By Electronic Mail

June 24, 2024

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

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

Re: Supplemental Comments on 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, RIN 7100–AG66; OCC Docket ID OCC-2023-0011; FDIC RIN 3064-AF86

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association ("SIFMA"),[1] together with the Asset Management Group of SIFMA ("SIFMA AMG"),[2] appreciate the opportunity to provide supplemental comments on the proposal to extend long-term debt ("LTD") and clean holding company requirements to non-GSIB large banking organizations ("LBOs"), certain intermediate holding companies ("IHCs") of foreign banking organizations ("FBOs"), and large insured depository institutions ("covered IDIs," and collectively with LBOs and IHCs, "covered entities") issued by the Board of Governors of the Federal Reserve System ("Federal Reserve"), Office of the Comptroller of the Currency ("OCC") and Federal Deposit Insurance Corporation ("FDIC," and collectively with the Federal Reserve and the OCC, the

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

[2] SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

"agencies").[3]

Executive Summary

As stated in our comment letter dated January 11, 2024,[4] SIFMA and SIFMA AMG support efforts to ensure there is adequate loss-absorbing capacity in the U.S. banking system. However, as currently written, the proposal threatens to materially impede investor demand for LTD securities, while simultaneously increasing the supply of these instruments to the market. As a result, the proposal would have significant adverse effects on funding costs for covered entities and on the liquidity of the funding markets for covered entities.

SIFMA and SIFMA AMG welcome the agencies' willingness to engage in a dialogue on ways to improve this important rulemaking. To that end, we are submitting supplemental comments to assist the agencies in their deliberations. The main focus of this letter is on our concerns with, and potential alternatives to, the proposed $400,000 minimum denomination requirement for eligible external LTD because we believe this requirement would be particularly disruptive to the market for LTD securities.[5] Below, we recommend two alternative actions that the agencies could take to maintain the existing low levels of direct retail holdings of covered entities' LTD and explain why other types of investor restrictions would be unwarranted, especially without further consultation with market participants.

We also highlight additional concerns regarding the proposed internal LTD requirement and reiterate the importance of waiting to finalize the proposal until the Basel III Endgame and other capital and liquidity proposals are also finalized.

Finally, the letter discusses our concerns with the proposed amendments to the existing total loss-absorbing capacity ("TLAC") rule, under which banks would only be allowed to count 50% of eligible LTD that has a remaining maturity of one year or more but less than two years toward a bank's minimum TLAC requirement. This change would be very impactful as it would reduce the amount of LTD that can count towards TLAC at the same time as banks' TLAC requirements will have to adjust with the Basel III Endgame changes.[6]

I. Potential Alternatives to the Minimum Denomination Requirement of $400,000

In our original letter we noted that the proposed $400,000 minimum denomination requirement would fundamentally disrupt the market for covered entities' LTD as the current standard denomination is $1,000 or $2,000 (and multiples of $1,000 in excess thereof). As we explained, the proposal would have an unintended effect of drastically reducing the sophisticated investor base for LTD securities, particularly institutional investors. Excluding a broad group of sophisticated investors would, in turn, reduce market depth and liquidity of LTD issued by covered entities.[7] These negative impacts would be exacerbated by

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[3] See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, 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).

[4] SIFMA and SIFMA AMG, Comments on 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 (Jan. 11, 2024), https://www.sifma.org/wp-content/uploads/2024/01/SIFMA-SIFMA-AMG-Long-Term-Debt-Response-01-11-2024.pdf.

[5] 88 Fed. Reg. 64534, 64537-64538.

[6] See Financial Services Forum, Comments on Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity (Jan. 16, 2024), fsf---b3e-comment-letter.pdf (fsforum.com). P. 34 indicates that there would be an increase in requirements for TLAC of almost 20% versus a 6.5% increase for LTD.

