effectively in the same position as an FBO's U.S. branches. Much like an FBO's U.S. branches, IHCs with parent guarantees are inextricably tied to their parent FBO by the strength of the guarantee, so that the default of the IHC would also represent the default of the parent entity. When a strongly capitalized FBO is willing to put its full and unconditional support

44 FSB Standards, Term Sheet Section 19, p. 19.

behind an IHC, the Board should apply that guarantee toward the IHC's internal TLAC requirement.

E. The Board Should Permit LTD Instruments Issued by Covered IHCs to Have the Same Acceleration Clauses as Instruments Issued by Covered BHCs

Under the Proposed Rules, LTD instruments issued by Covered IHCs would not be permitted to contain any acceleration clauses. By contrast, LTD instruments issued by Covered BHCs would be permitted to contain acceleration clauses exercisable on one or more specified dates or in the event of insolvency or upon a payment default.

The Board provides no justification for imposing the additional costs associated with this requirement on Covered IHCs. As discussed above in Section IV, Covered IHCs would generally issue LTD to their foreign parents on arm's-length terms. Therefore, any features that would increase costs of issuing the instruments externally would correspondingly increase costs for Covered IHCs. As instruments sufficient to facilitate the orderly resolution of a Covered BHC should be sufficient to facilitate the orderly resolution of a Covered IHC, the requirements applicable to the LTD required to be issued by IHCs should not be different. Otherwise, the Covered IHCs would be subject to increased compliance costs without a corresponding benefit to resolvability.

F. The Board Should Allow Covered IHCs the Flexibility to Structurally or Contractually Subordinate Internal LTD to Operating Liabilities

In the preamble to the Proposed Rules, the Board states its preference that both internal and external LTD be subordinated to the claims of general creditors of a Covered BHC's or Covered IHC's subsidiaries. However, the Board takes different approaches to achieve this result for internal versus external LTD—a general prohibition on Covered BHCs incurring non-TLAC liabilities (structural subordination) and a requirement that internal LTD issued by Covered IHCs be contractually subordinated (contractual subordination). Since both approaches address the Board's concerns and ensure that eligible LTD would be subordinated to operating liabilities, the Board should allow Covered IHCs the flexibility to pursue either approach.

For Covered IHCs, the Proposed Rules would require that eligible internal LTD represent, as a contractual matter, the most subordinated debt claim of a Covered IHC in its resolution or insolvency. Even though a Covered IHC is permitted to incur non-TLAC liabilities, such a clause ensures that the holders of the Covered IHC's LTD "generally would absorb the covered IHC's losses ahead of the third-party creditors and counterparties of the covered IHC and its subsidiaries."[45] By contrast, the Proposed Rules would require that external LTD generally be structurally subordinated to the claims of non-TLAC creditors by limiting the

[45] 80 Fed. Reg. at 74943.

non-TLAC liabilities that a Covered BHC can incur to five percent of the amount of the Covered BHC's external TLAC.[46]

As the Board explains in its discussion about external LTD, it did not impose a parallel contractual subordination requirement for external LTD because the effective structural subordination, in combination with the clean holding company requirements applicable to Covered BHCs, would ensure that a Covered BHC's creditors would absorb losses ahead of the creditors of its subsidiaries.[47] The Board correctly explains that the combination of these requirements would be just as effective for Covered BHCs as a contractual subordination requirement. Since the Board views structural subordination to be as effective as contractual subordination, it is our view that the Board should allow Covered IHCs the flexibility to pursue either approach—issue LTD that is subordinated to other liabilities of the IHC, or issue unsubordinated LTD but prohibit the IHC from incurring non-TLAC liabilities in an amount greater than five percent of the total amount of TLAC maintained by the IHC.

Giving Covered IHCs the option to use either contractual or structural subordination would provide Covered IHCs greater flexibility in satisfying the Board's TLAC requirements and would allow them to do so in a way that avoids the added costs associated with subordination.[48] Further, the limitation on third-party liabilities that are pari passu with a Covered IHC's LTD would mitigate any concerns about a potential change of control occurring during the separate resolution of the IHC.

G. The Board Should Eliminate the 50% Amortization Haircut for Internal LTD

Under the Proposed Rules, internal LTD with an outstanding maturity between one and two years would be subject to a 50% haircut for calculating a Covered IHC's amount of LTD. The Board explains that the rationales for this requirement and other eligibility criteria for internal LTD are "generally the same as the rationales for the identical provisions in the context

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46 See Proposed Rules § 252.64(b)(1).

47 See 80 Fed. Reg. at 74943 ("First. . . the structural subordination of a covered BHC's creditors to the creditors and counterparties of the covered BHC's subsidiaries already generally ensures that the covered BHC's creditors would absorb losses ahead of the creditors of the covered BHC's subsidiaries in an SPOE resolution of the covered BHC. Second, the Board is proposing to subject covered BHCs to clean holding company provisions that would limit the amount of non-TLAC instruments that could be pari passu with or junior to eligible external LTD, which will further address any concerns with covered BHCs' unsecured creditor hierarchies.").

48 In the preamble, the Board justifies requiring the contractual subordination of internal LTD, but not external LTD, on the basis that, because the LTD issued by Covered IHCs must be issued to the Covered IHC's affiliates rather than to non-affiliates, contractual subordination would not be as costly for Covered IHCs as for Covered BHCs. 80 Fed. Reg. at 74943. However, as discussed above, because LTD would generally be priced on arm's-length terms, requiring a subordination provision would impose additional costs on Covered IHCs' compliance with the TLAC requirements that Covered BHCs would not have to bear.

of eligible external LTD."[49] In our view, the rationales for such a provision in the context of external LTD are not applicable to internal LTD because a Covered IHC would have a significantly different relationship with the holder of its internal LTD, its parent FBO, than Covered BHCs would have with their third party creditors. As a result, the rollover risk the Board cites would not apply to internal LTD.

