Via Electronic Mail

January 16, 2024

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218 20219
Attention: Chief Counsel's Office,
Comment Processing

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: James P. Sheesley, Assistant Executive Secretary

Board of Governors of the Federal Reserve System
20th Street and Constitution Ave NW
Washington, DC 20551
Attention: Anne E. Misback, Secretary

Re: Notice of Proposed Rulemaking – Long Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions (Docket ID OCC-2023-0011 and RIN 1557-AF21 [OCC], Docket No. R-1815 and RIN 7100-AG66 [Board], and RIN 3064-AF86 [FDIC])

Ladies and Gentlemen:

The American Bankers Association[1] (ABA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (Proposed Rule or Proposal) issued by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC, and together with the Board and OCC, the Agencies) requiring large banks with total assets of $100 billion or more (LBOs) to maintain a minimum amount of loss-absorbing long-term debt (LTD).[2] The Proposed Rule follows an advanced notice of proposed rulemaking (ANPR) issued in October 2022 that examined possible changes, including a long-term debt requirement, to promote orderly resolutions for LBOs.[3]

ABA previously acknowledged the importance of effective resolution strategies to maintain financial stability and minimize the cost of bank failures in response to the ANPR, but expressed

[1] The American Bankers Association is the voice of the nation's $23.5 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard $18.6 trillion in deposits and extend $12.3 trillion in loans.
[2] *See* 88 Fed. Reg. 64524 (September 19, 2023), *available at* https://www.federalregister.gov/documents/2023/09/19/2023-19265/long-term-debt-requirements-for-large-bank-holding-companies-certain-intermediate-holding-companies.
[3] *See* 87 Fed. Reg. 641790 (October 24, 2022), *available* at https://www.federalregister.gov/documents/2022/10/24/2022-23003/resolution-related-resource-requirements-for-large-banking-organizations.

concerns that increased resolution measures will not result in cost-effective benefits to the financial system.[4] In a similar vein, ABA is concerned that the Proposed Rule strays from expressed Congressional intent that regulations be tailored according to the institutions' size, risk, and complexity.[5] Federal Reserve Board Chair Jerome Powell testified before Congress that "resolution planning requirements should also be tailored to the size and complexity of the firm...Smaller and less complex firms likely do not need the same frequency of, and detail in, their living wills..."[6] More recently, he noted in response to a question regarding a potential LTD requirement for Category II through IV banking organizations, that, "[w]e believe strongly and always have in tailoring to address the different size and risk characteristics of financial institutions and certainly nothing like that for the regionals. They won't have anything like what the very large, most systemically important banks have in terms of overall regulation . . . We're required by the law now and we're doing this [tailoring]. Dodd-Frank actually required us, suggested that we should tailor, and then S. 2155 required it. And anything that we do will reflect appropriate tailoring."[7]

ABA notes that Agencies already implemented a tailoring framework in 2019 that addresses asset growth of LBOs if certain thresholds are crossed and their statutory obligation to tailor regulation to the relevant risks.[8] Covered entities should therefore have reduced calibration requirements relative to the full "capital refill standards" applied to G-SIBs (Global Systemically Important Banks) under the total loss-absorbing capacity (TLAC) rule.[9]

Furthermore, extensive effort between the Board and FDIC on one hand and LBOs on the other to implement resolution planning has significantly enhanced the likelihood of an orderly resolution, should one of these institutions experience financial distress. These resolution plans, developed with considerable input from the Board and FDIC staffs, have been accepted by the regulators and represent important contributions to U.S, and global financial stability. Though ABA acknowledges that predicates for orderly resolution evolve over time, the Proposed Rule fails to take account of the progress to date and may compromise what has already been achieved.

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[4] *See* Letter from American Bankers Association, to Board and FDIC (January 4, 2023), https://www.fdic.gov/resources/regulations/federal-register-publications/2022/2022-resolution-resource-large-banking-3064-af86-c-018.pdf.

[5] *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-74 (May 24, 2018).

[6] FRB Chair Jerome Powell. Quote from: U.S. Congress. Hearing of the Senate Banking Committee. "Nomination of Jerome H. Powell." (Nov. 28, 2017), *available* at https://www.congress.gov/115/chrg/CHRG-115shrg28661/CHRG-115shrg28661.htm.

[7] *See* The Federal Reserve's Semi-Annual Monetary Policy Report: Hearing Before the H. Comm. on Fin. Servs., 118th Cong. (Mar. 8, 2023) (testimony of Chair Powell).

