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By Electronic Mail

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Washington, DC 20219

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
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Federal Deposit Insurance Commission
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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, Federal Reserve Docket No. R-1815 and RIN 7100-AG66; OCC Docket ID OCC–2023-0011 and RIN 1557–AF21; FDIC RIN 3064–AF86

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the notice of proposed rulemaking issued by the federal banking agencies regarding Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions.[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 international banks that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States ("international banks"). Our members are important to the competitive landscape of the U.S. financial system. In addition, our members inject billions

[1] Board of Governors of the Federal Reserve ("Federal Reserve"), Office of the Comptroller of the Currency ("OCC") and Federal Deposit Insurance Corporation ("FDIC"), *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 (proposed Sept. 19, 2023) (the "LTD Proposal" or the "Proposal"). Together, the Federal Reserve, the OCC and the FDIC are the "Agencies."

of dollars each year into state and local economies across the country through direct employment, capital expenditures and other investments. IIB members hold more than $4 trillion in assets across the United States, employing approximately 200,000 people in the United States. IIB members represent more than half of U.S. primary dealers (55%) and make more than 40 percent of all commercial and industrial loans in the United States.

We are commenting on the LTD Proposal because international banks are a critical part of the United States financial system, and the Proposal is one of several recent regulatory proposals (the "Capital and Resolution Related Proposals")[2] that, when considered together holistically, stand to disproportionately affect international banks and discourage international bank participation in U.S. banking and financial service markets to the detriment of U.S. financial stability.

This letter proceeds in two main parts. First, in Sections I through III, we discuss the ways in which the LTD Proposal should be better calibrated to the unique characteristics of U.S. intermediate holding companies ("IHCs") and the U.S. operations of international banks. Second, in Section IV, we discuss how the LTD Proposal contains flaws that are common to the Capital and Resolution Related Proposals. Namely, the proposed regulations are not tiered to banking organizations' risks (which is at odds with statutory requirements) and are not informed by a sufficient analysis or understanding, on the part of the Agencies, of the effects of the LTD Proposal and other Capital and Resolution Related Proposals. While we have suggested modifications in Sections I through III to address many of these issues, commenters should have access to clear supporting analyses of the interactions of all the Capital and Resolution Related Proposals (and, at a minimum, more time to consider the complex interactions of the various proposals).[3] More broadly, the fact that the LTD Proposal was not informed by a holistic and integrated review[4] of the various proposals compromises the ability of the Agencies to adopt regulations originating from this proposal.

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[2] Federal Reserve, FDIC, and OCC, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg 64028 (proposed Sept. 18, 2023) (the "Capital Proposal"); Federal Reserve, *Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies ["GSIBs"]; Systemic Risk Report (FR Y–15)*, 88 Fed. Reg 60385 (proposed Sept. 1, 2023) (the "GSIB Surcharge Proposal"); Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers*, 88 Fed. Reg. 64641 (proposed Sept. 19, 2023) (the "International Bank Guidance Proposal"); FDIC, *Resolution Plans Required for Insured Depository Institutions With $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least $50 Billion But Less Than $100 Billion in Total Assets*, 88 Fed. Reg. 64579 (proposed Sept. 19, 2023) (the "IDI Plan Proposal").

[3] Letter from IIB, Bank Policy Institute, Financial Services Forum, American Bankers Association, Securities Industry and Financial Markets Association to the Agencies (Oct. 6, 2023), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2023comms/20231006Resolution-Related_P.pdf (Request for Extension of Comment Period for Resolution-Related Notices of Proposed Rulemaking).

[4] *See* Michael S. Barr, Vice Chair for Supervision, Federal Reserve, *Why Bank Capital Matters* (Dec. 1, 2022), https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm ("By 'holistic,' I mean not looking only at each of the individual parts of capital standards, but also at how those parts may interact with each other—as well as other regulatory requirements—and what their cumulative effect is on safety and soundness and risks to the financial system. This is not an easy task, because finance is a complex system. And to make the task even harder, we are looking not only at how capital standards are working

Our specific recommendations are as follows:

- The Agencies should exclude IHCs from the proposed LTD and clean holding company requirements, or at a minimum, limit the scope of the Proposal to Category II IHCs that are not subsidiaries of non-U.S. GSIBs;

- For international banks that have IDIs in scope for the LTD Proposal as well as IHCs subject to LTD requirements under the LTD Proposal or the TLAC Rule, such institutions should not be subject to prescriptive requirements to issue LTD both from the IHC and from any Covered IDI;

- IDI subsidiaries of non-U.S. GSIBs should be excluded from the IDI-level requirements, similar to the approach taken for the IDI subsidiaries of U.S. GSIBs;

- If Covered IDI subsidiaries of IHCs subject to LTD requirements are required to issue LTD themselves, they should be permitted to issue such LTD either externally or internally if the international bank uses an MPOE strategy in the United States;

- There should be a materiality threshold before the IDI affiliates of IDIs with over $100 billion in assets become subject to standalone LTD requirements; and

- The proposed LTD requirements, and the existing internal TLAC requirements, should be recalibrated to better reflect the unique situations of international banks. Further, for the IHCs of non-U.S. GSIBs, 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.

I. Given the Unique Characteristics of the Operations of IHCs and International Banks in the United States, the Agencies Should Exclude IHCs From the Proposed LTD and Clean Holding Company Requirements.

Given the unique characteristics of IHCs and international banks in the United States, we repeat the position that we articulated in our comments on the October 2022 Advance Notice of Proposed Rulemaking (the "ANPR")[5]: Any newly proposed LTD or clean holding company requirement should not apply to the IHCs of international banks.[6] If, however, the

today, but also how they may work in the future, when conditions are different").

