FINANCIAL SERVICES FORUM

January 16, 2024

VIA ELECTRONIC SUBMISSION

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2023–0011

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R–1815; RIN 7100–AG66

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 3064–AF86

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

Ladies and Gentlemen:

The Financial Services Forum (the "Forum")[1] welcomes the opportunity to submit this letter to the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("FRB") and the Federal Deposit Insurance Corporation ("FDIC," and together with the OCC and FRB, the "Agencies") on their proposed rule (the "Proposal") to require large banking organizations to hold minimum amounts of long-term debt ("LTD") and to make certain changes to the FRB's total loss-absorbing capacity ("TLAC") rule.[2] The Proposal is relevant to each of our member institutions, the eight U.S. global systemically important bank holding

[1] The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace and a sound financial system.

[2] Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 Fed. Reg. 64524 (Sept. 19, 2023).

companies ("GSIBs"), each of which is subject to the FRB's TLAC rule and would be affected by the Proposal's revisions to the TLAC rule and its disclosure requirements.

We note, at the outset, our concern that in releasing the Proposal while the Agencies' proposal to implement the final set of Basel III capital reforms and the FRB's proposal to modify the GSIB surcharge are both still outstanding, the Agencies have not adequately considered the overall calibration of the capital framework. We believe that the Agencies should carefully consider the effect of the Proposal and the capital and GSIB surcharge proposals on an aggregate basis to ensure the capital framework is appropriately calibrated.

Moreover, although we appreciate that the Proposal would not extend minimum internal LTD requirements to insured depository institution ("IDI") subsidiaries of U.S. GSIBs, we believe many of the proposed changes to the FRB's TLAC rule are unwarranted. Specifically, we do not believe the final rule should impose any minimum denomination requirement on LTD securities, extend the TLAC rule's 50% haircut for LTD due within one and two years to minimum TLAC requirements or adopt the Proposal's revised disclosure requirements.

Accordingly, in this letter, we wish to highlight the following key observations and recommendations:

- **The final rule should not include a minimum denomination requirement.** The vast majority of LTD issued today is in denominations that are lower than the proposed minimum denomination, and the imposition of a minimum denomination would significantly harm the existing market for LTD, resulting in a less liquid, less diverse and more concentrated investor base contrary to the Agencies' stated policy goals. LTD issuances are also subject to disclosure requirements both under FRB regulation and the securities laws, which are adequate to inform retail investors of material information regarding the loss-absorbing characteristics of LTD securities. Accordingly, not only is a minimum denomination requirement unnecessary to fulfill the Agencies' stated goal of facilitating the imposition of losses on LTD holders in a resolution scenario, but also it would be detrimental to maintaining a deep and active market for such LTD. If the Agencies nevertheless believe that a minimum denomination amount is needed, the Forum would welcome the opportunity to discuss potentially less disruptive alternatives.

- **The final rule should not extend the LTD haircut requirement to minimum TLAC requirements.** The current 50% haircut for LTD due within one and two years adequately addresses the FRB's policy goals with respect to loss-absorbing debt as demonstrated by current market practice. Moreover, the FRB has not justified extending this requirement to the minimum TLAC amount. Further, extending the haircut would disrupt the funding plans that our member institutions have designed in reliance on the current TLAC rule. Accordingly, the final rule should retain the current rule's approach to the haircut for LTD due within one and two years for purposes of the minimum TLAC requirement. At a minimum, we recommend the extended haircut apply only to LTD issued after the effective date of the final rule.

- **The final rule should not adopt the Proposal's expanded disclosure requirements**. The Proposal's disclosure requirements are overly prescriptive and represent an

unexplained reversal in the FRB's approach to TLAC disclosures. At a minimum, the Proposal's revised disclosure requirements should be more appropriately calibrated.

- **We support the Proposal's position not to extend internal LTD requirements to IDI subsidiaries of U.S. GSIBs.** As the Proposal appropriately recognizes, the U.S. GSIBs are already subject to the most stringent capital, liquidity and other prudential standards as well as resolution planning requirements, and their robust single-point-of-entry ("SPOE") resolution strategies eliminate the need for a separate IDI LTD requirement.

- **The final rule should provide certain additional exceptions to the TLAC rule's prohibition on qualified financial contracts ("QFCs").** We appreciate that the Proposal would clarify that the TLAC rule's clean holding company requirements would not prohibit covered holding companies from entering into certain agreements that may constitute QFCs but that do not present resolvability risks. We believe the final rule should add exceptions for certain other agreements that may constitute QFCs and that similarly do not present resolvability risks.