[8] Throughout this letter, we refer to the institutions that would be subject to new resolution measures as "non-G-SIB LBOs," i.e., domestic Category II-IV institutions.

[9] *See* 12 CFR, Part 252, Subpart G. Because G-SIB LBOs already hold significant TLAC and LTD under these existing requirements and are legally obligated to support their IDIs during financial stress.

- **The Agencies should eliminate the internal long-term debt requirement and allow a covered entity the option to comply either with an external LTD requirement at the holding company level or with an internal or external LTD requirement at the IDI-level, but not require both.**

- **The Agencies should revise the LTD requirement's calibration for banks subject to the Proposed Rule.**

- **The Agencies should not impose a particular resolution strategy and should preserve the option to continue to develop existing resolution strategies and plans if compliant LTD can be issued without interfering with them.**

- **The LTD requirement would significantly raise the cost of funds.**

- **The Agencies should analyze the market impact of including both Category III and Category IV LBOs in the Proposed Rule.**

- **The Agencies should eliminate the proposed minimum denomination requirement for eligible external LTD.**

- **Limits should be placed on the Agencies' option to exclude issued/outstanding debt from the eligible total LTD and, thus, raise total debt requirements.**

- **The Agencies should exempt non-GSIB LBOs with MPOE resolution plans from the Clean Holding Company requirements and permit broader exemptions for certain qualified financial contracts generally under the Clean Holding Company requirements.**

- **The Agencies should acknowledge and consider the important distinctions among different types of deposits, insured and uninsured, and their importance to the banking system and economy, and the Agencies should not broadly discourage the acceptance of uninsured deposits.**

I. The Agencies should eliminate the internal long-term debt requirement and allow a covered entity the option to comply either with an external LTD requirement at the holding company level or with an internal or external LTD requirement at the IDI-level, but not require both.

The Proposal would require that LTD be issued by the holding company (HC), if one exists, with internal LTD issued by the IDI subsidiary, unless the insured depository institution (IDI) is not consolidated with parent company. IDIs that are not consolidated subsidiaries could issue LTD internally to affiliates or external to non-affiliates in the market. The Agencies state that requiring covered holding companies to issue LTD provides more resolution options, but LBOs

should have the option of pursuing their optimal issuance strategy in the overall context of a viable resolution plan.[10]

While a single-point-of-entry (SPOE) resolution strategy may be appropriate for G-SIBs, most non-G-SIB LBOs have adopted (with Board and FDIC approval) multiple-point-of-entry (MPOE) strategies to better reflect their institutions' size and structure. As we discuss later, institutions with an MPOE resolution strategy should be allowed to continue to develop their existing resolution strategies and resolution plans. To that end, covered entities should have the option to comply with the LTD requirement either through external LTD at the HC or through internal LTD or external LTD at the IDI level. Therefore, the Agencies should eliminate the internal LTD requirement for covered IDIs and instead allow the HC or intermediate holding company (IHC) to comply with the LTD requirement at either the HC or IDI-level, but not require both.

The agencies are right to exclude U.S. GSIBs from the proposed internal LTD requirement given the US GSIBs are already subject to both TLAC and external LTD requirements and have in place resolution frameworks for maintaining and then distributing internal loss-absorbing resources to their material subsidiaries.

Finally, ABA requests that, in cases in which the HC holds LTD issued by its IDI subsidiary, it should be permitted to extend the maturity of the LTD at any time to keep the IDI in compliance. As long as the HC's own external funding permits it to carry the IDI subsidiary's LTD, it should have flexibility to use this simple approach to maintain the IDI's debt structure.

II. The Agencies should revise the LTD requirement's calibration for banks subject to the Proposed Rule.

Banks subject to the Proposed Rule would be required to maintain a minimum amount of eligible LTD equal to the greater of 6% of risk weighted assets, 3.5% of average total consolidated assets, and for banks subject to the supplementary leverage ratio, 2.5% of total leverage exposure under the supplementary leverage ratio.[11] The Agencies' rationale for this calibration is that converting this amount of debt to equity in a resolution would capitalize the bridge bank at a level analogous to the "Prompt Corrective Action" standards of the Federal Deposit Insurance Act (FDIA).[12]

As discussed in more detail below, non-G-SIB LBOs have opted for an MPOE resolution strategy, reflecting their typical business model of conducting the majority of their activities through their IDIs. A failure scenario for these institutions would therefore most likely involve a

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[10] It should be noted that an IDI issuing LTD has the potential to issue debt at a lower cost compared to the HC.
[11] Proposed Rule at 64560.
[12] *See* Proposed Rule at 64532, 64534; 12 USC 1831o; *see also* 12 C.F.R. 6.4(b)(5); 12 C.F.R. 208.43(b)(5); 12 CFR 324.403(b)(5).

resolution of the IDI subsidiary under the FDIA. The resolution might or might not involve the establishment of a bridge bank.