5 *See* Federal Reserve and FDIC, *Resolution-Related Resource Requirements for Large Banking Organizations*, 87 Fed. Reg. 64170 (proposed Oct. 24, 2022).

6 Letter from IIB to Federal Reserve and FDIC (Jan. 23, 2023), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2023comms/20230123.FRB_Docket_No._R-17.pdf.

Agencies were to include IHCs in the scope of the LTD Proposal, the Agencies should at a minimum limit the application of the LTD Proposal (the LTD and clean holding company requirements) to only Category II bank holding companies ("BHCs") and Category II IHCs that are not subsidiaries of non-U.S. GSIBs. Any final rule that expands the LTD requirement across Category III and IV merely continues the erosion, throughout the Capital and Resolution Related Proposals, of the differentiation among tiers and therefore is insufficiently compliant with statutory requirements.

A. IHCs, and the U.S. operations of large international banks more generally, are differently situated from domestic banking organizations, as they are part of larger global institutions that can provide ready assistance and are already subject to robust, home country resolution-related requirements and enhanced prudential standards.

Since the global financial crisis, international banks have developed single-point-of-entry ("SPOE") and multiple-point-of-entry ("MPOE") home-country resolution plans, including with respect to their U.S. operations, guided by international and home- and host-country standards to facilitate effective resolution of the banking organization as a whole. In addition to being incorporated into this home country exercise, IHCs and the U.S. operations of international banks are also subject to the Agencies' resolution planning requirements (and in some cases, the FDIC's resolution planning requirements for insured depository institutions ("IDIs")). In the U.S. resolution planning context, international banks have separately developed SPOE or MPOE resolution strategies for their U.S. operations.

In recent years, international banks have engaged in intensive resolution planning for both their global and their U.S. operations to monitor and provide resources to their key operations, to withstand losses and to ensure resolvability. These steps include (1) significantly increasing capitalization levels and liquidity resources, (2) simplifying organizational structures, (3) streamlining business mixes, (4) developing playbooks to facilitate the provision of financial support and any preparatory actions for an orderly resolution and (5) enhancing affiliate and third-party service arrangements to ensure continued operations in stress and resolution scenarios (e.g., resolution-resilient service level agreements). Simultaneously, similar to the United States, the home countries of international banks have undertaken significant reforms in capital, liquidity, bail-in-able resources, corporate structures, and resolution frameworks and strategies to implement both domestic and international standards.[7]

As a result of these developments, international banks have reduced their potential to pose risk to the U.S. financial system and are in a better position to facilitate the resolution of their U.S. operations, should the need arise. In other words, the global resolution landscape has

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IHCs that are subsidiaries of non-U.S. GSIBs are already subject to total loss absorbing capacity, LTD and clean holding company requirements under the "TLAC Rule." *See* 12 C.F.R. pt. 252, subpt. P.

[7] *See*, *e.g.*, among many other examples, European Union Single Resolution Board, *Expectations for Banks* (2020), https://www.srb.europa.eu/system/files/media/document/efb_main_doc_final_web_0_0.pdf; Bank of England, *Statement of Policy: The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)* (Dec. 2021), https://www.bankofengland.co.uk/-/media/boe/files/paper/2021/mrel-statement-of-policy-december-2021-updating-2018.pdf.

strengthened considerably. There is no need for host-country specific layers of regulation and costly U.S. debt issuances on top of the resolution planning requirements already applied by the United States as host country and the home-country frameworks applied on a consolidated basis. Domestic banks do not have another regulator applying requirements to their U.S. operations, but international banks do. The International Bank Guidance Proposal appears to recognize the importance of home country resolution strategies as it asks international bank filers to specify how their U.S. resolution strategy interacts with their global resolution plan.[8]

In addition, as part of larger organizations subject to global, enterprise-wide capital planning, the U.S. operations of international banks may manage and allocate capital between IHCs and other non-U.S. subsidiaries in a way that increases the capital strength of the group overall and reduces group fragility. By contrast, distributions of earnings and capital to public shareholders of domestic banking organizations leave the organization and do not promote group stability.

The Agencies also should more generally exercise caution when considering whether to apply additional U.S. host-country requirements to the U.S. operations of international banks and be aware of unintended consequences of these decisions at the international level. Disproportionate requirements in the United States can lead to similar demands by other host-country supervisors. This could, in turn, lead to increased fragmentation and less orderly approaches to the resolution of internationally active banking organizations, making such organizations less resilient on an enterprise-wide basis and increasing financial stability risks in both home and host jurisdictions.[9] Generally, more flexibility and fewer mandatory requirements are needed to promote resiliency of the U.S. portion of international banks' global operations, when these international banks are subject to mandatory requirements on a consolidated basis by their home country that are already consistent with international norms.

[8] *See* International Bank Guidance Proposal at 64650 ("Recognizing that the preferred resolution outcome for the specified firms is often a successful SPOE home country resolution, a specified firm's Plan should describe the impact of executing the global resolution plan on U.S. operations. This description should include a discussion of the expected resolution strategy for the firm's U.S. entities and operations under the global resolution plan. In addition, a specified firm's resolvability work in the United States should consider both the objectives of the firm's group-wide resolution strategy and the Rule. Efforts to enhance the resolvability of U.S. operations and entities should be as complementary as practicable to the group-wide resolution strategy, while complying with the Rule.").

[9] *See* Wilson Ervin, *Understanding 'ring-fencing' and how it could make banking riskier*, Brookings Center on Regulation and Markets (Feb. 7, 2018), https://www.brookings.edu/articles/understanding-ring-fencing-and-how-it-could-make-banking-riskier/ (finding that for a hypothetical bank with four equally sized subsidiaries, the risk of group failure could increase by 5x or more if extensive ring-fencing were required). For example, the EU intermediate parent undertaking ("IPU") structure was implemented after the United States introduced the IHC requirements. *See* Council of the European Union, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures*, (Feb. 14, 2019), https://data.consilium.europa.eu/doc/document/ST-6289-2019-INIT/en/pdf.