- **The Agencies should clarify that the definition of "covered debt instrument" applies only to an IDI that is subject to an LTD requirement.** Any final rule should be revised to provide that, for purposes of the deduction framework under the capital rule, the definition of "covered debt instrument" applies only to an IDI that is subject to an LTD requirement.

1. The final rule should not include a minimum denomination requirement.[3]

The Proposal would require external LTD issued after the final rule is published to be issued in minimum principal denominations of $400,000 that may not be exchanged by the issuer for notes of smaller denominations.[4] Because the Agencies' justification for the minimum denomination requirement is facile at best and because the proposed change would severely distort and thereby harm the market for LTD instruments, we urge that the final rule not include any minimum denomination requirement.

A. *A minimum denomination requirement would severely distort and impede the market for LTD securities.*

Although the Agencies contend the minimum denomination would not "prevent[] institutional investors from purchasing eligible external LTD,"[5] we believe a minimum denomination requirement would significantly adversely affect the market for LTD and would impair investments by institutional investors. As an initial matter, as shown in the first chart in Appendix A, the proposed minimum denomination is higher than the vast majority of eligible external LTD currently issued by our member institutions. Indeed, industry analysis shows that more than 90% of the principal notional amount of U.S. GSIB LTD outstanding is issued in denominations of less than $400,000, and more than 80% of the outstanding principal amount of

[3] This section is responsive to Question 28.

[4] Proposed 12 CFR 252.61, definition of "Eligible debt security" (1)(ix).

[5] 88 Fed. Reg. at 64537.

long-term debt securities has a denomination of $100,000 or less. This itself demonstrates how the Proposal would fundamentally alter the market for LTD and, as discussed further below, without meaningful justification.

Moreover, minimum denomination requirements would reduce the number of institutional investors that could purchase LTD. Institutional investors generally limit the concentration of their exposures to particular entities, industries or asset classes. Lower denomination issuances allow these investors to diversify their exposures. By contrast, a minimum denomination requirement would make it difficult for institutional investors to comply with their policies. This issue is compounded by the fact that the Proposal would require a significantly greater number of banking organizations to issue LTD.

A more limited number of potential LTD buyers would also reduce demand for LTD instruments in the primary market and severely reduce liquidity in the secondary market, raising the cost of borrowing for banking organizations and seriously undermining secondary trading of debt securities issued by bank holding companies.[6] As shown in the second chart in Appendix A, over 90% of trading activity is in relation to trade sizes of less than $400,000. Moreover, the proposed changes would require banking organizations to depend on a more concentrated set of investors for funding and concentrate any losses in a resolution scenario within a smaller set of investors, which would have the perverse effect of actually increasing contagion risk. That is, limiting banking organizations' sources of funding and concentrating losses would increase financial stability risk, as the failure of a single or multiple banking organizations would be more likely to have a systemic impact, contrary to the stated policy goals of the Agencies.

Finally, as noted above, the Proposal's minimum denomination requirement would reduce demand for LTD instruments. At the same time, the Proposal would require increasing the supply of LTD instruments (as more banking organizations would be required to issue LTD). The Agencies have not provided any analysis as to how the increased supply of LTD instruments along with the reduced demand resulting from the minimum denomination requirement would affect the market for LTD instruments. In fact, the Proposal does not even acknowledge that a minimum denomination change would be inconsistent with the vast majority of existing issuances, let alone discuss what the implications for such a material change would be. It goes without saying that we do not believe the Agencies should propose such a significant change to the LTD market without undertaking a robust analysis.

B. *The Agencies' justification for the minimum denomination requirement is baseless.*

In proposing the minimum denomination requirement, the Agencies aim to limit retail investors from purchasing LTD as, in the Agencies' view, "[s]ignificant holdings of LTD by retail investors may create a disincentive to impose losses on LTD holders."[7]

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6 The link between a diverse investor base and liquidity has been long established as a key ingredient of market depth. In fact, one of the requirements of the liquid and readily marketable definition under 12 CFR 249 (the U.S. Liquidity Coverage Ratio final rule) is that "the security is traded in an active secondary market with . . . [a] large number of non-market maker participants on both the buying and selling sides of transactions."

7 88 Fed. Reg. at 64537.

We do not believe the Agencies' justification about a supposed disincentive to impose losses on retail investors is compelling. First, the Agencies have not demonstrated that retail investors purchase LTD instruments in any significant amount. In reality, because of the difficulty of buying a debt security directly, there is only a certain segment of individual investors that seek out holding such debt securities. These investors tend to be sophisticated and understand the credit risk of the issuer. In such cases, the minimum denomination requirement would merely reduce choice for such sophisticated investors to invest directly in high-quality debt securities whose issuers are subject to prudential regulation.