[7] In our original letter we showed that 90 percent of trading activity occurs in relation to trade sizes of less than $400,000. More generally, please refer to pages 6-9 of our original letter for a more detailed explanation of how the proposal would impact the investor base for LTD instruments and LTD market liquidity.

additional LTD issuances that will result from the impending RWA increases from Basel III Endgame as well as those resulting from new covered entities coming into compliance with the proposed LTD rule. It is crucial that the agencies address this issue in the final rule given that a broad and diverse investor base for LTD is vital in ensuring stable, efficient and predictable funding for covered entities.

While the agencies may be concerned about experiences in other jurisdictions and particularly Italy, we would note that the conditions that led to the large-scale sale of bank debt to retail customers in Italy in the 2010s do not exist in the United States. Italian banks historically placed most of their bonds (around 80%) directly with their customers on an over-the-counter basis.[8] As a consequence, retail investors were the main holders of bank debt securities, and the portion of bank bonds in Italian retail investors' portfolios was significantly greater than the average of other developed countries. By contrast, U.S. covered entity LTD is most commonly offered in an underwritten offering through investment banks to their institutional customers and not by the covered entities directly to their individual customers.[9] For LTD that may be directly placed with retail investors, the agencies already have significant supervisory and enforcement powers over covered entity issuers to limit inappropriate or misleading sales to their retail customers.

It is also worth reiterating that direct retail ownership of bonds of *any kind* in the United States is very low, both in absolute terms and relative to a number of other developed economies.[10] The Federal Reserve's own data shows that very few households directly hold bonds of any kind,[11] and our members report that bond holdings in self-directed accounts are comprised primarily of U.S. Treasuries and municipal debt. The amount of covered entity LTD held in self-directed accounts is thus likely a fraction of the already minimal amount of bonds held directly by individuals. Given the established practices around the issuance of covered entities' LTD and the already low levels of direct retail ownership of corporate bonds, we would not expect direct retail holdings of LTD to materially increase as a proportion of overall issuance as a result of the proposed LTD requirement, even in the absence of actions by the agencies.

Recommendations to maintain the status quo of low direct retail ownership of covered entity LTD

To the extent that the agencies believe additional action is needed to maintain the status quo of low direct retail ownership of covered entity LTD, two additional steps they could take immediately are noted below. However, any steps that the agencies take should be focused principally on actions that are within the reasonable control of covered entities i.e., the primary market issuance of new eligible external LTD. This focus on primary issuance is appropriate given that any changes to the status quo would be driven by a shift in issuer behavior as new LTD requirements are implemented e.g., if new issuers raise proceeds by selling eligible external LTD to retail clients.

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[8] Crespi, F, Giacomini, E and Mascia, DV orcid.org/0000-0002-3776-0420 (2019) Bail-in rules and the pricing of Italian bank bonds. European Financial Management, 25 (2). pp.1321-1347. ISSN 1354-7798. Available at https://doi.org/10.1111/eufm.12206.

[9] Virtually all new issues of corporate bonds in recent years have been sold in the primary market to institutional investors (other than a small, niche sector commonly referred to as "baby bonds," which are typically listed, registered securities offered in $25 denominations). Indeed, several SIFMA members active in these markets have confirmed that all new investment grade bonds in which they participated as an active bookrunner during Q1 2024 were sold to institutional investors.

[10] Approximately 1 percent of U.S. households invest in bonds through self-directed accounts. See Board of Governors of the Federal Reserve System, Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances (Sept. 2020), https://www.federalreserve.gov/publications/files/scf20.pdf. As a point of comparison, 3.2% of households in the European Union own bonds, though the figure is significantly higher in certain jurisdictions, notably Italy and Ireland, both of which have bond ownership rates of 10.9%. See European Central Bank, The Household Finance and Consumption Survey, Table C1 Financial assets – participation rates (July 2023), https://www.ecb.europa.eu/home/pdf/research/hfcn/HFCS_Statistical_Tables_Wave_2021_July2023.pdf?0515e108613e1e4d0e839e816e9f07b8.