We also note that, while the LTD Proposal generally points to the IDI failures in March 2023 as giving rise to the Proposal's policy choices[10] – and, it would seem, relies on these March 2023 developments as a reason to not engage fully[11] with the comments received on the ANPR – the LTD Proposal does not explain how these domestic IDI failures would support applying the LTD Proposal to IHCs.

B. <u>IHCs of international banks are significantly smaller and less risky than U.S. GSIBs as well as domestic banking organizations in Categories II through IV</u>.

In addition to the beneficial effects of IHCs' status as members of global banking organizations that are already subject to robust, home country resolution-related requirements and enhanced prudential standards, the size and activities of IHCs overall generate less risk for the U.S. financial system than domestic banking organizations.

IHCs are significantly smaller than the U.S. GSIBs and also smaller than other domestic banking organizations in similar categories.[12] As of the second quarter of 2023, IHCs had an average of $181.7 billion in total consolidated assets; U.S. GSIBs had an average of $1.8 trillion in total consolidated assets; and domestic BHCs in Categories II through IV had an average of $312.53 billion in total consolidated assets. In fact, IHCs have gotten smaller as domestic banking organizations have continued to grow in size. As of the second quarter of 2023, IHCs' average total consolidated assets have *decreased* by 4.78% since the fourth quarter of 2020, whereas the average total consolidated assets of U.S. GSIBs in Category I have *increased* by 9.41% and the average total consolidated assets of domestic BHCs in Categories II through IV have *increased* by 13.51%.[13] These relative differences between IHCs and domestic banking organizations are even starker for changes in asset sizes since 2018: IHCs' average total consolidated assets have increased by 4.04% since the fourth quarter of 2018, whereas the average total consolidated assets of U.S. GSIBs have increased by 31.91% and the average total consolidated assets of domestic BHCs in Categories II through IV have increased by 48.57%.[14]

In addition, IHCs are better capitalized than U.S. GSIBs and other domestic BHCs. While IHCs have an average CET 1 ratio of 16.01%, U.S. GSIBs have an average CET 1 ratio of 12.62% and domestic BHCs in Categories II through IV have an average CET 1 ratio of

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[10] *See* LTD Proposal at 64526-64527.

[11] *See* LTD Proposal at 64528 ("Most commenters opposed or raised concerns regarding the proposal. However, most of the comments were received prior to the recent bank stress events involving SVB, SBNY, and First Republic and therefore did not take those events into consideration.")

[12] Because this Proposal would apply to IHCs, comparing IHCs to domestic BHCs is the most suitable type of comparison for evaluating the relative attributes of these entities. While the global operations of an IHC's parent are of course much larger in size than the IHC is, this is not a relevant data point because these consolidated global operations are not subject to the Proposal (or to consolidated U.S. supervision and regulation in general). Indeed, this is among the reasons why 12 U.S.C. § 5365(b)(2) states that, when applying prudential standards to any "foreign-based bank holding company," the Federal Reserve "shall . . . take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States."

[13] Data from Form FR Y-9C.

[14] Data from Form FR Y-9C.

10.62%.[15] Similarly, while IHCs have an average Tier 1 capital ratio of 17.56%, U.S. GSIBs have an average Tier 1 ratio of 14.30% and domestic BHCs in Categories II through IV have an average Tier 1 ratio of 12.23%.[16]

Finally, IHCs on average continue to either decrease or experience limited growth in other risk-based indicators. From the fourth quarter of 2020 to the second quarter of 2023: [17]

- IHCs' average total nonbank assets increased by 4.93% (U.S. GSIBs had an increase of 15.64% and domestic BHCs in Categories II through IV had a decrease of 1.72%);
- IHCs' average total short-term wholesale funding decreased by 2.70% (U.S. GSIBs had an increase of 10.89% and domestic BHCs in Categories II through IV had an increase of 19.59%);
- IHCs' average cross-jurisdictional activity increased by 3.13% (U.S. GSIBs had an increase of 14.03% and domestic BHCs in Categories II through IV had a decrease of 6.4%); and
- IHCs' average total off-balance sheet exposure decreased by 4.10% (U.S. GSIBs had a decrease of 2.37% and domestic BHCs in Categories II through IV had an increase of 13.94%).

The changes in IHC size and risk-based indicators depict entities with materially and observably less risk than U.S. GSIBs and domestic BHCs in Categories II through IV.

II. The Requirements for Covered IDIs Should Be Revised to Provide Sufficient Flexibility to Maximize Efficiency in a Stress Scenario and to Accommodate Both SPOE and MPOE U.S. Resolution Strategies.

A. For international banks that have IDIs in scope for the LTD Proposal ("Covered IDIs") as well as IHCs subject to LTD requirements under the LTD Proposal or the "TLAC Rule",[18] such institutions should be provided flexibility on where to issue required LTD. They should not be subject to prescriptive requirements to issue LTD both from the IHC and from any Covered IDI.

It is particularly important to permit the U.S. operations of international banks to position capital in a manner that allows for maximum flexibility and efficiency in a stress scenario, given that both the IHC and IDI subsidiaries are part of a broader organization subject to loss-absorbing and resolution-related requirements and enterprise-wide capital planning.

In our view, the requirements of the LTD Proposal, which seeks to improve the resolvability of banking organizations, could lead to the unintended consequence of causing resolution-related resources to be trapped and unable to be most effectively deployed within an

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[15] Weighted averages based on data from Form FR Y-9C.

[16] Weighted averages based on data from FR Y-9C.