Second, LTD, currently and under the Proposal, is subject to significant disclosure requirements, both as a matter of FRB regulation and under applicable securities law. Specifically, U.S. GSIBs must "publicly disclose a description of the financial consequences to unsecured debtholders" in all offering LTD documents.[8] Accordingly, investors, including retail investors (if any), are fully notified about the potential for loss, minimizing any disincentive to impose losses on LTD holders. Moreover, LTD is issued in accordance with relevant securities laws and markets regulation that provide comprehensive protections for retail investors and, accordingly, it is not clear that additional protection for retail investors is necessary.

Further, if a U.S. GSIB were to fail, its top-tier holding company would enter into bankruptcy in line with its SPOE resolution plan. The U.S. Bankruptcy Code generally requires treating creditors in the same class in the same fashion, regardless of whether those creditors are institutional or retail investors.[9] It is unlikely that this general principle of bankruptcy would give way to the supposed disincentive the Agencies mention.

Finally, retail investors are already exposed to loss in case of a banking organization's failure, as they may buy a banking organization's publicly traded equity or be exposed to a banking organization's debt through mutual funds, exchange-traded funds or other investment vehicles. Thus, the FRB is merely speculating that holdings of LTD by retail investors "may" create a disincentive to impose losses on the LTD.

All that said, if the Agencies nevertheless believe that a minimum denomination amount is needed, the Forum would welcome the opportunity to discuss the Agencies' concerns and to share where appropriate supplementary information based on those discussions, including with respect to potentially less disruptive alternatives.

2. The final rule should not extend the TLAC rule's haircut provision.[10]

For purposes of its minimum LTD requirement but not for its minimum TLAC requirement, the current TLAC rule applies a 50% haircut to eligible LTD that is due to be paid in one year or more but in less than two years.[11] The Proposal would extend this 50% haircut to the minimum

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[8] 12 CFR 252.65.

[9] *See* 12 U.S.C. § 1123(a)(4).

[10] This section is responsive to Question 58.

[11] 12 CFR 252.63(b)(3); 12 CFR 252.62(b)(1)(ii).

TLAC requirement. The FRB claims that extending the haircut would "incentivize[] TLAC companies to reduce or eliminate their reliance on LTD loss-absorbing capacity that is due to be paid in less than two years."[12]

This goal has been adequately addressed by the existing haircut applicable to minimum LTD requirements. Specifically, banking organizations, acting rationally in response to the current TLAC rule's already punitive haircut requirements, overwhelmingly call LTD instruments prior to the last year before they mature. Perhaps because the existing rule (which already applies a 50% haircut to the LTD minimum) and this market practice have already reduced reliance on debt that is maturing within one to two years, the FRB has not been able to provide any evidence in the Proposal to suggest that there is an over-reliance on such debt. In fact, the FRB acknowledges that the potential effects of the proposed change would appear to be "modest,"[13] raising the question as to why any change is needed when the separate minimum LTD requirement (as opposed to a TLAC requirement) already ensures a minimum amount of non-runnable LTD. Moreover, our member institutions have developed their funding plans and accordingly calibrated their business strategies in reliance on the current TLAC rule's treatment of LTD. Modifying that treatment now would unnecessarily impair these funding plans without sufficient countervailing benefits.

Further, TLAC requirements serve as binding capital requirements for some of our member institutions. By applying an additional haircut to TLAC requirements, the FRB would essentially be requiring some U.S. GSIBs to raise additional capital. The U.S. GSIBs, however, are exceptionally well capitalized and, as the Proposal recognizes, are already subject to the most stringent capital standards.[14] Accordingly, we do not believe the FRB should attempt to use a proposal that is primarily intended to address the resolvability of regional banking organizations to raise U.S. GSIB capital requirements. We note that it is especially inappropriate for the FRB to attempt to raise capital requirements without allowing the industry to understand and comment on the FRB's view of the capital framework as a whole.

In light of the foregoing, we recommend that the final rule retain the current TLAC rule's approach to debt due in one year or more but in less than two years. At a minimum, if the final rule adopts the extended haircut for purposes of minimum TLAC requirements, we recommend the extended haircut apply only to LTD issued after the effective date of the final rule. In other words, any LTD instrument issued prior to the effective date of the final rule should be grandfathered and therefore not subject to the Proposal's extended haircut for purposes of minimum TLAC requirements when those instruments reach a remaining maturity of between one and two years.