[11] *Ibid.*

a) Ensure Robust Investor Disclosures by New Issuers

Current issuers of eligible external LTD (i.e., the U.S. GSIBs and the U.S. IHCs of foreign GSIBs) are already required to provide robust disclosure language in their prospectuses explaining how a resolution of the firm could affect the firm's ability to pay its obligations on the securities.[12] These prospectuses also state clearly that eligible external LTD securities are not insured by the FDIC or any other governmental agency. In the final rule (and/or through the supervisory process), the agencies could require new issuers of eligible external LTD to include similar descriptions of the financial consequences to unsecured debtholders of the issuer's entry into a resolution proceeding consistent with the covered entity's preferred resolution strategy. Extending these existing disclosure requirements and practices to new covered entity issuers would inform investors of the risks of owning such LTD securities and could provide a strong mitigant against the possibility of sales of eligible external LTD to unaware investors, including retail customers of a covered entity.

In addition, we would note that the Federal Reserve also previously considered but rightly decided not to adopt investor restrictions for eligible LTD in the TLAC rule, instead recognizing the value of enhanced disclosures. In the preamble to the TLAC final rule, the Federal Reserve notes that some commenters had recommended that eligible LTD be sold only to "qualified, sophisticated investors," a proposal that it did not adopt because it saw robust disclosures as sufficient to achieve the rule's objectives of improving market discipline and encouraging sound risk-management practices. As the preamble to the TLAC final rule states, "by helping holders of [GSIB eligible external LTD] to understand that they will be allowed to suffer losses ahead of the creditors of the [GSIB covered entity] subsidiaries, the disclosure requirement of the final rule should encourage potential investors to carefully assess the covered [entity's] risk profile when making investment decisions... [leading] to an improvement in the market pricing of the unsecured debt of covered BHCs and….providing supervisors and market participants with more accurate market signals about the financial condition and risk profile of the covered BHC…."[13]

b) Adopt a $2,000 Minimum Denomination

The agencies could also require a $2,000 minimum denomination for eligible external LTD. As noted above, the current market standard denomination is either $1,000 or $2,000 (and multiples of $1,000 in excess thereof). The agencies could adopt the high end of that range ($2,000) as the minimum denomination requirement for newly issued eligible external LTD securities.

A $2,000 minimum denomination would serve as a strong mechanism for restricting sales primarily to sophisticated investors. Retail investors, on the other hand, commonly invest directly in smaller denominations. For example, corporate bond issuances marketed to retail investors in the niche "baby bond" market are typically offered in far smaller $25 denominations. Direct retail investment in eligible LTD is expected to remain low under the final rule, consistent with the current status quo.

We remain strongly opposed to any minimum denomination requirement higher than $2,000. The proposed $400,000 minimum denomination would have significant negative impacts on market liquidity and would inhibit the ability of institutional investors of all sizes to invest in covered entity LTD for the reasons we discuss at length in our original letter.

Taking additional actions, such as adopting poorly designed restrictions on the types of investors that can invest in eligible LTD, could have unintended negative impacts

[12] See 82 Fed. Reg. 8303. The SEC's "reasonable investor test" would also apply, requiring issuers to disclose the consequences of resolution proceedings for LTD investors.

[13] *Ibid.*

SIFMA and SIFMA AMG do not believe any additional actions by the agencies are necessary to maintain the status quo of low direct retail holdings of covered entity eligible LTD. Moreover, any additional actions to restrict the eligible external LTD issuance practices of covered entities could have unintended negative impacts and should therefore be subject to further consultation with market participants. In particular, we would discourage the agencies from seeking to restrict the types of investors that may invest in eligible LTD without considering the impact that such restrictions would have on the ability of institutional investors to invest in eligible external LTD. Imposing investor restrictions that do not account for the important role played by registered investment advisers ("RIAs") and other investment managers in LTD markets could have significant unintended consequences.