If a bridge bank is established, capitalization at the level of an independent “going concern” institution is clearly unnecessary - the FDIA expressly exempts bridge banks from regulatory capital requirements.[13] Furthermore, the Prompt Corrective Action (PCA) provisions of the FDIA require a bank that is “critically undercapitalized,” with 2.0% or less in tangible equity be placed in receivership or conservatorship, absent a clear path to recapitalization. Therefore, commencement of resolution under the FDIA would certainly occur when an institution has going concern leverage capital of at least 2.0% of its average total assets at the time it reaches its point of non-viability. Accordingly, since commencement of resolution under the FDIA does not contemplate (nor is it likely)100% capital depletion, an appropriate LTD calibration should assume a low, but positive, level of 2.0% tangible capital when the receiver is appointed, and a bridge bank would be established.

If the LTD calibration were set at a level equivalent to a ratio of common equity Tier 1 (CET1) to total assets of 4.5% of risk-weighted assets, the bridge bank would be equivalent to an “adequately capitalized” going-concern IDI. Given the commencement resolution prior to total capital depletion, a balance sheet depletion of 0.5% is more appropriate than the Proposed Rule’s 1.0%. The net result of these adjustments would be an LTD requirement of approximately 2.0% of total risk-weighted assets rather than the proposed 6.0%.

As further justification for a lower calibration, ABA notes that banks with relatively large market footprints will typically have greater potential franchise value in resolution. In such situations, it is more likely that in a resolution that follows normal procedures, FDIC will receive at least a modest premium from an acquirer reflecting franchise value, so successful resolution does not require capitalizing the bridge bank on a “going concern” basis.

Finally, the Agencies must calibrate the covered entities’ LTD requirements in accordance with the Congressional direction to tailor regulations according to institutions’ capital structure, risk profile, complexity, size, and other relevant factors.[14] The adjustments ABA proposes would reflect a more tailored approach, consistent with statutory tailoring requirements.

III. The Agencies should not impose a particular resolution strategy and should preserve the option to continue to develop existing resolution strategies and plans if compliant LTD can be issued without interfering with them.

Non-G-SIB LBOs have dedicated significant efforts to prepare for orderly resolutions pursuant to their existing resolution plans submitted to FDIC and the Board. As noted above, most non-G-SIB LBOs have adopted an MPOE resolution strategy, which is better suited for these LBOs based on their size, structure, risk profile and other considerations. For example, non-G-SIB LBOs typically have business models centered around an IDI subsidiary (or in some cases a

[13] 12 USC 1821(n)(5).
[14] 12 USC 5365(a)(2)(A).

retail brokerage subsidiary[15]) and have limited foreign operations. Although the Agencies have appropriately stated that they do not intent to prescribe a particular resolution strategy, imposing an HC LTD requirement in addition to requiring LTD at the IDI level may suggest that the Agencies prefer for non-G-SIBs to adopt a SPOE resolution strategy. The Agencies should not prescribe a particular resolution strategy for non-G-SIB LBOs, but instead continue to allow them to develop their existing resolution strategies and resolution plans based on their size, structure, risk profile, and other considerations.

Furthermore, requiring institutions that have adopted an MPOE resolution strategy to issue internal LTD fails to recognize the diverse funding models under which non-G-SIB LBOs operate. Restructuring intercompany funding or changing issuing entities may cause serious disruption to the ongoing operations needed to maintain the firm on a sound basis. Alternatively, HCs could provide binding commitments to their IDI subsidiaries to provide support when necessary, either through HC deposits (that could be cancelled if the IDI subsidiary is placed in receivership) or enforceable pledges of assets. Such arrangements would promote simplicity by avoiding the need to comply with prescriptive internal LTD requirements, but would still provide the needed support in resolution.