[17] Available FR Y-15 data.

[18] *See* 12 C.F.R. § 252.162.

international bank during a stress scenario. As the Basel Committee on Banking Supervision ("BCBS") recently wrote with respect to the March 2023 banking turmoil, "Supervisors should also take into account possible limitations to the free transferability of capital and liquidity resources within banking groups that may arise (eg from national laws, supervisory approaches or banks' internal managerial practices), as these can limit or restrict actions by banks or supervisors in stress."[19] Flexibility can be of paramount importance in a stress scenario.

As we discuss in our comment letter on the International Bank Guidance Proposal,[20] that proposal's expectations around resolution capital adequacy and positioning ("RCAP") are generally duplicative of TLAC requirements, and if adopted as proposed, the LTD requirements. If RCAP were to be adopted as proposed, the prescriptive nature of RCAP, coupled with the prescriptive proposed LTD requirements, would seriously limit an international bank's ability to respond to a stress scenario with appropriate flexibility. Even if RCAP were not to be adopted for broader categories of resolution plan filers, prescriptive LTD requirements with respect to IDIs of IHCs would still create obstacles. The application of these rules to IHCs and their IDI subsidiaries should be viewed through a significantly different lens from that used to apply these rules to domestic banking organizations. The Agencies' jurisdiction extends to the U.S. operations of international banks, and yet the rules are proposed to apply as if IHCs were top-tier entities. They are not, and to take into account this structural difference between IHCs and domestic banking organizations, the Agencies' method for applying these requirements to an IHC should be materially different from their method for applying these requirements to a top-tier entity that manages its subordinate organizations. The parent organization of an international bank should therefore have the purview to more flexibly structure capital throughout the organization.

Should the LTD requirements be finalized to apply to IHCs, as long as IHCs maintain an overall level of required LTD under either the TLAC Rule or finalized LTD requirements, international banks should be able to determine the appropriate balance of pre-positioned versus deployable capital within their U.S. operations, balancing certainty with flexibility and taking into account their global and U.S. resolution strategies and the needs of material entities. The LTD Proposal currently takes a "one size fits all" approach that ignores the different structures and strategies (e.g., MPOE v. SPOE) of international banks in the United States, and consequently, the requirement for an IHC with a Covered IDI to issue LTD out of both entities is a blunt tool that is not appropriately tiered to the characteristics of this entity. Therefore, international banks should be given flexibility to meet LTD requirements at either the IHC level, IDI level or some combination of the two.

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[19] *See* BCBS, *Report on the 2023 Banking Turmoil* at 23 (Oct. 2023), https://www.bis.org/bcbs/publ/d555.pdf at 22-23.

[20] *See* Letter from IIB to Federal Reserve and FDIC (Nov. 30, 2023), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2023comms/FINAL_IIB_Resolution_Plannin.pdf (IIB comment letter on International Bank Guidance Proposal).

B. IDI subsidiaries of non-U.S. GSIBs should be excluded from the IDI-level requirements, similar to the approach taken for the IDI subsidiaries of U.S. GSIBs.

As a result of the suite of regulations that U.S. GSIBs and non-U.S. GSIBs each face, the IDI subsidiaries of non-U.S. GSIBs are subject to a similar regulatory framework as the IDI subsidiaries of U.S. GSIBs. If the IDI subsidiaries of U.S. GSIBs are to be excluded from the LTD Proposal's IDI-level requirements, the IDI subsidiaries of *non-U.S.* GSIBs also should be excluded.

Like U.S. GSIBs, the IHCs of non-U.S. GSIBs are already subject to LTD, TLAC and clean holding company requirements under the TLAC Rule. In addition, the top-tier parent entities of these IHCs are subject to home-country loss-absorbing capacity and resolution-related requirements, as discussed further in Section I.A above. Furthermore, the supervision and regulation of non-U.S. GSIBs by their home country supervisors is comparable to that for U.S. GSIBs (e.g., home country regulators apply comparable capital and liquidity allocation requirements to non-U.S. GSIBs). Taking these requirements together, non-U.S. GSIBs' IHC subsidiaries are subject to a level of consolidated regulation similar to that facing U.S. GSIBs.[21]

In addition, the 165(d) resolution planning guidance currently applicable to the U.S. operations of certain non-U.S. GSIBs (the "Current International Bank Guidance") applies substantially similar requirements to the U.S. operations of non-U.S. GSIBs as those applicable to U.S. GSIBs.[22] As a result of the International Bank Guidance Proposal, 165(d) resolution planning guidance has been proposed to apply to a much larger group of U.S. operations of non-U.S. GSIBs, moving the requirements they face even closer to those applicable to U.S. GSIBs.

In short, the IDI subsidiaries of non-U.S. GSIBs and the IDI subsidiaries of U.S. GSIBs are subject to similar sets of regulatory requirements. Because of this, the IDI subsidiaries of non-U.S. GSIBs should be excluded from the IDI-level requirements, just as the subsidiaries of U.S. GSIBs are.[23] A different outcome would not be consistent with national treatment for international banks and is inadequately supported in the LTD Proposal.[24]

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[21] 12 U.S.C. § 5365(b)(2) (in particular, when applying prudential standards to any "foreign-based bank holding company," the Federal Reserve "shall . . . take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States").

[22] *See* Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*, 85 Fed. Reg. 83557 (Dec. 22, 2020); International Bank Guidance Proposal.

[23] *See* LTD Proposal at 64526 n.2 ("IDIs that are consolidated subsidiaries of U.S. GSIBs would not be subject to the proposed LTD requirement because their parent holding companies are subject to the LTD requirement under the Board's total loss-absorbing capacity (TLAC) rule. See 12 CFR 252 subparts G and P. In addition, U.S. GSIBs are subject to the most stringent capital, liquidity, and other prudential standards . . .")