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[12] 88 Fed. Reg. at 64546.

[13] 88 Fed. Reg. at 64547.

[14] 88 Fed. Reg. at 64526 n.2.

3. The Proposal's disclosure requirements should not be adopted.[15]

A. *The Proposal's disclosure requirements are overly prescriptive and therefore should not be adopted.*

The Proposal's enhanced disclosure requirements for U.S. GSIBs would be far more prescriptive than those of the current TLAC rule and represent a reversal from the FRB's approach to disclosures in the current rule. Specifically, the Proposal would require U.S. GSIBs to disclose a table of creditor ranking using text specified in a template. By contrast, in adopting the current TLAC rule, the FRB explicitly rejected commenters' requests to prescribe the text of TLAC disclosures and require a list of liabilities and credit hierarchy.[16] In doing so, the FRB concluded that the rule's disclosure requirements would sufficiently allow LTD holders to understand the risks associated with LTD instruments and provide adequate market discipline.[17]

The Proposal does not provide any explanation as to why the FRB proposes to reverse its approach now. Our experience suggests that the current disclosure requirements adequately provide investors with notice and promote market discipline. In fact, the U.S. Department of the Treasury has found that LTD investors and ratings agencies have appropriately recognized the risk associated with these instruments.[18] Accordingly, we do not believe the final rule should adopt the proposed modifications to the TLAC disclosure requirements. Nor do we believe disclosure requirements should be extended to material subgroup entities of banking organizations subject to the TLAC rule.

B. *At a minimum, the Proposal's disclosure requirements should be better calibrated.*

If, however, the FRB were to adopt modifications to the disclosure requirements, we believe those modifications should be appropriately calibrated. Specifically, we note that the proposed creditor ranking table would require, in row 2, "the total balance sheet amount associated" with a U.S. GSIB's liabilities and outstanding equity instruments.[19] Total balance sheet amount is generally understood to refer to the *carrying value* of these instruments. However, rows 3 to 5 require disclosures related to TLAC instruments that are defined by reference ultimately to the Proposal's definition of "outstanding eligible external long-term debt amount."[20] Outstanding eligible external long-term debt amount is defined, in part, as "the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the covered [bank holding company ("BHC")]" or the *notional* amount of outstanding LTD. Accordingly, to promote

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[15] This section is responsive to Questions 64 and 65.

[16] Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8266, 8303 (Jan. 24, 2017).

[17] *See* 82 Fed. Reg. at 8303.

[18] U.S. Department of the Treasury, Orderly Liquidation Authority and Bankruptcy Reform at 19 (Feb. 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf.

[19] Proposed 12 CFR 252.66(b)(5)(i).

[20] Proposed 12 CFR 252.66(b)(5)(iii); Proposed 12 CFR 252.63(b)(3); Proposed 12 CFR 252.62(c).

consistency within the proposed table, we recommend that FRB clarify that row 2 be completed on a *notional* basis.

In addition, row 3 of the creditor ranking table would require listing as "excluded liabilities," "[a]ny liabilities that, under the laws of the United States or any State applicable to the global systemically important BHC, may not be written down or converted into equity by a resolution authority or bankruptcy court without giving rise to material risk of successful legal challenge or valid compensation claims."[21] We note, however, that the current TLAC rule requires eligible LTD instruments to be governed by the laws of the United States or any State precisely so that those instruments "can be effectively used to absorb losses during the resolution of a covered BHC under the U.S. Bankruptcy Code or Title II [of the Dodd-Frank Act] without giving rise to material risk of successful legal challenge."[22] Because, as the Agencies already acknowledge, instruments issued under the laws of the United States or any State should not create material legal risk in a resolution scenario, we recommend that Proposed 12 CFR 252.66(b)(5)(ii)(E) be revised to refer instead to "liabilities that are <u>not</u> governed by the laws of the United States or any State thereof."

Finally, the Proposal would require banking organizations to comply with the policy and attestation requirements of 12 CFR 217.62(b).[23] We do not believe the Proposal's disclosure requirements are extensive enough to warrant the compliance burdens associated with the more prescriptive requirements of the FRB's capital rule. Moreover, even certain of the FRB's other, more extensive disclosure requirements, such as those related to banking organizations' liquidity coverage ratio and net stable funding ratio, do not include such policy and attestation requirements.[24] Accordingly, the final rule should not adopt the proposed policy and attestation requirements for U.S. GSIBs.