In the proposing release, the agencies state that an objective of the proposed minimum denomination is to "disincentivize direct holding of [eligible external LTD] by retail investors without preventing institutional investors from purchasing eligible external LTD." The agencies are correct to acknowledge the importance of institutional investors to the functioning of bank LTD funding markets, and as we have previously stated, the final rule should not restrict the ability of institutional investors to invest in eligible LTD.

a) Investor Issuance Restrictions Could Have Unintended Negative Consequences and Would Be Challenging to Implement

Some commenters have suggested various modifications or alternatives to the proposed $400,000 minimum denomination to carve out certain sophisticated investors from any investor issuance restrictions resulting from the requirement. Although these comments are well-intentioned, the implementation of these alternatives would present challenges and could have negative unintended consequences.[14]

One commenter recommended adding a Qualified Institutional Buyer (QIB) opt-out with respect to the higher denomination requirement.[15] This type of restriction would be unduly restrictive because it would exclude sophisticated natural persons, such as those who invest through separately managed accounts as described below. Such accounts add to a diverse investor base that is crucial for well-functioning and liquid LTD markets. Moreover, a QIB restriction would create significant implementation challenges. Members believe that an opt-out could only be achieved by issuing multiple or "mirrored" CUSIPs with different minimum denominations that would separately be available to natural persons and QIB investors.

Furthermore, another commenter suggested that the proposed minimum denomination should be replaced with a requirement restricting the sale of eligible external LTD to "accredited investors."[16] This recommendation fails to consider the complications that covered entities would face in monitoring and enforcing such a requirement in the secondary market. As a result, unbeknownst to the covered entity, eligible LTD that makes its way to the hands of non-qualified investors would effectively reduce a covered entity's outstanding LTD if there were a requirement to subtract LTD held by non-accredited investors from an entity's eligible outstanding LTD; worse still, it could even count against the unrelated liability limit. Both would clearly be untenable outcomes. These challenges are, in part, why we continue to recommend that any actions the agencies take be focused principally on the initial transaction in a

[14] Given the potential range and complexity of available implementation approaches, the agencies should give serious consideration to the inclusion of a "safe harbor" approach that would offer covered entities needed compliance certainty.

[15] See comments on the proposal from The Credit Roundtable, (Nov. 8, 2023), https://cdn.ymaws.com/thecreditroundtable.org/resource/resmgr/recent_news/231108_crt_letter_re_fdic_an.pdf (recommending a QIB carveout).

[16] See comments on the proposal from Breckinridge Capital Advisors, (Sep. 26, 2023), https://www.federalreserve.gov/SECRS/2023/October/20231010/R-1815/R-1815_092623_154719_322266077974_1.pdf (recommending an Accredited Investor standard).

primary market issuance of new eligible external LTD, where the ordinary course issuance practices of a covered entity could reasonably be expected to give effect to such actions.[17]

b) Avoid Unintended Negative Impacts on Professionally Managed Accounts

Importantly, we caution against any requirements that might inadvertently limit investments in covered entities' LTD securities by professional investment managers. The agencies are aware that individual investors (i.e., natural persons) generally only have exposures to LTD through separately managed accounts and pooled investment funds (such as mutual funds and exchange traded funds).[18] As discussed in our original letter, these holdings are typically part of an investor's broader diversified portfolio, and the investment managers that manage these accounts and funds are highly sophisticated professionals that understand the distinct risks of LTD instruments and make investment decisions in their clients' best interest, a legally required fiduciary obligation.

These sophisticated professionals are thus well-positioned and strongly incentivized to properly manage the risks posed by LTD instruments in the context of the fund or account's investment objectives, which serves end-investor interests and supports market discipline. Restricting the ability for investment managers to access LTD markets on behalf of their clients, a meaningful portion of the corporate bond market, would be extremely detrimental to portfolio diversification and overall portfolio risk, and it would eliminate a critical means of generating income for investors that rely on bonds for that exact purpose. Moreover, the discretionary investment decisions and risk management practices of professional investment managers play a critical role in supporting market discipline in covered entity LTD markets and therefore encourage sound risk management practices. Thus, it is particularly crucial that these types of investments are not subject to any restrictions.

c) The Agencies Should Not Substitute For Existing Investor Protection and Conduct Standards

We would also highlight that investor protection and conduct standards are set by the SEC under its market conduct authority and enforced by both the SEC and FINRA through a variety of well-developed regulatory frameworks, including Regulation Best Interest for broker-dealers and FINRA Rule 2111 on suitability, while the Investment Advisers Act and applicable case law impose rigorous standards of conduct on investment advisers.[19] The agencies should not impose any restrictions on the eligible external LTD issuance practices of covered entities that attempt to reach sales in the secondary market, where market conduct rules can be sufficient to protect investors from conflicts of interest.