In the context of external LTD, the Board explains that a Covered BHC's debt could mature between the time when the Covered BHC "begins to experience extreme stress and the time when it enters a resolution proceeding," and that its creditors "will likely be unwilling to maintain [their] exposure to the covered BHC and will therefore refuse to roll over the debt or extend new credit."[50] Because the Proposed Rules would require a Covered IHC to issue its LTD solely to its parent FBO, the risk that its LTD would not be rolled over is minimal because the parent FBO has every incentive to keep the Covered IHC out of proceedings and in compliance with its TLAC and LTD requirements. By applying this rationale to Covered IHCs, the Board effectively assumes that the parent FBO will cease supporting a Covered IHC in a period of financial stress. As we discuss in detail above, this kind of assumption is inconsistent with historical precedent and the incentives of the parent FBO.

In our view, the rationale applicable to external LTD is not relevant to internal LTD for purposes of this provision and this provision would only have the effect of increasing Covered IHCs' compliance burden. We therefore urge the Board to eliminate this requirement for internal LTD.

VI. The Internal TLAC Buffer Imposes a Significant Additional Burden with No Corresponding Regulatory Benefit

The Proposed Rules' requirement that Covered IHCs maintain an internal TLAC buffer has no analogue in the FSB Standards. The external TLAC buffer for Covered BHCs under the Proposed Rules arguably aligns with the FSB Standards, which provide that CET1 allocated to a bank's Basel III regulatory capital buffers should not be counted toward its TLAC requirement. However, the FSB Standards do not provide for separate, specific internal or external TLAC buffers in addition to the regulatory capital buffers that would impose restrictions on capital distributions and discretionary bonus payments.

As discussed above, Covered IHCs are already subject to Enhanced Prudential Standards that impose capital buffer requirements and restrict the ability of IHCs to engage in capital distributions that have not been approved in connection with the IHC's capital plan and supervisory stress testing. The internal TLAC buffer would impose additional maintenance costs by introducing yet another buffer requirement, in addition to the costs of maintaining yet more loss-absorbing capital in the form of LTD. This requirement is also unnecessary considering that

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[49] 80 Fed. Reg. at 74942.

[50] 80 Fed. Reg. at 74936.

the Board's early remediation framework will already provide a comprehensive regulatory mechanism for the Board to react to potential stress at the Covered IHC.

Covered IHCs can reasonably be expected to maintain additional TLAC and LTD above the minimum TLAC and LTD requirements to minimize the risk of breaching a mandatory minimum requirement. In addition, the Proposed Rules would require a 100% haircut on internal LTD with a remaining maturity of less than one year. However, such debt could and would be used to recapitalize the Covered IHC at the point of failure even though it would not be counted towards the minimum requirement. The voluntary maintenance of some extra TLAC and LTD by Covered IHCs and the existence of the 100% haircut of LTD securities with a remaining maturity of less than one year will act as a de facto internal TLAC buffer.

Accordingly, the final rule should eliminate the internal TLAC buffer and align with the FSB Standards in light of the absence of any clear regulatory or other benefit associated with the internal TLAC buffer. To the extent the Board retains the internal TLAC buffer requirement, it should ensure that the requirement does not limit distributions or bonus payments simply because the Covered IHC incurs a loss. The Proposed Rules provide that "a Covered IHC may not make distributions or discretionary bonus payments during the current calendar quarter if the Covered IHC's: (A) Eligible retained income is negative; and (B) Internal TLAC buffer level was less than the internal TLAC buffer as of the end of the previous calendar quarter."[51] This provision could be understood to mean that, in the event a Covered IHC incurs a loss and such loss precipitates a decline in the Covered IHC's internal TLAC buffer level, such Covered IHC would not be permitted to make distributions or bonus payments, even where such Covered IHC has an internal TLAC buffer level well in excess of the required amount. We accordingly urge the Board to clarify this provision to the extent it retains the internal TLAC buffer requirement. If an internal LTD requirement is preserved in the final rule, we urge the Board to address any breach of such requirement as part of the supervisory process rather than through self-executing restrictions on an IHC's capital distributions that would not be necessary to prevent weakening of its financial condition.

VII. The Complexity of the Proposed Internal TLAC Requirements Lead to Higher Effective Internal TLAC Levels and Should be Simplified

The internal TLAC requirements under the Proposed Rules are more complex than that under the FSB Standards in many meaningful respects, and could be simplified without compromising the Board's objectives. For example, as discussed above, elimination of the formal LTD requirement in favor of a supervisory LTD guideline aligned with the FSB Standards would significantly simplify the Proposed Rules without compromising the Board's regulatory objectives.

Certain more modest simplifications to the Proposed Rules would similarly reduce burden and complexity without adversely affecting the loss-absorption aims of the

51 Proposed Rules § 252.165(d)(iii).

proposal. Specifically, the Proposed Rules set forth a three-prong test for Covered IHCs to determine their compliance with the proposed internal TLAC and LTD requirements. The test is based on the denominator measures for the risk-based capital ratio requirements, U.S. Tier 1 leverage ratio requirements and SLR requirements (to the extent the Covered IHC meets the thresholds for application of the SLR). By contrast, Covered BHCs are subject to a two-pronged test that is based on total risk-weighted assets and the SLR exposure measure, even though these Covered BHCs remain subject to the U.S. Tier 1 leverage ratio requirement.

If the internal TLAC and LTD requirements in the Proposed Rules are adopted for Covered IHCs, there is no regulatory purpose served in requiring a Covered IHC that is subject to the SLR to calculate, monitor and report its compliance with these standards under both the U.S. Tier 1 leverage exposure measure and the SLR measure. The Board should therefore clarify in the final rule that if a Covered IHC is already subject to the SLR, it should not also be required to comply with the total consolidated assets components of the TLAC or LTD requirement.