4. We support the Proposal's position that IDI subsidiaries of U.S. GSIBs should not be required to issue internal LTD.[25]

We appreciate that the Proposal would not extend internal LTD requirements to IDI subsidiaries of U.S. GSIBs. As the Proposal recognizes, U.S. GSIBs are already subject to "the most stringent capital, liquidity, and other prudential standards" and "have adopted resolution plans reflecting guidance . . . which establishes a capital and liquidity framework for resolution" that is "designed to ensure adequate maintenance of loss-absorbing resources."[26] We believe the Proposal's treatment appropriately recognizes the steps our member institutions have taken since the global financial crisis of 2008 to enhance their resilience and resolvability, obviating the need for a separate internal LTD requirement for their IDI subsidiaries.

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[21] Proposed 12 CFR 252.66(b)(5)(ii)(E).

[22] 82 Fed. Reg. at 8283. The Proposal would retain this governing law requirement for the same reason. 88 Fed. Reg. at 64537.

[23] Proposed 12 CFR 252.66(b)(3).

[24] *See* 12 CFR 249 subparts J, N.

[25] This section is responsive to Question 17.

[26] 88 Fed. Reg. at 64526 n.2.

Specifically, since the 2008 crisis, U.S. GSIBs have significantly improved their capital and liquidity levels. Much of the increase in capital reflects the United States' overly stringent implementation of the Basel III reforms and non-transparent capital buffers calibrated based on the results of the FRB's annual supervisory stress tests. Further, the Agencies' capital requirements are stricter for U.S. GSIBs than they are for most other banking organizations. For example, our member institutions are subject to a GSIB surcharge on top of their base capital requirements, and many of their stress tests (which impact required capital buffers) include "global market shock" and "large counterparty default" scenarios.

In addition to heightened capital requirements, U.S. GSIBs are also subject to stricter liquidity requirements relative to most other banking organizations. For example, U.S. GSIBs are required to calculate their liquidity coverage ratio and net stable funding ratio daily as opposed to on a reduced frequency for many other banking organizations and are subject to a Comprehensive Liquidity Analysis and Review as part of their supervision under the Large Institution Supervision Coordinating Committee portfolio.

Taken together, these reforms have increased the resilience of U.S. GSIBs and materially reduced, *ex ante*, the risk that a U.S. GSIB could fail. As a result of the strength and resilience they have built over the last nearly 15 years, U.S. GSIBs serve as a source of stability to the financial system, including during times of stress such as during the COVID-19 pandemic and following the bank failures of spring 2023.[27]

Post-crisis reforms have also reduced the risk of contagion if a U.S. GSIB were to fail, and the U.S. GSIBs have developed uniquely robust and comprehensive resolution plans to facilitate orderly resolutions and ensure financial resources are available to material IDI subsidiaries. Through an iterative process with the FRB and FDIC, our member institutions have developed credible and robust resolution strategies that rely on an SPOE strategy that is designed to enable only the top-tier BHC to enter bankruptcy. Under their resolution plans, IDI subsidiaries of U.S. GSIBs would not enter into resolution proceedings; instead, they would remain open and continue to operate.

In furtherance of the SPOE strategy, our member institutions are unique in that they have developed secured support agreements that contractually require their parent holding companies to provide capital and liquidity support to material operating subsidiaries, including subsidiary IDIs, prior to and during resolution. In implementing these support agreements, U.S. GSIBs have conducted extensive legal analysis to ensure that BHCs are able to downstream resources prior to entering bankruptcy.

Moreover, our member institutions' resolution plans already address the recapitalization and provision of liquidity to material IDI subsidiaries. Specifically, in alignment with the heightened resolution planning guidance to which they are subject, U.S. GSIBs anticipate the capital and

[27] FRB, Statement by Governor Christopher J. Waller (July 27, 2023) ("[T]he U.S. G-SIBs, which are subject to the most rigorous parts of our current regulatory capital framework, were a source of strength during the pandemic. More recently, during the regional banking stress earlier this year when depositor confidence was fractured, those banks actually experienced deposit inflows.") (footnote omitted), https://www.federalreserve.gov/newsevents/pressreleases/waller-statement-20230727.htm.

liquidity needs of material subsidiaries and preposition certain amounts of capital and liquidity at those subsidiaries to cover any necessary resources prior to contractually obligated transfers under the secured support agreements.[28] The Agencies recognize that by doing so, U.S. GSIBs "ensure adequate maintenance of loss-absorbing resources . . . such that all material subsidiaries, including IDIs, could be recapitalized in the event of resolution."[29] The heightened TLAC and LTD requirements applicable to U.S. GSIBs further support and facilitate their SPOE strategies and the availability of resources to support an IDI subsidiary.