We also note that institutions that have received approval for an SPOE strategy would avoid placing their IDI subsidiary in receivership. In an SPOE resolution, the advantages in favor of having LTD on the subsidiary IDI's balance sheet would be unnecessary since the IDI would not go through resolution.

Therefore, the Agencies should explicitly affirm that either an MPOE or an SPOE strategy is viable pursuant to each institution's unique size, structure, and risk profile, with the option to issue LTD either internally or externally, but not require both.

IV. The LTD requirement would significantly raise the cost of funds.

The Agencies' LTD requirements for covered entities are designed to ensure that LTD can absorb losses in resolution. However, the immediate costs of the LTD requirement as proposed would decrease the availability of credit to business and consumers. Instead, as previously mentioned, the Agencies should tailor the calibration pursuant to the covered entity's size, risk profile, and resolution strategy.

For non-G-SIB LBOs, the cost of issuing LTD may be more expensive than other forms of funding, and costs would potentially be passed onto consumers through higher fees or reduced services. Particularly troublesome is that LBOs would need to issue debt in an unfavorable high interest rate environment while potentially having to raise significant amounts of new capital

[15] A retail broker-dealer subsidiary could be sold or wound down under a proceeding pursuant to the Securities Investor Protection Act, which is designed to protect retail investors. The main insolvency imperative would be to transfer customer accounts to another broker-dealer, and the Securities Investor Protection Corporation has a well-established and proven process for executing such a resolution.

from the parallel capital proposal.[16] In the estimation of some non-G-SIB LBOs, the cost of LTD would be roughly double that of other funding options. In addition, favoring the issuance of LTD over other potentially efficient funding mechanisms may cause market distortions. LBOs benefit from a diverse mix of funding sources and this requirement would reduce their flexibility in optimizing their funding structure.

V. The Agencies should analyze the market impact of including Category III and Category IV LBOs in the Proposed Rule.

When issued in 2022, the ANPR assessed the impact of applying an LTD requirement for Category II-III banks — institutions with $250 billion or more in assets. Category I banks (i.e., G-SIBs) are already subject to loss absorbing requirements that include LTD and total loss-absorbing capacity (i.e., TLAC). The Proposed Rule would now expand the LTD requirement to include Category III and Category IV banks (generally, firms with $100 to $700 billion in total assets), resulting in significantly more banks issuing debt in the market at the same time, likely in a higher interest rate environment. The Agencies have undertaken no analysis of the market impact of this debt, how it might be priced, and the effect that it will have on banks' balance sheet and cost of funds.

Furthermore, there has been no analysis of the broader market impact of issuance planned under the Proposed Rule. General debt issuance by non-G-SIB LBOs is currently well below the levels that the Proposed Rule contemplates, and the increase would have a significant market impact. Such an analysis should also address the concerns described below regarding the proposed minimum denominations.

VI. The Agencies should eliminate the minimum denomination requirement for eligible external LTD.

If finalized, the Proposal would require eligible external LTD issued by covered HCs, mandatory and permitted externally issuing IDIs, and resolution covered IHCs have a minimum denomination of $400,000. The Agencies argue that this amount would support their goal of ensuring low retail investor holdings of eligible LTD without preventing institutional investors from purchasing these debt instruments.

This proposal is contrary to the industry standard minimum denomination of $2,000. For example, an analysis of external LTD issued by the U.S. GSIBs shows that more than 80 percent of the outstanding principal amount of LTD securities have a denomination below the lowest threshold contemplated by the Agencies ($100,000) in the LTD proposal.

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[16] *See* 88 Fed. Reg. 64028 (September 18, 2023), available at https://www.federalregister.gov/documents/2023/09/18/2023-19200/regulatory-capital-rule-large-banking-organizations-and-banking-organizations-with-significant.

Based on the agencies' own estimates only ~1% of households buy corporate bonds of any kind.[17] Institutional funds and accounts commonly hold hundreds or thousands of CUSIPs. Many funds and accounts are not large enough to make a $400,000 allocation to the LTD of a single banking organization, and registered funds are only considered to be diversified if they do not hold more than 5 percent of the fund's total assets in a single issuer.[18]

This proposal would diminish the investor base for banking organizations' LTD particularly at a time when supply of eligible debt will be increasing and will meaningfully impact debt markets.