[24] Jonathan McKernan, Director, 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* (Oct. 4, 2023) ("One unique feature of our proposal is that regional banks and certain foreign banking organizations would be required to issue long-term debt out of both the top-tier U.S. parent

C. <u>If Covered IDI subsidiaries of IHCs subject to LTD requirements are required to issue LTD themselves, they should be permitted to issue such LTD either externally or internally if the international bank uses an MPOE strategy in the United States</u>.

This suggested revision is consistent with the current approach for IHCs under the TLAC Rule and the proposed approach for IHCs under the LTD Proposal.[25] External LTD issued from a subsidiary that is anticipated to enter into resolution proceedings is an appropriate option for MPOE resolution strategies, something that the Federal Reserve considered and ultimately recognized in the 2016 TLAC Rule.[26]

More broadly, the Agencies have consistently stated that they do not identify a preferred resolution plan strategy, and they do not intend to favor one strategy over another.[27] In addition, by tasking banking organizations with developing their own resolution strategies and writing their own resolution plans, the Dodd-Frank Act implicitly acknowledges that such institutions have the best insight into the most appropriate resolution strategy and that such strategy may differ for each institution. Many institutions have chosen a U.S. MPOE strategy as the most effective for their particular structure. As just one example, an institution may determine an MPOE strategy is most effective if there is a large concentration of assets and activities in an IDI subsidiary and, therefore, the resolution proceedings would be concentrated in the FDIC receivership with few, if any, of the coordination issues that might result from multiple proceedings with respect to different entities or in different jurisdictions.

Permitting an IDI subsidiary of a holding company that uses an MPOE strategy to decide whether to issue external or internal LTD would be consistent with the objective of not

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company and the bank subsidiary. U.S. GSIBs, in contrast, are required to issue long-term debt out of only the parent. U.S. GSIBs do preposition some resources at the bank subsidiary through the internal issuance of debt by the bank subsidiary, but that is done on a bespoke basis developed through dialogue with its regulators. This difference in approach means that regional banks would have less flexibility than the U.S. GSIBs to preposition resources throughout the banking organization. That, in turn, would suggest that regional banks could have less flexibility—and perhaps more difficulties—in developing resolution plans that preserve the franchise value of their non-bank businesses.") (footnote omitted).

[25] *See* LTD Proposal at 64534.

[26] *See* Federal Reserve, *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, 8270 (Jan. 24, 2017) ("A key modification to the proposal is that, under the final rule, a resolution covered IHC that adopts an MPOE resolution strategy would have the option to issue capital and LTD externally to third parties in a fashion similar to covered BHCs (and consistent with their resolution strategy). . .").

[27] *See* International Bank Guidance Proposal at 64643 ("The agencies do not prescribe a specific resolution strategy for any covered company, nor do the agencies identify a preferred strategy. The proposed guidance is not intended to favor one strategy or another.") *See also* Financial Stability Board ("<u>FSB</u>"), *Key Attributes of Effective Resolution Regimes for Financial Institutions* Key Attribute 11.3 at 16 (Oct. 15, 2014), https://www.fsb.org/wp-content/uploads/r_141015.pdf (the recovery and resolution plan "should be informed by resolvability assessments. . . and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.").

favoring one resolution strategy over another.[28] In contrast, a rule that requires the issuance of *internal* LTD out of subsidiary IDIs, coupled with clean holding company requirements at IHCs, could effectively push international banks to adopt a SPOE strategy for their U.S. operations. This would be inconsistent with the stated position of the Agencies. If the Agencies were to consider prescribing a particular resolution strategy, this would be an important topic for public input that should be effectuated through a formal rulemaking process, not through implicit policy judgments that push institutions to adopt one strategy over another.

D. <u>There should be a materiality threshold before the IDI affiliates of IDIs with over $100 billion in assets become subject to standalone LTD requirements</u>.

The Agencies' rationale for subjecting IDI affiliates to the LTD requirement is that it would facilitate the FDIC's use of bridge depository institutions in a resolution scenario. This is because affiliated depository institutions may fail together (hence the need for gone-concern loss-absorbing resources), and because, where affiliated IDIs engage in complementary business activities, it may be easier to market the IDIs together to potential acquirers.[29]

While reasonable in theory, this rationale does not justify imposing the burdens of the LTD requirements and related compliance on smaller IDIs, particularly those that are so small relative to their affiliate IDIs as to be immaterial for resolution purposes. Indeed, a blanket scoping-in of IDI affiliates would run contrary to the principles of tiering in an extreme way, even more so given that the Agencies have provided only general, hypothetical arguments for the inclusion of these IDIs. We propose that affiliate IDIs should be required to issue LTD only once they have surpassed $50 billion, the threshold at which IDIs are subject to resolution planning requirements that the industry has been accustomed to since 2012.[30]

E. <u>The definition of "eligible internal debt security" for IHCs subject to the proposed LTD Requirements should be clarified.</u>

In the Proposal, "eligible internal debt security" is defined as a debt instrument that, among other things, "is issued to and remains held by a company that is incorporated or organized outside of the United States, and directly or indirectly controls the covered IHC or is a wholly owned subsidiary. . ." For avoidance of any confusion, we believe that the final rule

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[28] Consistent with the Agencies' indication that they have no preference for a SPOE resolution strategy relative to an MPOE strategy, the IDI subsidiaries of non-U.S. GSIBs should be excluded from the IDI-level requirements (as discussed in the prior section) regardless of whether their parent bank employs a U.S. SPOE or MPOE strategy. *But see* LTD Proposal at 64526 n.2 (suggesting that a reason to exclude the IDI subsidiaries of U.S. GSIBs from the IDI-level requirements is in part because they have chosen an SPOE resolution strategy.) Rather, the existence of extensive consolidated home-country requirements for non-U.S. GSIBs should foreclose the proposed IDI-level requirements from applying to IDI subsidiaries of non-U.S. GSIBs.