Accordingly, the resolution plans of U.S. GSIBs already address the provision of resources to IDI subsidiaries, eliminating the need for a separate internal LTD requirement. As such, the Proposal's rationale for requiring certain IDIs to issue LTD does not extend to U.S. GSIBs. Specifically, the Proposal would subject certain IDIs to LTD requirements to ensure the LTD would be available to absorb losses if the IDI fails and provide the FDIC with additional options during resolution.[30] The U.S. GSIBs, however, have already demonstrated that their IDI subsidiaries would effectively be recapitalized, and even provided liquidity support, should their parent BHC fail.

Further, we do not believe that the lack of an LTD requirement for IDI subsidiaries of U.S. GSIBs would shield U.S. GSIBs from competition from other banking organizations.[31] As discussed above, U.S. GSIBs are subject to the most stringent prudential requirements—requirements that go above and beyond those applicable to other banking organizations. Moreover, even if the Proposal is finalized, most other banking organizations would not be subject to total TLAC requirements (as the U.S. GSIBs are), and other banking organizations would be required to hold less LTD than the U.S. GSIBs.[32] Taken together, the enhanced prudential standards applicable to our member institutions require them to obtain relatively larger amounts of expensive debt and equity funding and raise their cost of operating relative to other banking organizations. Finally, as discussed above, the U.S. GSIBs already commit to effectively recapitalizing their IDI subsidiaries through a combination of prepositioned resources and contractual commitments to downstream resources pursuant to the most stringent and robust resolution planning requirements and guidance. An internal LTD requirement for IDIs would be duplicative at best and could impede execution of existing approaches to resolution at worst.

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28 Final Guidance for the 2019 and Subsequent Resolution Plan Submissions, 84 Fed. Reg. 1438, 1442 (Feb. 4, 2019).

29 88 Fed. Reg. at 64526 n.2.

30 88 Fed. Reg. at 64531.

31 *See* FDIC, Remarks by Jonathan McKernan, Director, FDIC Board of Directors, at the New York State Bar Association and Mayer Brown on the Basel Endgame and Long-Term Debt Proposals (suggesting an LTD requirement for regional banks, but not IDI subsidiaries of U.S. GSIBs may have "the unintended consequence of shielding the U.S. GSIBs from competition with our regional banks.") (Oct. 4, 2023), https://www.fdic.gov/news/speeches/2023/spoct0423a.html.

32 *Compare* Proposed 12 CFR 252.62(a) *with* Proposed 12 CFR 252.62(b).

Finally, the Proposal asserts that increased reliance on uninsured deposits has given rise to systemic contagion risks and vulnerabilities at banking organizations.[33] In characterizing such risks, we believe the Agencies must carefully consider differences in industry business models and risk management practices, as well as key distinctions among types of uninsured deposits, some of which are observably stable even in stress periods. The Agencies previously have recognized, for example, that not all types of uninsured deposits are equally likely to run in stress situations and have noted that operational deposits resulting from the provision of clearing, custody and asset administration services provided by our member institutions "present less liquidity risk during a stress period" and "are more stable than non-operational funding."[34] We urge the Agencies to acknowledge in their rulemaking the important distinctions that exist among different types of uninsured deposits and the reasons why many customers place deposits at a bank that exceed the federal deposit insurance limit. We also urge recognition of the essential role that sound asset-liability management practices play in promoting robust structural liquidity, including in stress periods.

5. The final rule should provide for additional exceptions to the prohibition on QFCs.

We welcome the Proposal's clarification that certain agreements, which may constitute QFCs, do not as a practical matter present material risk to the clean holding company requirements of the rule and are therefore exempted from the general prohibition on QFCs. This includes underwriting agreements, fully paid structured share repurchase agreements and employee and director compensation agreements that do not present resolvability risks or otherwise interfere in the orderly resolution of a failing banking organization. However, we believe that the final rule should broaden the scope of agreements covered by this QFC exemption.

QFCs are defined to include "securities contracts," which are, in turn, defined broadly as "contract[s] for the purchase, sale, or loan of a security."[35] Publicly traded holding companies routinely enter into a variety of transactions that are "securities contracts" and that do "not present the risks intended to be addressed by the clean holding company requirements," and therefore need not be prohibited by the clean holding company requirements in the TLAC rule.[36] Specifically, we recommend that the final rule provide that the clean holding company requirements do not prohibit a holding company from entering into agreements related to tender offers, exchange offers, consent solicitations, open-market or privately negotiated transactions involving the repurchase of its own securities, agreements for the spot purchase or sale of its own securities, and strategic transactions and investments that involve stock purchase or other similar agreements.