VIII. Internal TLAC Requirements Should Apply Only to IHCs of FBOs that Have Been Designated as G-SIBs by the FSB

The Proposed Rules' requirement for FBOs to determine whether they would be G-SIBs under the Board's G-SIB methodology adds complexity and cost but offers no corresponding benefit for resolvability. The Board's methodology is directly and explicitly based on the global methodology established by the BCBS, meaning its application should not result in a different scope of FBOs being designated as G-SIBs.[52] However, relying on this methodology would impose additional compliance costs for all FBOs required to form IHCs in satisfaction of the Board's Regulation YY, not just Covered IHCs, and introduce the possibility of outcomes different from the application of the global methodology. If the possibility of such different outcomes was intended by the Board, we urge the Board to reconsider, as such deviations would arise as a result of factors unrelated to the risks to U.S. financial stability of an FBO's U.S. operations but could have substantial consequences for its global operations.

Under the Proposed Rules, Covered IHCs include any IHC where:

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[52] Our understanding of the Proposed Rules is that the Board will determine which FBOs are subject to the internal TLAC requirements by relying exclusively on the Board's method 1 G-SIB surcharge calculation (and not, for example, on the Board's method 2 G-SIB surcharge calculation). See Proposed Rules § 252.153(b)(4)(ii)(B) and (C) (in which the cross-references to the Board's Regulation Q in the Proposed Rule refer only to the calculation of an entity's method 1 score under the Board's G-SIB surcharge methodology). We respectfully request that the Board confirm that this is the exclusive means for it to determine which FBOs' IHCs would be subject to the final TLAC rules and that the Board's reservation of authority to apply the G-SIB surcharge to other U.S. bank holding companies and to adjust the surcharge, 12 C.F.R. § 217.400(c), would not apply to the determination of whether an FBO is a G-SIB for purposes of the final TLAC rules.

- The FBO parent determines that it has the characteristics of a G-SIB under the BCBS global methodology;

- The Board determines that the FBO parent would be a G-SIB under the BCBS global G-SIB methodology; or

- The Board determines that the FBO parent or its IHC would be a G-SIB under the Board's method 1 G-SIB surcharge, if such FBO were subject to Regulation Q.[53]

The systemic indicators that form the Board's method 1 G-SIB surcharge methodology are identical to the BCBS global G-SIB methodology, as is the weighting of each systemic indicator in the score's calculation. As such, a single calculation applying the global methodology should be sufficient to identify those FBOs that should be designated as G-SIBs based on their potential risk to global financial stability. Requiring FBOs to calculate and monitor their scores under the Board's G-SIB methodology as well as under the BCBS global methodology is unnecessarily duplicative if it would not yield different outcomes from the FSB's own calculation, and does not appear to provide the Board with any clear benefit.

However, this additional requirement would add incremental burden to the global compliance operations of FBOs with IHCs, as they will need to monitor their method 1 scores on a going-forward basis. For IHCs of FBOs that are not currently designated as G-SIBs by the FSB and that do not have to calculate method 1 scores under the Board's G-SIB surcharge rule, this additional compliance obligation, especially considering the complexity discussed below, as well as the ongoing monitoring obligation, represent significant costs. In our view, these costs are not justified, as the final calculation will either be duplicative of the calculations already performed by the FSB or, at worst, yield different results based on factors unrelated to the IHCs' systemic importance.

In addition to being burdensome, the Board's approach introduces an element of uncertainty because it raises the possibility that an FBO could qualify as a G-SIB under the Board's methodology but not the global methodology. This results from the fact that the risk indicators that form the basis of a bank's G-SIB score are denominated in euros under the BCBS global methodology and denominated in U.S. dollars under the Board's G-SIB surcharge methodology. Under the Board's G-SIB surcharge methodology, a bank's aggregate global risk indicators are converted from euros to U.S. dollars using a single-day spot conversion rate

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[53] FBOs are not currently required to calculate their method 1 scores under the Board's capital rules, which were specifically tailored to apply only to those U.S. bank holding companies that are likely to pose a risk to the financial stability of the United States. 80 Fed. Reg. 49082, 49084. The Proposed Rules would have the effect, contrary to the Board's articulation of the scope of the G-SIB surcharge in its adopting release, of imposing the burden of the method 1 calculation on all FBOs that have IHCs. Id. Among other things, the burden of this calculation appears not to be included within the Paperwork Reduction Act burden assessment in the Proposed Rules.

published by the BCBS.[54] Commenters on the Board's proposed G-SIB surcharge rule noted that relying on a spot exchange rate could have the effect of overstating a bank's risk indicators depending on the euro-USD exchange rate, which is not related to measures of systemic risk. The Board's final G-SIB surcharge rule maintained the use of a spot rate to make euro-to-USD conversions for those U.S. bank holding companies subject to the G-SIB surcharge. However, the Proposed Rules would require an FBO to make this additional calculation solely for the purpose of determining whether it must comply with TLAC requirements. This adds an additional variable that an FBO would have to compute and actively monitor on a going-forward basis, considering the scale of the requirements that would be applicable to an FBO if its IHC were a Covered IHC. This added level of complexity and the uncertainty it brings are additional and unnecessary costs for FBOs that affect their capital planning and risk management on a global basis.

In our view, the burdens and risks of this approach are not justified. We therefore suggest that the Board limit the application of the final rules to only those banking organizations designated as G-SIBs by the FSB.

IX. The Board's Requirement that Home Country Resolution Authorities Provide the Board with an SPOE Certification Creates an Unnecessary Administrative Burden and Should be Eliminated

Under the Proposed Rules, a Covered IHC would be presumed to be a resolution entity, and therefore subject to a higher TLAC calibration, unless its home country resolution authority provides the Board with a certification that the "planned resolution strategy for the foreign banking organization does not involve the Covered IHC or the subsidiaries of the Covered IHC" entering into resolution or insolvency proceedings.[55] In the preamble to the Proposed Rules, the Board does not give any explanation for why it has included this requirement for home country resolution authorities even though the Board will know—on its own—whether a Covered IHC is likely to be a resolution entity or not.