[29] *See* Proposal at 64532.

[30] *See* 12 C.F.R. § 360.10.

should clarify that the "wholly owned subsidiary" refers to a "wholly owned subsidiary **of the foreign parent**", in keeping with the language of the Proposal's preamble.[31]

III. The Proposed LTD Requirements, and the Existing Internal TLAC Requirements, Should Be Recalibrated to Better Reflect the Unique Situations of International Banks. Further, for the IHCs of Non-U.S. GSIBs, 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.

A. The proposed LTD requirements are miscalibrated, especially for IHCs, and should be revised downward and tiered based on risk.

The calibration of the LTD requirement is generally too high as compared to the risk of, and possible resolvability benefits for, Category II through IV domestic banking organizations and IHCs that are not subsidiaries of non-U.S. GSIBs. As discussed previously, IHCs are significantly smaller than the U.S. GSIBs, and also smaller than domestic banking organizations in similar categories. Calibration that is the same for all Covered IDIs and holding companies contributes to the further erosion of tiering. This calibration should instead be tailored to risk profile (e.g., based on tiering category) and should generally be lower for IHCs than for domestic banking organizations in recognition of IHCs' structure within a broader group and of the contributions of home-country resolvability enhancements.

This is consistent with the approach taken for TLAC requirements for IHCs subject to the TLAC Rule, although we believe such requirements should be further recalibrated downward, as discussed below in Section III.B. The internal TLAC ("iTLAC") and LTD calibration for IHCs subject to the TLAC Rule is currently set at approximately 90% of the requirements applicable to domestic banking organizations, which is the highest calibration established by FSB standards.[32] For the reasons discussed below, in our view, TLAC and LTD requirements applicable to IHCs under either the TLAC Rule or the LTD Proposal should be scaled at no higher than 75% of the requirements applicable to domestic banking organizations.

B. The iTLAC requirements currently applicable to the IHCs of non-U.S. GSIBs should be recalibrated downward to more accurately reflect the risk profiles, local supervisory frameworks and particular structural considerations relevant to IHCs. Further, for the IHCs of non-U.S. GSIBs, the requirement that a fixed portion of iTLAC be in the form of LTD is unnecessary and should be eliminated or at least significantly reduced.

The Agencies propose calibrating the LTD requirements under the LTD Proposal the same as the internal LTD requirements for IHCs of non-U.S. GSIBs under the TLAC Rule.

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[31] Proposal at 64539.

[32] FSB, *Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet* § 18 at 19 (Nov. 9, 2015), https://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf.

However, as we have argued previously,[33] the iTLAC requirements currently applicable to the IHCs of non-U.S. GSIBs should be recalibrated downward to more accurately reflect the risk profiles, local supervisory frameworks and particular structural considerations relevant to IHCs.

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."[34] Therefore, the calibration of iTLAC involves a trade-off. If iTLAC requirements are set too high, the effects could include having prepositioned 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. Such misallocation risk arises if an international bank prepositions excessive resources in a single jurisdiction at the expense of flexibility to address losses in other jurisdictions.[35] An excessively high calibration level could also result in similarly high levels of prepositioning in other jurisdictions, limiting the ability of GSIBs—including those headquartered in the United States—to flexibly respond to losses in different jurisdictions and potentially making them less resilient.

iTLAC should be calibrated to facilitate home-host cooperation and should not necessarily be based on assumed stand-alone losses at an IHC taking an SPOE approach, given that iTLAC is applied to material subgroups of a GSIB that, for many non-U.S. GSIBs, are expected not to be the subject of resolution powers during the resolution of the GSIB.

We appreciate the Federal Reserve's previous efforts to modestly recalibrate TLAC requirements to better align its rules with the practice of other regulators around the world, such as through the 2020 technical amendments to the TLAC buffer calibration for IHCs, but more should be done.

The FSB's TLAC Term Sheet stipulates that material subgroups should have iTLAC scaled within a range of 75 to 90 percent of the minimum external TLAC requirement that would apply if the material subgroup were a resolution group. iTLAC requirements currently applicable to IHCs of non-U.S. GSIBs are calibrated at approximately 90% of the

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[33] *See*, *e.g.*, Letter from Beth Zorc, CEO, IIB, to the Federal Reserve and FDIC (Jan. 23, 2023); Letter from Briget Polichene, CEO, IIB, to the Federal Reserve (Nov. 20, 2020); Letter from Briget Polichene, CEO, IIB, to Ann E. Misback, Secretary, Federal Reserve (June 25, 2018); Letter from Sarah A. Miller, CEO, IIB, to Robert deV. Frierson, Secretary, Federal Reserve (Feb. 19, 2016).

[34] FSB, *Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet* § 16, at 17 (Nov. 9, 2015), https://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf.

[35] *See* 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, 80 Fed. Reg. at 74,926, 74,949 (proposed Nov. 30, 2015) (discussing the difference between "contributable" and "prepositioned" resources, the Federal Reserve 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.").

iTLAC requirements applicable to domestic GSIBs, which is the highest calibration established by FSB standards.[36] In our view, this requirement should be no higher than 75% of the external TLAC requirements applicable to U.S. GSIBs, taking into consideration the substantially smaller systemic footprints of IHCs, the existing regulatory framework applicable to IHCs, and the availability of international parent bank support. Moreover, as RWAs are projected to materially increase in connection with the Agencies' implementation of the Capital Proposal, a downward recalibration of iTLAC requirements is even more important to avoid further increasing required levels of iTLAC, which are already too high.