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[33] *See* 88 Fed. Reg. at 64526.

[34] Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 Fed. Reg. 61440, 61497, 61502 (Oct. 10, 2014). Under the agencies' liquidity coverage ratio rules, operational deposits are assumed to flow out at far lower rates than other uninsured wholesale deposits. *Compare* 12 CFR 249.32(h)(4) (outflow rate of 25% for uninsured operational deposits) *with* 249.32(h)(1), (5) (outflow rates of 40 to 100% for uninsured, non-operational unsecured wholesale funding).

[35] 88 Fed. Reg. at 64547.

[36] 88 Fed. Reg. at 64547.

6. The Agencies should clarify that the definition of "covered debt instrument" applies only to an IDI that is subject to an LTD requirement.

Any final rule should be revised to provide that, for purposes of the deduction framework under the capital rule, the definition of "covered debt instrument" applies only to an IDI that is subject to an LTD requirement (*i.e.*, unsecured debt issued by an IDI that is not subject to an LTD requirement is not included). Specifically, clause (1)(i) of the proposed revised definition of covered debt instrument should refer to a subsidiary subject to an LTD requirement under proposed new Parts 54, 216 or 374, instead of any subsidiary of a depository institution holding company subject to an LTD requirement under Part 238 or Part 252. Otherwise, as currently drafted, the proposed definition of covered debt instrument would appear to scope in certain unsecured exposures to subsidiaries of covered companies that do not count as capital or eligible long-term debt.

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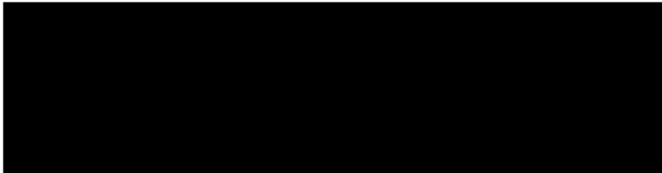
Thank you for considering these comments. Please feel free to contact the undersigned (KFromer@fsforum.com) with any questions.