In addition, the Agencies' intention is for LTD holders to absorb losses in resolution after equity shareholders, even though equity shareholders in contrast are not subject to the equivalent of a minimum denomination or minimum holding requirement but are subject to losses in the event of a resolution.[19]

Also, any concerns that the Agencies may have can be alleviated by mirroring disclosure requirements found in current TLAC rules. Under existing TLAC rules, U.S. G-SIBs are required to disclose a description of the financial consequences to unsecured debtholders of the U.S. G-SIB entering a resolution proceeding in which the top-tier HC is the only entity subject to the resolution proceeding.[20] ABA would welcome the opportunity to discuss the agencies' objectives with this proposed requirement and potential means of achieving those objectives.

VII. Limits should be placed on the Agencies' option to exclude issued/outstanding debt from the eligible total LTD and, thus, raise total debt requirements.

The Proposed Rule will enable the Board to exclude certain debt securities from an LBO's outstanding eligible LTD amount if it deems them to have features impairing their ability to absorb losses in resolution, following a notice and opportunity to respond. Regulators should be required to count any LTD that meets the requirements set out in the Proposed Rule as compliant and part of the total of LTD. The requirements need to be clear, and institutions should be confident in relying on the stated requirements. Agencies should require an institution to return to the debt market out of regular order, i.e., other than to replace maturing LTD, to avoid creating investor concerns and market uncertainty.

[17] *See* Board of Governors of the Federal Reserve System, Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances (Sept. 2020), P 15 https://www.federalreserve.gov/publications/files/scf20.pdf

[18] 15 U.S.C. 80a-5(b)(1).

[19] *Id.*

[20] 12 CFR 252.65.

VIII. The Agencies should exempt non-GSIB LBOs with MPOE resolution plans from the Clean Holding Company requirements and permit broader exemptions for certain qualified financial contracts generally under the Clean Holding Company requirements.

Under the Proposed Rule, the operations of covered entities would be subject to "Clean Holding Company" requirements to improve resolvability. One consequence is that covered HCs would be permitted to enter into qualified financial contracts (QFCs) only with their subsidiaries and covered IHCs with their affiliates, with certain exemptions. ABA recommends that the Agencies exempt non-GSIB LBOs with MPOE resolution plans from the Proposed Rule's Clean Holding Company requirements. Since these requirements were designed to facilitate the orderly resolution of banking holding companies using a SPOE resolution strategy, they would not support an orderly resolution of a bank using a non-SPOE resolution strategy and therefore be unnecessary.

Furthermore, ABA recommends permitting broader exemptions for QFCs. ABA believes that the proposed rule would still be too restrictive and could encompass other security contracts which involve QFCs that the Clean Holding Company requirements were not intended to cover. These security contracts include transactions where the HC repurchases its own securities, agreements for the spot purchase or sale of securities, tender offers, and strategic transactions and investments involving stock purchases.

IX. The Agencies should acknowledge and consider the important distinctions among different types of deposits, insured and uninsured, and their importance to the banking system and economy, and the Agencies should not broadly discourage the acceptance of uninsured deposits.

The Agencies contend in the Proposed Rule that banks' reliance on uninsured deposits has emerged as a new vulnerability. As the Agencies are aware, deposits, including uninsured deposits, are the lifeblood of banks and the economy. Banks of all sizes and business models offer a broad array of deposit products, including uninsured deposits, to a diversity of retail customers, agricultural and commercial businesses, state and local government units, and institutional customers. Banks are well accustomed to understanding and managing their customers' banking needs and practice robust liquidity and asset and liability management that allows them to serve their customers, both insured and uninsured, without undue risk. More specifically, both insured and uninsured deposits have different stability, duration, and rate risk characteristics. Banks can account for these different risks by appropriately matching and risk managing the stability, duration, rate, and other risks on the asset side. Broadly discouraging banks from accepting uninsured deposits will narrow the provision of banking services to communities and entities vital to economic growth, including in periods of stress when stability is most needed.

We therefore urge the Agencies to take a holistic, risk-based view that is informed by a number of characteristics and consider the important distinctions among different types of deposits, the different ways to manage them, and the reasons why many customers need to place deposits at a bank that exceed the federal deposit insurance limit.

ABA believes these potential effects and the other concerns we raise above can be mitigated as we recommend. ABA is confident that by focusing on adequate and timely preparation for resolutions, FDIC can continue to achieve these results without incurring the disadvantages the Proposed Rule would cause.

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If you have any questions concerning the matters discussed in this letter, please do not hesitate to contact Hu Benton (hbenton@aba.com) or David Androphy (dandrophy@aba.com).

Very truly yours,

/s/

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