As we have argued in the past,[37] we also would respectfully submit that, for the IHCs of non-U.S. GSIBs, the requirement that a fixed portion of iTLAC be in the form of LTD is unnecessary and should be eliminated or at least significantly reduced. Among other reasons, this approach is inconsistent with the purpose of iTLAC, which is to ensure that non-resolution entities will be supported during resolution. Notably, when the FSB's TLAC Term Sheet discusses an expectation that a portion of TLAC be in the form of debt, it is only in the context of external TLAC, not iTLAC. In our view, this is the correct approach.

An approach to iTLAC that facilitates home-host cooperation, achieves a balanced global result, and ensures resilience at the international level will ultimately better protect the U.S. financial system.

IV. The LTD Proposal Shares Issues Common to the Capital and Resolution Related Proposals, Namely, Insufficient Tiering That Is at Odds With Statutory Requirements and Insufficient Cost-Benefit and Impact Assessment.

Many of the fundamental problems common to the Capital and Resolution Related Proposals are also present in the LTD Proposal.

A. The Agencies are required by statute to tier the application of prudential standards, and the elimination of tiering under the LTD Proposal is inconsistent with this legal requirement.

As with the other Capital and Resolution Related Proposals, the LTD Proposal does not sufficiently differentiate between Categories I through IV, as required under both the Dodd-Frank Act and the Economic Growth, Regulatory Relief and Consumer Protection Act ("EGRRCPA").[38] The Proposal's application of the same requirements to Categories II through

[36] FSB, *Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet* § 18 at 19 (Nov. 9, 2015), https://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf.

[37] Letter from Sarah A. Miller, CEO, IIB, to Robert deV. Frierson, Secretary, Federal Reserve (Feb. 19, 2016).

[38] *See* Dodd Frank Act § 115(a)(1)(B) (recommendations of the FSOC regarding enhanced prudential standards are to "increase in stringency" based a number of factors described in §§ 113 and 115(b)(3)); § 165(a)(1)(B) (the Federal Reserve "shall . . . establish prudential standards . . . that . . . increase in stringency based on" a number of factors described in § 165(b)(3)); § 165(a)(2)(A) (as modified by EGRRCPA § 401(a)(1)(B)(i)).

IV represents a further step away from the tiering of regulatory requirements based on the risk profile of institutions and violates statutory requirements.

EGRRCPA, enacted in response to the post-Dodd-Frank lack of differentiation and "one size fits all" regulation burdening non-GSIB banking institutions,[39] requires the Federal Reserve to "differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate."[40] In addition to ignoring the lower risks posed by IHCs as members of larger, supportive global banking organizations, the LTD Proposal would subject Category II through IV institutions to requirements that are not sufficiently differentiated from those applicable to U.S. GSIBs in Category I. In other words, the Proposal's requirements (e.g., the LTD requirement, the clean holding company requirements) also bring *all* domestic banking organizations and IHCs closer to being treated as U.S. GSIBs. In fact, the Proposal would add an IDI-level LTD requirement to Covered IDI subsidiaries of Category II-IV institutions that is not even required for Category I institutions, as we discuss further in Section II.B above.

Chair Gruenberg stated that the organizations covered by recent proposals are "*just below* the U.S. global systemically important banking organizations in terms of their size, complexity and the potential impact of their failure on U.S. financial stability."[41] That conclusion is not supported by the actual data. Category II through IV banking organizations are not remotely commensurate with U.S. GSIBs. This is particularly the case for IHCs and the U.S. operations of international banks in such categories. To cite just one example, as of the end of the second quarter of 2023, IHCs had, on average, approximately $181.7 billion in total consolidated assets, whereas a U.S. GSIB had, on average, approximately $1.8 trillion in total consolidated assets,[42] a ten-fold difference. Other differences between IHCs and U.S. GSIBs include average total nonbank assets ($78.5 billion versus $607.4 billion); average total short-term wholesale funding ($41.7 billion versus $325.6 billion); average cross-jurisdictional activity ($28.4 billion versus $1 trillion); and average total off-balance sheet exposure ($28.6 billion versus $353.6 billion).[43]

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[39] Federal Reserve, *Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations*, 84 Fed. Reg 59032, 59033-34 (Nov. 1, 2019) ("By taking into consideration a broader range of risk-based indicators and establishing four categories of standards, the final rule enhances the risk sensitivity and efficiency of the Board's regulatory framework. This approach better aligns the prudential standards applicable to large banking organizations with their risk profiles, taking into account the size and complexity of these banking organizations as well as their potential to pose systemic risk.")

[40] Dodd Frank Act § 165(a)(2)(A) (as modified by EGRRCPA § 401(a)(1)(B)(i)).

[41] Martin J. Gruenberg, Chairman, FDIC, *Statement by Martin J. Gruenberg, Chairman, FDIC, On Proposed Dodd-Frank Act Title I Resolution Plan Guidance* (Aug. 29, 2023) (emphasis added).

[42] FR Y-9C data.

[43] Available FR Y-15 data.

Consequently, the LTD Proposal does not "differentiate among companies" in accordance with their various risk-based characteristics[44] (or reflect a risk-based approach to the development of prudential standards).[45]

Also, as we discuss further below, the LTD Proposal does not take into account the effects of the other Capital and Resolution Related Proposals. This lack of holistic analysis makes it inherently difficult, if not impossible, to "differentiate among companies" in the way that EGRRCPA requires. Furthermore, with respect to the application of prudential standards to BHCs and IHCs that have more than $100 billion but less than $250 billion in total consolidated assets, EGRRCPA requires a more nuanced approach and a more intensive analysis into such organizations' risk-related characteristics (the "Dodd-Frank Act § 165(a)(2)(C) requirement").[46] Not only does the LTD Proposal insufficiently account for the lesser risks posed by these smaller organizations, but also it does not acknowledge the existence of the Dodd-Frank Act § 165(a)(2)(C) requirement.