In their U.S. resolution plans, FBOs generally discuss their global resolution strategies and specify, in particular, whether such resolution strategy is an MPOE or SPOE strategy.[56] The Board reviews these resolution plans, which are approved by each FBO's board

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54 80 Fed. Reg. 49082, 49085.

55 Proposed Rules § 252.164(d)(1).

56 See, e.g., the public sections of the resolution plans submitted in 2015 by Barclays Bank plc, ("In the UK, the Bank of England has advised that the preferred resolution strategy for Barclays is a single point of entry resolution at [Barclays Bank plc] that involves bail-in."), BNP Paribas ("BNPP's group-level resolution strategy is built around a Single Point of Entry approach. This is in line with regulatory guidance provided by France's Autorité de Contrôle Prudentiel et de Résolution."), Credit Suisse Group AG (describing the [Swiss Financial Market Supervisory Authority ('FINMA')] 2013 position paper, which "announced that [FINMA's] preferred resolution strategy for [Credit Suisse Group AG] would be a FINMA-led Single Point of Entry resolution strategy."), Deutsche Bank AG ("The [German Federal

of directors. Additionally, the Board participates in the CMGs for virtually all of the Covered IHCs' FBOs and would therefore be familiar with the resolution strategies of those FBOs. As a result of its review of each FBO's U.S. resolution plan, its ability to participate in the FBO's CMG and its general supervision of the Covered IHC and engagement with the FBO's home authorities, the Board will know whether the Covered IHC is likely to be a resolution entity or not and whether the resolution strategy for an FBO changes.[57] As such, the certification requirement in the Proposed Rules would not give the Board any new information it does not already have. It would, however, create an administrative requirement that is outside of the control of the Covered IHC and the FBO and that home country resolution authorities could fail to satisfy for reasons wholly unrelated to the FBO's resolution strategy.

For example, resolution authorities may have internal policies or requirements that do not permit them to make an official commitment to effectuate a particular resolution strategy. The FDIC, for instance, would likely be unable to make such a certification regarding its resolution strategy for a Covered BHC because proceedings under the Orderly Liquidation Authority (the only proceedings in which the FDIC would be in charge of a Covered BHC's resolution) are not permitted to be "the planned resolution strategy" for a Covered BHC.[58] Further, resolution authorities are likely to develop a variety of strategies in order to be prepared for a resolution under difficult market circumstances and in response to different failure scenarios. This would make it impossible for a resolution authority to make a certification with respect to "the" strategy for an FBO.

Because the default is for Covered IHCs to be treated like resolution entities, any such impediment to a resolution authority's ability to provide such a certification for a Covered IHC would subject the Covered IHC to higher TLAC requirements for reasons unrelated to its potential risk to U.S. financial stability or the likelihood of cross-border cooperation. Instead,

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Agency for Financial Market Stabilisation] and the global Crisis Management Group, which consists of representatives of the principal regulators of the DB Group, are working under the assumption of resolution though bail-in under a single point of entry approach as the preferred resolution strategy, which is intended to cover the whole DB Group, including the DB Group's U.S. operations."), HSBC Holdings plc ("HSBC Group's global resolution strategy is based on the resolution of regional or national groups of affiliated companies in what has been referred to as a multiple point of entry resolution strategy."), Banco Santander, S.A. ("[Santander's] structure . . . makes the 'multiple points of entry' the most appropriate resolution strategy for the Santander Group.") and UBS Group AG (describing SPOE as FINMA's "preferred resolution strategy for UBS"), available at http://www.federalreserve.gov/bankinforeg/resolution-plans.htm.

57 One of the primary purposes of the CMGs is to review the relevant G-SIB's resolution plans and develop institution-specific cooperation agreements. FSB, "Key Attributes of Effective Resolution Regimes for Financial Institutions," Section 8.

58 See, e.g., Resolution Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76614, 76615 (Dec. 18, 2013) (noting that the Dodd-Frank Act "makes clear that bankruptcy is the preferred resolution framework in the event of the failure of a" systemically important financial institution).

the Board should determine, based on its review of the FBO's U.S. resolution plan, its engagement with the FBO's home authorities and its interaction with the Covered IHC and the FBO, whether the Covered IHC is expected to be a resolution entity. Alternatively, considering that the vast majority of G-SIBs are recognized to have SPOE resolution strategies, the default calibration for Covered IHCs should be the calibration applicable to non-resolution entities, and the Board could impose the calibration applicable to MPOE IHCs on a Covered IHC if it determines such Covered IHC is likely to be resolved under an MPOE strategy. At a minimum, the Board should coordinate with home authorities to understand what certifications or commitments they would be able and willing to provide and ensure that the final rule does not unnecessarily subject SPOE IHCs to the requirements applicable to MPOE IHCs for reasons unrelated to such SPOE IHCs' resolution strategies.

X. The TLAC Requirements Should Respect the MPOE Strategy Being Pursued by the MPOE IHCs and their Parent FBOs

By subjecting MPOE IHCs to an Internal Issuance Requirement, the Board is effectively eliminating these IHCs as points of entry during resolution, forcing the IHCs' parent FBOs and their home authorities to abandon an MPOE strategy with respect to the IHCs. This is a significant departure from the FSB Standards and contrary to ongoing cross-border resolution planning efforts, and would impose substantial and unnecessary costs on the MPOE IHCs. We therefore urge the Board to allow MPOE IHCs to satisfy their TLAC requirements with otherwise eligible instruments issued externally to third parties. However, if the Internal Issuance Requirement is retained for MPOE IHCs, and the Board effectively forces the MPOE IHCs and their parent FBOs to adopt the funding structures employed by the SPOE IHCs, there would be no reason to subject the MPOE IHCs to higher TLAC requirements, and this differential treatment should be eliminated.