II. Additional Recommendations Regarding the Proposed "Internal LTD" Requirement

In our original letter, we noted that the proposed "internal LTD" requirement would significantly contribute to the over-calibration of the "external LTD" requirement, increasing funding costs for new covered entities and negatively impacting their ability to provide credit and capital markets services. We

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[17] For example, eligible LTD is primarily placed with institutional investors through the use of underwriters whose relationship—including commitments with respect to the initial sale of the instruments –is governed by agreements between the issuer and its underwriters.

[18] A separately managed account ("SMA") is a portfolio of securities that's professionally managed separately from other portfolios. Retail investors may choose to invest in bond markets via SMAs to benefit from professional risk management of their bond portfolio. Under an SMA structure, registered investment advisors are hired to provide discretionary management of the client's assets in accordance with an agreed investment objective, often aligned to a broad fixed income benchmark. Assets in the SMAs are beneficially owned by the individual investor, not the investment advisor. Individual investors may prefer SMAs to investments in funds because SMAs can be tailored to the individual client needs. Also, because the individual investor owns the underlying assets, an SMA may be more portable, tax efficient, and cost-effective than investments in a fund.

[19] See Regulation Best Interest: The Broker-Dealer Standard of Contact, 84 Fed. Reg., 33318. See also FINRA Rule 2111: Suitability, https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111.

recommended that the agencies instead permit covered entities to comply with any LTD requirement at either the holding company or insured depository institution ("IDI") level, eliminating the "two-level" requirement.

However, should the internal issuance requirement be retained, we would recommend that the agencies recalibrate it downwards and allow it to be satisfied through a broader range of loss-absorbing instruments beyond internal LTD. We also strongly support the proposed exemption from the internal LTD requirement for U.S. GSIBs and recommend it be extended to foreign GSIB IHCs. We further recommend that non-GSIB LBO retail broker-dealers be exempt from this requirement, given their low risks and the particularly significant impact that the two-level requirement would have on such firms.[20] In this supplemental letter, we would like to additionally highlight the following points:

a) ***Consider the Market Impacts of the Two-Level Requirement:*** Because the internal LTD requirement would significantly increase (and in some cases effectively double) the amount of eligible LTD that will need to be issued by many covered entity holding companies, it will distort several metrics that ratings agencies use, including debt-to-capital and debt-to-EBITDA ("earnings before interest, taxes, depreciation, and amortization") ratios. Furthermore, during recent stress events, interest rates fell, and balance sheets grew, which means that covered entity LBOs would need to issue significant amounts of LTD debt at the same time as others are required to do so and at a time when there may not be a market to absorb these issuances. For these reasons, and for the reasons presented in our original letter, we recommend that the agencies eliminate the two-level requirement and provide covered entity holding companies with a choice to comply with any LTD requirement at either the holding company or IDI-level.

b) ***Account for Statutory Mandate to Tailor Enhanced Prudential Standards:*** The two-level LTD requirement that will apply to certain covered entity LBOs, as well as the current calibration and design of the internal issuance requirement, are inconsistent with the Federal Reserve's statutory requirement to tailor enhanced prudential standards under the Economic Growth, Regulatory Relief and Consumer Protection Act ("EGRRCPA").[21] To ensure consistency with this statutory mandate, the two-level LTD requirement should be eliminated for covered entity holding companies in Categories III and IV. Short of this, the internal issuance requirement applicable to Category III and IV covered entity holding companies should be significantly recalibrated and modified in line with our prior recommendations.