Because they are not tiered, the proposed requirements also would constrain growth in competition from international banks with smaller U.S. footprints because it makes worse the "cliff effect" of crossing the $100 billion threshold and having an IHC subject to requirements more commensurate to those applicable to U.S. GSIBs. This current miscalibration, particularly combined with the effects of the Capital and Resolution Related Proposals, would be part of the fabric of regulatory change that could encourage international banks to shrink their U.S. operations, constrain their growth in the United States or exit entirely. An increased concentration of the banking organizations remaining in the United States could itself be a source of systemic risk.[47] Ultimately, this trend could reduce the resiliency and available liquidity of U.S. credit and other financial markets.

As described above, our proposed changes such as removing IHCs from the scope of the LTD Proposal or, at least, calibrating the LTD requirements differently for institutions in

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44 *See* Dodd-Frank Act § 165(a)(2)(A) (as modified by EGRRCPA § 401(a)(1)(B)(i)).

45 *See* Dodd-Frank Act § 165(a)(1)(B).

46 *See* Dodd-Frank Act § 165(a)(2)(C) (the Federal Reserve "may by order or rule…apply any prudential standard established under this section to any bank holding company or bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 to which the prudential standard does not otherwise apply provided that the Board of Governors—(i) determines that application of the prudential standard is appropriate-- (I) to prevent or mitigate risks to the financial stability of the United States, as described in paragraph (1); or (II) to promote the safety and soundness of the bank holding company or bank holding companies. . .") *See also* Dodd-Frank Act § 165(a)(2)(C)(ii) (the prudential standards for BHCs that have more than $100 billion but less than $250 billion must take "into consideration the bank holding company's or bank holding companies' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.")

47 *See* Michelle W. Bowman, Governor, Federal Reserve, *The Role of Research, Data, and Analysis in Banking Reforms* (Oct. 4, 2023) ("Year after year, researchers have presented evidence that a banking system with diverse business models and sizes is better for business formation and leads to better penetration of financial services products across all industry sectors"), https://www.federalreserve.gov/newsevents/speech/bowman20231004a.htm.

different tiering categories and for IHCs as compared to domestic banking organizations, would go a long way toward ameliorating this flaw in the LTD Proposal.

B. Similar to the other Capital and Resolution Related Proposals, the Agencies have not provided sufficient analysis to support the LTD Proposal's proposed requirements.

The ability of the Agencies to provide meaningful impact assessment, and for the industry to effectively comment, on the LTD Proposal is hampered by multiple, interrelated proposals that are outstanding. For example, the LTD Proposal provides little analysis about how the proposed changes under the Capital Proposal would affect the LTD Proposal, primarily acknowledging that the two proposals would "interact".[48] Moreover, the Agencies' Capital Proposal itself is not supported by sufficient data and impact assessment, and is subject to an ongoing data collection, the submission deadline for which is the same as that for *comments* on the Capital Proposal.[49] The reality of multiple outstanding interrelated proposals – some of which are still being informed by an ongoing data collection that will not be resolved prior to the end of any comment period – greatly complicates commenters' ability to understand the interaction between the proposals and to provide meaningful comments.

The Agencies should conduct a robust analysis that considers the full picture of all of these interrelated proposals. A true "holistic" review[50] requires the Agencies both to understand and explain the ultimate goals and effects of all of the proposals together. While we believe that the modifications we have proposed in Sections I through III would be helpful in addressing some of these issues, commenters need access to a clear analysis of the interactions of all of these proposals from the outset (and, at minimum, more time to consider the complex interactions of the various proposals). This lack of holistic review is a fundamental flaw in the LTD Proposal.

V. Conclusion

In our view, IHCs should be excluded altogether from the proposed LTD and clean holding company requirements under the LTD Proposal. If the Agencies do decide to apply these requirements to IHCs, the LTD requirements are miscalibrated (especially for IHCs) and should be revised downward and tiered based on risk. For IDIs, the proposed requirements

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[48] *See* LTD Proposal at 65428 ("The agencies invite comment on the implications of the interaction of the proposal with other existing rules and with other notices of proposed rulemaking. How do proposed changes to the agencies' capital rule affect the advantages and disadvantages of this proposed rule?").

[49] *See* Press Release, Federal Reserve, *Federal Reserve Board launches data collection to gather more information from the banks affected by the large bank capital proposal it announced earlier this year* (Oct. 20, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231020b.htm.

[50] *See* Michael S. Barr, Vice Chair for Supervision, Federal Reserve, *Why Bank Capital Matters* (Dec. 1, 2022), https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm (By 'holistic,' I mean not looking only at each of the individual parts of capital standards, but also at how those parts may interact with each other—as well as other regulatory requirements—and what their cumulative effect is on safety and soundness and risks to the financial system. This is not an easy task, because finance is a complex system. And to make the task even harder, we are looking not only at how capital standards are working today, but also how they may work in the future, when conditions are different").

should be revised in several specific ways in order to provide appropriate flexibility to adapt such requirements to the varying resolution strategies utilized by the U.S. operations of international banks. Ultimately, the Proposal's finalization should be contingent on a holistic review of the Capital and Resolution Related Proposals.

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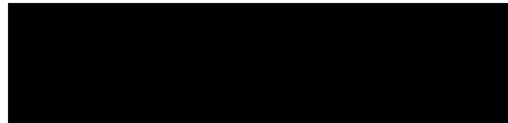
We appreciate your consideration of our comments on the Proposal. If we can answer any questions or provide any further information, please contact me at 646-213-1149, swebster@iib.org.

Very truly yours,



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