A. The Internal Issuance Requirement Effectively Eliminates the MPOE Resolution Strategy as an Option for Covered IHCs

By requiring all TLAC instruments, including LTD, to be issued to and held by a foreign parent entity, the Proposed Rules would make it impossible, from a practical perspective, for a parent FBO of a Covered IHC to pursue an MPOE strategy with respect to the IHC. By requiring an MPOE IHC to issue all of its internal TLAC solely to a parent FBO, the resulting cross-border funding interconnections would make an independent resolution of the MPOE IHC effectively impossible since its losses would be borne solely by the parent FBO. The Board's approach with respect to MPOE IHCs would contradict the FSB Standards, the resolution strategy developed by the MPOE IHCs' home authorities and the business model being pursued by the IHC and its parent FBO.

Contrary to the FSB Standards, the Proposed Rules would subject MPOE IHCs to an internal TLAC requirement rather than an external TLAC requirement. Under the FSB Standard, "[e]xternal TLAC must be issued and maintained directly by resolution entities," correctly, in our view, distinguishing the treatment of subsidiaries that are resolution entities from the treatment of other subsidiaries.[59] A resolution entity is "an entity to which resolution tools will be applied in accordance with the resolution strategy for the G-SIB."[60] By contrast, internal TLAC is aimed at "ensuring the appropriate distribution of loss-absorbing and recapitalisation capacity within resolution groups," which are defined as subsidiaries of resolution entities that "are not themselves resolution entities."[61] The FSB Standards recognize that internal TLAC is appropriate only for those entities that are not expected to independently enter resolution, which of course is not the case with MPOE IHCs. Subjecting MPOE IHCs to an internal TLAC requirement would therefore be in direct contradiction to the FSB Standards, which respect to the different resolution strategies that FBOs can pursue.

The Board's stated rationales for imposing the Internal Issuance Requirement on Covered IHCs are not relevant for MPOE IHCs that are expected to enter bankruptcy or resolution proceedings in the United States in a failure scenario. For example, the Board states in the preamble that if eligible TLAC were held by a third party, its conversion could effect a change in control, which "could create additional and undesirable regulatory and management complexity during a failure scenario and would severely disrupt an SPOE resolution strategy."[62] These issues are not relevant for MPOE IHCs that will continue to be organized under a decentralized subsidiary business model and will be regulated as standalone entities. The resolution of an MPOE IHC in the United States would be the same as the resolution of a Covered BHC (as opposed to an SPOE IHC). Since the Board does not believe that a change in control in the context of the resolution of a Covered BHC would disrupt a Covered BHC's resolution, the same rationale should apply to MPOE IHCs.

Further, subjecting MPOE IHCs to an internal TLAC requirement would be contrary to the business models of FBOs with an MPOE resolution strategy and force them to create the cross-border funding linkages that their business models were designed to avoid. The business model for the MPOE IHCs and their parent FBOs is oriented around operating subsidiaries that are independently funded on a local basis and that do not rely on their foreign parent for capital or liquidity support. As a result, the operations of the MPOE IHCs closely resemble those of the U.S. regional banking groups that the Board has determined would not need any TLAC to address any potential risks to U.S. financial stability that might arise in the context of their failure or resolution. The only difference between these U.S. regional banking groups and the MPOE IHCs is that the MPOE IHCs happen to be owned by a single, foreign parent as opposed to by a variety of public shareholders.

Complying with an internal TLAC requirement would force an MPOE IHC's parent FBO to change not only its funding model, but also its resolution strategy. In order to

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59 FSB Standards, Term Sheet Section 8, p. 13 (addressing the issuer of external TLAC).

60 FSB Standards, Term Sheet Section 3, p.9.

61 FSB Standards, Term Sheet Section 16, p. 17.

62 80 Fed. Reg. at 74942 (emphasis added).

fund the internal LTD issued by the MPOE IHC, the parent FBO would likely need to obtain funding at the top of the house, issuing either additional equity or long-term debt. Likewise, the amount of TLAC and LTD that would be required to be issued to an MPOE IHC's parent FBO would more than satisfy its funding requirements, eliminating the need for (and benefit of) raising external funding at the IHC level. These cross-border funding linkages would inextricably tie the IHC to its parent FBO during resolution, as is the Board's stated intention for the internal TLAC requirements.

As a result, the parent FBO would no longer be able to count on the IHC being a resolution entity or a "point of entry" during a resolution scenario. While the parent FBO would be able to pursue an MPOE strategy with respect to other regions or operations, the Proposed Rules effectively eliminate an MPOE strategy with respect to an MPOE IHC. In our view, the global resolution strategy for a G-SIB should be determined by the G-SIB and its home authorities, not dictated by host authorities.[63]

B. The Elimination of MPOE as a Viable Resolution Strategy for MPOE IHCs Directly Contradicts Parent FBOs' Compliance with Other Applicable Resolution Mandates

In consultation with both home resolution authorities and the Board, among others, MPOE IHCs and their parent FBOs have been making significant and costly changes to internal global operations and funding strategies to ensure that the IHCs can be resolved on a standalone basis. These efforts would be undermined by requiring MPOE IHCs to comply with an internal TLAC requirement. The Proposed Rules do not explain why the Board, which has been involved in the development of MPOE resolution strategies for the MPOE IHCs, proposes to change course so dramatically and unexpectedly.