c) ***The Agencies Should Revise the Calibration of the Internal Issuance Requirement Given its Conflict with the Pending Resolution Planning Proposals:*** In our prior comments, we explained why it was unnecessary to base the calibration of the internal issuance requirement on the assumption of a "full capital refill" of a failed IDI subsidiary. In addition to these comments, we would note that this assumption is particularly inappropriate for multiple-point-of-entry ("MPOE") firms in which material subsidiaries are not expected to continue operations or be subject to recapitalization. Indeed, that is why the pending Section 165(d) guidance for triennial full filers issued by the Federal Reserve and FDIC on the same day as the LTD proposal states clearly that "the agencies are not proposing further expectations concerning capital to firms whose plans

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[20] A retail broker-dealer LBO already would be required to issue LTD that would meet the full "capital refill" requirement at the holding company and maintain their liquidity at the holding company level – in part to ensure compliance with the liquidity coverage ratio ("LCR") rule given that rule's punitive treatment of the retail broker-dealer business model, as well as to capitalize non-bank entities. The internal LTD requirement would force the retail broker-dealer LBO to go to the market to issue additional (roughly double) the amount of LTD required by the rule resulting in a negative carry, whereas the proposal assumes this is costless (this is before the addition of management buffers). All of this would meaningfully impact costs of an LTD requirement for retail broker-dealer LBOs, and impact bank net interest margin and profitability.

[21] See Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, sec. 401, 132 Stat. 1296 (2018).

contemplate an MPOE resolution strategy."[22] The agencies could resolve this conflict by reducing the calibration of the internal issuance requirement to 2 percent of RWAs, as we proposed in our original letter.

III. Changes to the existing TLAC rule to apply a 50% haircut to eligible LTD with a maturity of one year or more, but less than two years

As noted in our original letter, we recommend that the agencies do not adopt the proposed amendments to the existing TLAC rule, which would allow banks covered by that rule to only count 50% of eligible LTD that has a remaining maturity of one year or more, but less than two years toward its minimum TLAC requirement. The industry acknowledges that this haircut already applies to the minimum LTD requirement. However, as mentioned in prior letters, we remain of the view that the 50% haircut for LTD with a remaining maturity of more than one year but less than two years is not appropriate and inconsistent with the international standard.[23] In the context of this proposal, we would also note that TLAC requirements seem to be more affected by Basel III Endgame changes[24] at a time when this requirement would reduce the amount of LTD that can count towards TLAC requirements.

Currently, banks can issue eligible LTD with a call that can be exercised by the issuer one year prior to maturity so that the issuer can redeem the note when it does not any longer count towards eligible LTD. With the introduction of the 50% haircut, banks may consider this for LTD with a remaining maturity of less than two years. The preamble to the 2017 final rule acknowledged this when it suggested that "a covered BHC could reduce its reliance on eligible external LTD that is due to be paid in less than two years… by redeeming and replacing eligible external LTD once the amount due to be paid falls below two years."[25]

In order for banks to redeem the notes, banks may consider having an additional call two years prior to the maturity of the note. However, this additional optionality might be difficult to price because there would be considerable uncertainty as to whether the issuer would exercise the call with two years until maturity, one year until maturity, or not at all. As a result, the uncertainty could lead to materially higher costs to issue eligible LTD. This would also come at a time when banks must issue more such debt to meet higher LTD / TLAC requirements as a result of the Basel III Endgame changes. Given these challenges, we reiterate our recommendation that the agencies do not adopt the proposed change.

IV. Wait to Finalize the LTD Rule Until the Basel Endgame and Other Capital Proposals Are Also Finalized

SIFMA and SIFMA AMG recommend that the agencies take a deliberative approach to this rulemaking, with a comprehensive accounting of the costs and benefits of any new requirements. It is particularly important that the agencies consider the important interactions between the LTD proposal and other outstanding capital proposals, particularly how the new LTD requirements would be affected by the

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[22] Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers*, 88 Fed. Reg 64,626, 64,628 (Sept. 19, 2023). A similar statement is included in the proposed guidance for foreign triennial full filers: "The agencies are not proposing further expectations concerning capital to firms whose plans contemplate a U.S. MPOE resolution strategy, as a U.S. MPOE strategy assumes most material entities do not continue as going concerns upon entry into resolution." Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers*, 88 Fed. Reg. 64,641, 64,644 (Sept. 19, 2023).