Respectfully submitted,

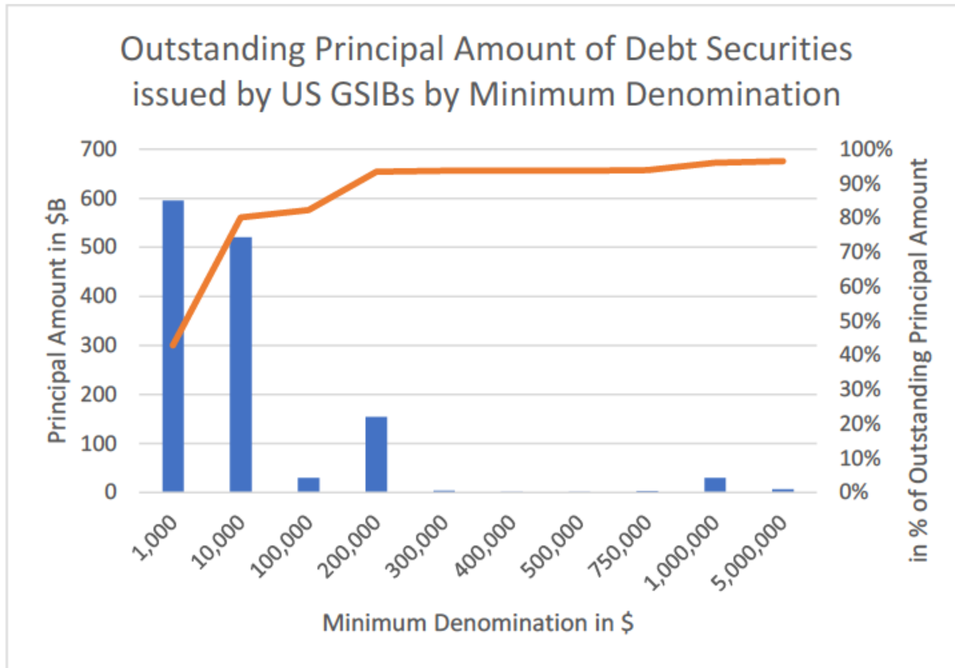


Kevin Fromer
President and CEO
Financial Services Forum

Appendix A
Data on Minimum Denominations of U.S. GSIB Long-Term Debt Securities

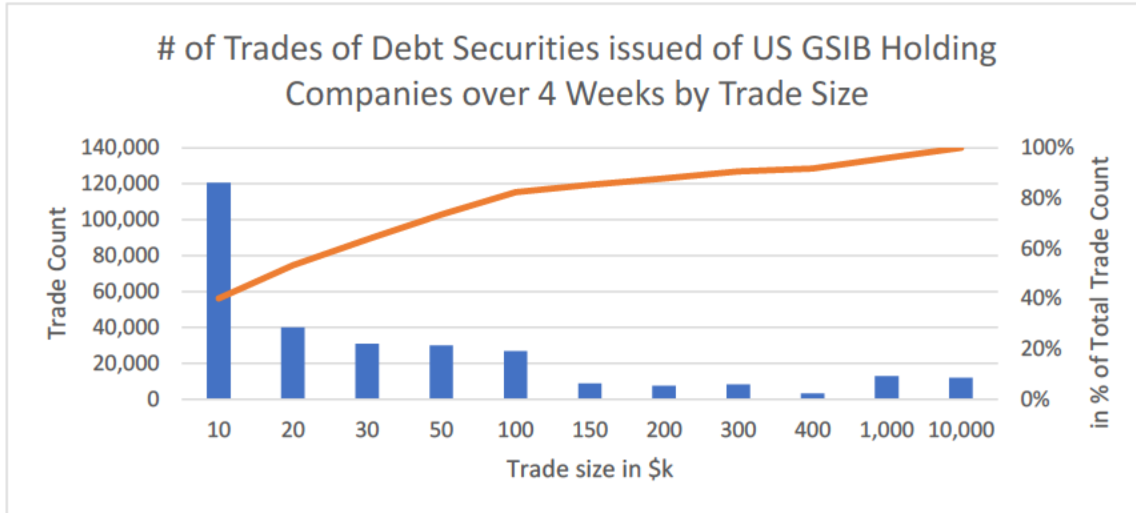
For all the graphs below, the trading data is based on the four weeks of October 10 through November 6, 2023 for the eight U.S. GSIBs.

Chart 1:



Source: Bloomberg

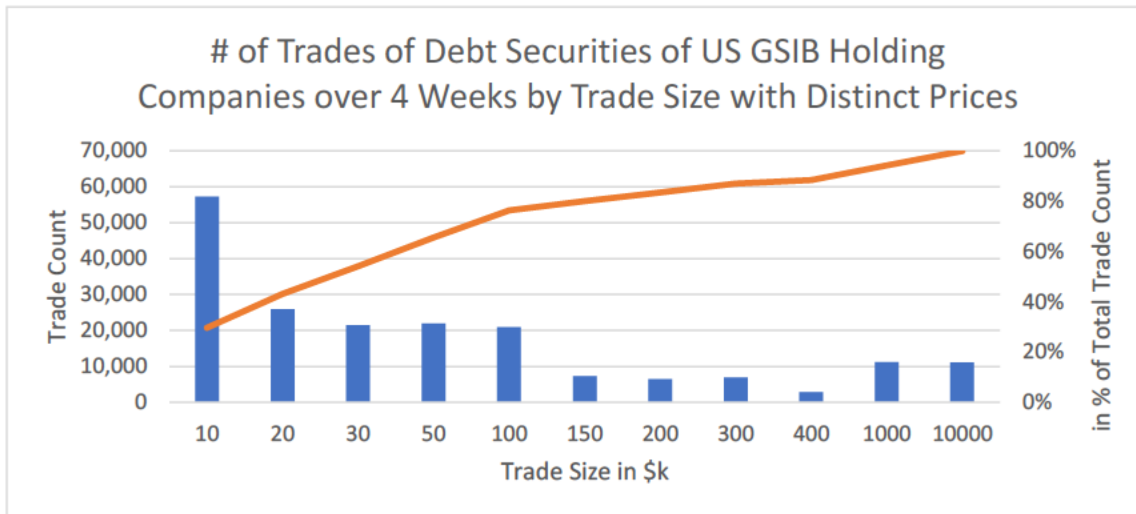
Chart 2:



Source: TRACE

This graph includes counts of trading activity where different trades reflect different buyers or sellers buying or selling at the same time and price.

Chart 3:



Source: TRACE

This chart is based on the same population as Chart 2 but collapses trades at the same price / time. As such, it shows the true impact on price discovery. Still, over 85% of trades with distinct prices are in trade sizes of less than $400,000, showing a similar picture as the chart above.