The choice to pursue an MPOE resolution strategy has significant consequences for other applicable regulations and resolution mandates that would be undermined by the Proposed Rules. In particular, the implications of the draft EU proposal for a Regulation on Bank Structural Reform ("EU BSR") are dependent on the resolution strategy being pursued by EU-headquartered institutions. As drafted, for an EU institution with an MPOE resolution strategy, non-EU subsidiaries that are resolution entities would be excluded from the requirements of the EU BSR on the basis that the subsidiaries would be resolved in their host jurisdiction. By eliminating the MPOE resolution strategy as a practical option for the MPOE IHCs, and eliminating these IHCs as points of entry, the Proposed Rules would push the MPOE IHCs within the scope of the EU BSR. As a result, the U.S. operations would become subject to the requirements under EU BSR to separate the banking and trading activities of the U.S. subsidiaries. From a practical perspective, this would be impossible without a legal framework to support the transition and a continuing supervisory framework to monitor the split. Further, it

[63] Consider, for example, the implications of the host authorities of a U.S. G-SIB requiring that local operations be resolved separately from the rest of the G-SIB's operations in contradiction to the U.S. authorities' preferred SPOE global resolution strategy for U.S. G-SIBs.

would impose significant and unnecessary costs on the parent FBOs of the MPOE IHCs, which would not otherwise need to comply with the requirements of the EU BSR with respect to their non-EU operations.

C. The Board Should Permit Instruments Issued Externally to Count Towards an MPOE IHC's TLAC Requirements

We urge the Board to respect the resolution strategies developed by the parent FBOs of MPOE IHCs and their home authorities and to permit instruments issued externally to count towards an MPOE IHC's TLAC requirements. Permitting the MPOE IHCs to satisfy their TLAC requirements with instruments issued to non-affiliates would be consistent with the FSB Standards and the resolution strategies for the MPOE IHCs. Further, from a loss-absorbency perspective, there is no difference between TLAC instruments held by affiliates and those held by non-affiliates—the Internal Issuance Requirement does not itself make the instruments more capable of absorbing losses. Accordingly, externally issued instruments would support both the resolution of the IHCs and the reduction of risks to U.S. financial stability. Finally, as noted in Section II.A, internally issued TLAC would not promote the Board's goals of market discipline since it will all be held by a single parent FBO. For MPOE IHCs, which are more akin to Covered BHCs than SPOE IHCs, externally issued TLAC would impose more transparent market discipline as well as provide important information about the market's reaction to the MPOE IHC's issuances. If the Board permits MPOE IHCs to issue external TLAC and LTD, the Board should retain flexibility as to which U.S. entity is treated as the Covered IHC subject to the TLAC, LTD and clean holding company requirements. Some FBOs have more than one U.S. holding company that satisfy the Board's stated objectives.

If the Board ultimately retains the Internal Issuance Requirement with respect to MPOE IHCs, we respectfully request that the Board impose the same calibration requirements on MPOE IHCs as they do on SPOE IHCs. There would be no justification for differentiating between MPOE IHCs and SPOE IHCs if both are subject to an Internal Issuance Requirement and to impose higher TLAC requirements on just the MPOE IHCs would be arbitrary and unfair.

The internal TLAC requirements established for SPOE IHCs, particularly the separate LTD requirement, are premised in part on the failure of the IHC and the need to be able to effectively recapitalize the IHC if it were to fail, which is also the case for MPOE IHCs.[64]

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[64] For example, the preamble confirms that the Board's underlying premise for imposing internal TLAC requirements on Covered IHCs of SPOE and MPOE G-SIBs is ultimately the same:

> "Were such an SPOE resolution to succeed, the covered IHC would avoid entering resolution and would continue as a going concern, with its eligible internal TLAC and eligible internal LTD used to pass up the covered IHC's going concern losses to the parent foreign GSIB, to the extent necessary. <u>However, the Board also recognizes the need to plan for the contingency in which the covered IHC enters a U.S. resolution proceeding</u>. The proposed calibration for such a covered IHC is based

Because the Board has determined that the lower levels of internal TLAC and LTD calibration for SPOE IHCs would be sufficient to recapitalize the IHC during resolution and guard against risks to U.S. financial stability, there would be no justification for imposing higher requirements on MPOE IHCs. This is particularly the case where all internal TLAC instruments of an MPOE IHC would be required to be issued to an FBO parent, which would change the incentives for and assumptions about the parent's support during resolution.[65] Therefore, if MPOE IHCs are subjected to internal TLAC requirements, they should be subject to the same calibration levels applicable to SPOE IHCs.

At a minimum, the final rule, consistent with the FSB Standards, should provide a mechanism for adjusting TLAC calibration levels for an MPOE IHC to ensure that the sum of the TLAC requirements applicable to each of the resolution entities of the IHC's parent FBO does not exceed the amount of external TLAC that the FBO would be required to issue if it pursued an SPOE resolution strategy rather than an MPOE strategy.

XI. The Board Should Not Require Any Domestic Prepositioning of Covered IHC TLAC, But If It Does, It Should Allow Covered IHCs Discretion in Determining the Form of Such TLAC

In our view, a domestic prepositioning requirement would be contrary to the Board's objectives of promoting the resolvability of the subsidiaries of Covered IHCs and reducing risks to U.S. financial stability.

As we discuss above, prepositioning requirements, particularly those set at the high levels proposed by the Board, lead to the fragmentation of capital and undermine the global resiliency of G-SIBs. Requiring domestic prepositioning would only exacerbate the fragmentation resulting from the cross-border prepositioning called for under the FSB Standards and the Proposed Rules. Such additional prepositioning would create further rigidity of funding structures, reducing the ability of institutions to respond dynamically to stress when and where it occurs, and ultimately undermining the resilience of institutions on a global basis.

> on the desirability of providing support for the preferred SPOE resolution of the foreign GSIB, which requires that the foreign GSIB be allowed to have some internal loss-absorbing capacity at the parent level that can be freely allocated to whichever subsidiaries have incurred the greatest losses (including non-U.S. subsidiaries), <u>balanced with the need to ensure that sufficient loss absorbing capacity is prepositioned with the covered IHC to ensure that it can be kept operating as a going concern or subjected to an orderly resolution in the United States if the foreign G-SIB is not subjected to an SPOE resolution</u>."