[23] The Clearing House, SIFMA, American Bankers Association, Financial Services Roundtable, Financial Services Forum, Comment Letter on the Notice of Proposed Rulemaking on Internal TLAC, Long-Term Debt, Clean Holding Company and Other Requirements Applicable to the U.S. IHCs of Foreign G-SIBs (Feb. 6, 2016), https://www.federalreserve.gov/secrs/2016/april/20160406/r-1523/r-1523_021916_130227_427277025959_1.pdf, page 21 of Annex 1.

[24] See Financial Services Forum letter, p. 34.

[25] See preamble to the final TLAC rule: 82 Fed. Reg. 8283.

agencies' Basel III Endgame proposal.[26] As the LTD proposal notes, the Basel III Endgame proposal would significantly increase risk-weighted assets ("RWAs") for covered entity banking organizations, which would "lead mechanically to increased requirements for LTD under the LTD proposal."[27] Until the Basel III Endgame proposal is finalized, it will be impossible to accurately estimate the total amount of new LTD that will need to be issued by covered entities, nor the potential costs of this issuance. A more comprehensive accounting of the costs and impacts of the Basel III Endgame on the LTD proposal would also be consistent with the agencies' obligations under the Administrative Procedure Act.[28]

There are also other outstanding proposals that may impact the LTD proposal, including the GSIB surcharge and resolution planning proposals.[29] Similarly, pending proposals to amend liquidity rules could also impact elements of the LTD proposal, including the proposed internal LTD requirement. The plethora of proposals that are currently under review make it difficult to assess with certainty how they may interact with and compound one another and what the costs and benefits would be of specific actions. As such we strongly recommend that the agencies refrain from finalizing the LTD rule until these other proposals are also finalized. Doing so will provide the agencies with the opportunity to consider the interactions between the new requirements in a more holistic manner and will result in a more durable and effective final rule.[30]

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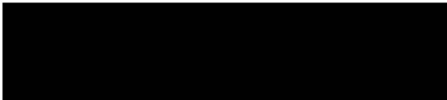
SIFMA and SIFMA AMG appreciate the agencies' consideration of these comments and would be pleased to discuss any of these views in greater detail. Please contact Peter Ryan at pryan@sifma.org or at (202) 962-7452 if you wish to discuss the points raised in this letter further.

Sincerely,



Kenneth E. Bentsen, Jr.
CEO and President
Securities Industry and Financial Markets Association

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[26] See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, Regulatory Capital Rule: Large Banking Organizations and to Banking Organizations with Significant Trading Activity, 88 Fed. Reg. 64028 (Sept. 18, 2023).

[27] 88 Fed. Reg. 64524, 64551 n.97.

[28] The Administrative Procedure Act authorizes courts to set aside agency action that is arbitrary and capricious. 5 U.S.C. § 706(2). The Supreme Court has held that agencies are required under the APA to "examine the relevant data and articulate a satisfactory explanation for its action" and determined that a rule promulgated after the agency "entirely failed to consider an important aspect of the problem" is generally arbitrary and capricious. Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). The Supreme Court has also held that a statutory requirement that an agency determine whether "regulation is appropriate and necessary" is not "an invitation to ignore cost." Michigan v. EPA, 576 U.S. 743, 753 (2015).

[29] See Board of Governors of the Federal Reserve System, Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15), 88 Fed. Reg. 60385 (Sept. 1, 2023); Federal Deposit Insurance Corporation, 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 (Sept. 19, 2023); Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers, 88 Fed. Reg. 64626 (Sept. 19, 2023); Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers, 88 Fed. Reg. 64641 (Sept. 19, 2023).

[30] At a March 6, 2024, House Financial Services Committee hearing, Chairman Powell appeared to that all of the capital rulemakings were interconnected, and that delays in one rulemaking would have impacts on the others. In response to questions about the timing implications of a possible Basel III Endgame re-proposal for the LTD proposal, he said "…that's a question we'd be asking ourselves … what would be the implication for other rules including for the long-term debt [proposal]."