80 Fed. Reg. at 74941 (emphasis added).

[65] <u>See</u> Section II generally for more on the incentive for parent support created by the Internal Issuance Requirement.

Further, both the FSB and the Board justify internal prepositioning requirements as necessary to ensure cooperation between home and host regulators. Presumably, cooperation among U.S. authorities can be assured in ways that do not reduce the resiliency of G-SIBs. In particular, we note the Board already has a robust framework for ensuring that Covered IHCs are well capitalized and managed in a safe and sound manner. Further, the major operating subsidiaries of Covered IHCs are already subject to comprehensive capital regimes and prudential supervision. To the extent that the Board believes it is necessary to enhance these frameworks to ensure that loss-absorbing resources are available at the subsidiary level, we urge the Board to work with other U.S. functional regulators and if necessary to enhance its early remediation framework so that such concerns can be addressed dynamically. If the Board is concerned about the legal enforceability of support downstreamed from a Covered IHC to a subsidiary, the Board should consider alternatives to prepositioning that would not engender a risk of brittleness.

However, if the Board does decide to propose a domestic internal TLAC requirement, it should allow Covered IHCs and FBOs the greatest degree of flexibility to determine the types of loss-absorbing instruments used for such purposes, regardless of whether the relevant resources are "contributable" or "prepositioned." Although prepositioning resources through the issuance of loss-absorbing instruments by subsidiaries could have the benefit of ensuring losses can be passed up to a Covered IHC, this potential benefit needs to be considered in relation to the concomitant loss to the ability of a Covered IHC to deploy resources within its organization where they may be necessary. The resulting loss of flexibility could severely undermine the goals of the Proposed Rules, which are designed to ensure that the Covered IHC, and the FBO as a whole, have sufficient loss absorbency. If the Board is too prescriptive about how those resources must be allocated on an ex ante basis, those resources would not be useful if losses arise other than as anticipated by the Board.

Given the potential risk of limiting a Covered IHC's flexibility during resolution, we urge the Board to allow Covered IHCs to determine how to preposition internal TLAC within its corporate organization and satisfy those requirements as flexibly as possible—including by common equity, LTD or other instruments such as guarantees.

ANNEX I
Detailed Explanation of Suggested Internal TLAC Calibration

In Section I.D we set forth our view that the Board should (i) set the internal TLAC calibration equal to 75% of the Equivalent External TLAC levels and (ii) eliminate the standalone internal LTD requirement. If the Board retains an internal LTD requirement, we propose that the Board establish the minimum level of internal LTD as a regulatory expectation equal to 33% of the internal TLAC amount, consistent with the FSB Standards' approach to external LTD. The resulting calibration is set forth below. This Annex I provides further clarity on the methodology used to reach this calibration.

Minimum Internal TLAC and LTD Levels for SPOE IHCs			
	RWA	**SLR (for SPOE IHCs subject to the SLR)**	**U.S. Tier 1 Leverage Ratio (for SPOE IHCs not subject to the SLR)**
Minimum Internal TLAC	13.5% (rather than 16%)	4.125% (rather than 6%)	5.625% (rather than 8%)
Minimum Internal LTD (if retained)	4.5% (rather than 7%)	1.375% (rather than 3%)	1.875% (rather than 4%)

The starting point for our proposed calibration of minimum internal TLAC is the minimum external TLAC applicable to Covered BHCs. Consistent with the Board's methodology for establishing the calibration for Covered IHCs, we then adjust the RWA component to exclude the G-SIB surcharge and the leverage components to exclude the buffer requirement of the enhanced SLR. The calibration for external TLAC in the Proposed Rules is 18% of RWA and 9.5% of total leverage exposure.

The Board explains in the preamble to the Proposed Rules that the calibration of the RWA component of external TLAC is based on its analysis of the historical loss experiences of major financial institutions during the financial crises and other financial crises.[66] For the reasons stated in Section I.A of our letter, the calibration of internal TLAC should reflect the smaller systemic footprints of Covered IHCs. The RWA component of the internal TLAC requirement should therefore be 75% of the RWA component of the external TLAC requirement rather than 90%, or 13.5% of RWA (as reflected in the table above).

For the SLR component of external TLAC, the Board does not provide a clear explanation of the methodology it used to reach its proposed calibration. However, the Board does explain that the SLR prong of the external LTD requirement is 4.5% of total leverage exposure, which is equal to a Covered BHC's tier 1 leverage ratio minimum plus buffer, which is

[66] 80 Fed. Reg. at 74932.

equal to 5% under the enhanced SLR, less a 0.5% reduction incorporating an assumption of balance-sheet depletion.[67] We have assumed, based on the Board's reference to the capital refill framework for determining the LTD component of external TLAC, that the SLR prong of the external TLAC requirement is the sum of the 4.5% external LTD requirement and the 5% enhanced SLR requirement (composed of a 3% minimum SLR plus 2% SLR buffer requirement).

Covered IHCs, by contrast, are subject only to a 3% minimum SLR. As we argue in Section III of our letter, the Board does not provide any justification for disregarding the balance sheet depletion assumption in its proposed calibration of internal TLAC, and principles of fundamental fairness and national treatment strongly favor such assumptions being applied to the calibration of internal TLAC as well. Applying this assumption of balance sheet depletion would result in an internal LTD requirement of no more than 2.5% for Covered IHCs subject to the SLR. Thus, following the methodology for determining the external TLAC requirement for Covered BHCs, the SLR prong of internal TLAC would be the sum of the 3% minimum SLR plus the adjusted internal LTD requirement of 2.5%, totaling 5.5%—the Equivalent External TLAC requirement. Under our proposal, the internal TLAC requirement for Covered IHCs should be further adjusted downward to 75% of the Equivalent External TLAC requirement, which would result in a minimum internal TLAC requirement of 4.125% of total leverage exposure, as shown in the table above.

For Covered IHCs that are not subject to the SLR, the methodology for calculating the Tier 1 leverage ratio minimum is the same as described for the SLR prong. The minimum Tier 1 leverage ratio for Covered IHCs is 4%. Applying the balance-sheet depletion assumption would result in a 3.5% internal LTD requirement. Thus, the Equivalent External TLAC requirement under this prong would be 7.5%. Following our proposed approach, the Tier 1 prong of the internal TLAC requirement would be 75% of the Equivalent External TLAC requirement of 7.5%, which would be 5.625% of average total consolidated assets.

Finally, as discussed in Section II of our letter, the Board should eliminate the standalone minimum internal LTD requirement, or at a minimum replace it with a regulatory expectation that a Covered IHC maintain at least 33% of its internal TLAC in the form of internal LTD instruments. Applying this 33% guideline to each prong of our proposed internal LTD calibration would yield internal LTD expectations of: 4.5% of RWA, 1.375% of total leverage exposure and 1.875% of average total consolidated assets.

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[67] See 80 Fed. Reg. at 74932-74933.

ANNEX II
Effective TLAC Requirements for Covered IHCs

As discussed in Section II.B, the effective TLAC requirements for Covered IHCs would be significantly higher than the stated requirements in the Proposed Rules. This results primarily from the interaction of the standalone LTD requirement and the regulatory capital requirements applicable to Covered IHCs.

The proposed stated minimum level of internal TLAC for an SPOE IHC (after full phase-in) would be the greater of: (i) 16% of RWA; (ii) 6% of total leverage exposure (if the SPOE IHC is subject to the SLR); and (iii) 8% of average total consolidated assets. All Covered IHCs would also need to satisfy the internal TLAC buffer of 2.5% of RWA, resulting in a required RWA component 18.5% of RWA. All Covered IHCs would also be required to maintain eligible internal LTD equal to the greater of (i) 7% of RWA; (ii) 3% of total leverage exposure; and (iii) 4% of average total consolidated assets. Accordingly, an SPOE IHC that satisfies the minimum required level of internal TLAC by maintaining internal LTD just equal to 7% of RWA would need to maintain a Tier 1 capital ratio of at least 11.5% in order to meet an 18.5% RWA TLAC requirement.

However, Covered IHCs will generally be required to maintain Tier 1 capital ratios well in excess of 11.5% in order to obtain approval of their capital plans in connection with the Comprehensive Capital Analysis and Review ("CCAR") (under which eligible LTD would provide no benefit). The Board's 2015 CCAR results noted that the average Tier 1 capital ratio for the 31 participating banking organizations was 13.5%, which provides a reasonable expectation of the Tier 1 capital ratio that Covered IHCs would target to ensure capital plan approval.[68]

As a result, any Covered IHCs that maintain a Tier 1 capital ratio of 13.5% and a 7% LTD RWA ratio would thus maintain a TLAC RWA ratio of 20.5%, which significantly exceeds the stated minimum plus buffer requirement of 18.5%. Based on data received from our members, this higher effective TLAC requirement is not a hypothetical possibility; rather, it more accurately reflects the expected minimum TLAC levels that many Covered IHCs would expect to maintain given the composition of their balance sheets.

As discussed in Section II.B of our letter, we received data from several of our members that would be Covered IHCs regarding their capital levels, the binding constraints under the Proposed Rules and the resulting levels of internal TLAC that they would be required to maintain. The following example depicts a composite Covered IHC that has features approximately equal to the mean data provided by our members (although the numbers do not match any particular Covered IHC and are rounded for ease of exposition) and illustrates how

[68] Comprehensive Capital Analysis and Review 2015: Assessment Framework and Results (March 2015), p. 3.

the LTD requirement would increase a Covered IHC's effective TLAC requirement. In this example, our composite Covered IHC has the following characteristics:

Characteristics of the Composite Covered IHC		
RWA	**On-Balance-Sheet Assets**	**Total Leverage Exposure**
45	100	125
Tier 1 Capital Holdings Pre-TLAC:	**6**	
Tier 1 Capital Ratio:	**13.3%**	
Tier 1 Leverage Ratio:	**6%**	
SLR:	**4.8%**	

The Covered IHC would generally be expected to hold Tier 1 capital of approximately 6 (resulting in a Tier 1 capital ratio of 13.3% RWA) in order to maintain compliance with its regulatory capital requirements in a severely adverse stress scenario under CCAR. As a result, the Covered IHC would be near full compliance with the 16% RWA internal TLAC minimum under the Proposed Rules.

However, under the Proposed Rules, the Covered IHC would have to maintain the greater of the following levels of internal LTD in addition to its existing regulatory capital:

Composite Covered IHC's LTD Requirement Under the Proposed Rules		
RWA	**On-Balance-Sheet Assets**	**Total Leverage Exposure**
45 x 7% = 3.15	100 x 4% = 4	125 x 3% = 3.75
Minimum LTD Requirement:	**4**	
Total Internal TLAC:	**6 (Tier 1) + 4 (LTD) = 10**	

In the example above, the U.S. Tier 1 Leverage Ratio (highlighted) would be the binding constraint. Adding the 4 of LTD required by the U.S. Tier 1 Leverage Ratio to the 6 of Tier 1 held for regulatory capital and CCAR purposes results in a total internal TLAC level of 10, or 22% RWA. As illustrated above, the Tier 1 leverage prong of the LTD requirement—a test that is not required for any Covered BHC—can drive up a Covered IHC's total TLAC requirements to levels well above the stated levels for Covered BHCs.