agencies believe internal LTD is necessary, the agencies should recalibrate it downwards and allow it to be satisfied through other loss-absorbing instruments. The agencies should also retain the exemption from the internal LTD requirement for U.S. GSIBs and extend it to foreign GSIB IHCs and non-GSIB LBO retail broker-dealers.

The Internal LTD Requirement Contributes to Over-Calibration of the External LTD Requirement, Which Would Contribute to the Oversupply of LTD in the Markets.

The proposal would require covered entity holding companies to downstream the proceeds of external LTD to certain IDI subsidiaries with assets of $100 billion or more. These covered IDIs would then issue internal LTD back to their parent holding company. This new concept of an internal LTD requirement would create a two-tiered LTD requirement for covered entity holding companies that would ultimately force them to issue significantly larger volumes of external LTD than reflected in the agencies' estimates in the proposal. In the aggregate, this requirement would also lead to levels of LTD that would be far greater than needed to ensure adequate loss-absorbing capacity in the system and may prove difficult for the markets to absorb, given the significant spike in the supply of LTD that would result.

As noted above in Section II, the agencies have estimated that the total LTD shortfall amount resulting from the proposal (under their incremental shortfall approach)[23] would be approximately $70 billion in the aggregate, representing a 15 percent increase in annual LTD issuance. In the proposal, the agencies make clear that this estimate assumes that it "will be costless to substitute external holding company-issued debt for external IDI-issued debt, as well as to downstream resources from holding companies to IDIs through eligible internal debt securities, to fulfill the requirements of the proposed rule and general funding needs. It is assumed, in other words, that there are no additional costs for IDIs to maintain eligible internal debt securities to holding companies beyond those attributable to any external holding company LTD that may be passed through to IDIs."[24]

The agencies' assumption under the incremental shortfall approach is that the internal LTD requirement would be "costless" and have no bearing on the overall level of external LTD is incorrect. Estimates suggest that, even leaving aside the impact of the Basel III Endgame proposal, the external LTD shortfall could be closer to $186.6 billion[25] in the aggregate, more than double the agencies' own estimates under the incremental shortfall approach, driven in large part by the constraints of maintaining an adequate level of internal LTD at the IDI level. The Bank Policy Institute also released estimates showing that the LTD shortfall would be approximately $83 billion for Categories II and III banking organizations and approximately $104 billion for Category IV banking organizations, approximately $60 billion and $50 billion more, respectively, than the agencies' estimates of $20 billion and $50 billion under

[23] The agencies' economic impact analysis includes two approaches for analyzing the costs for the banking organizations that would become newly subject to LTD requirements: (i) a lower-end estimate ("incremental shortfall approach"), which assumes the current reported principal amounts of LTD issuance at covered entities is a "reasonable proxy for the levels of such debt that would be maintained in future periods in the absence of the [LTD proposal]," and (ii) a higher-end estimate ("zero baseline approach"), which assumes that covered entities would, in the absence of the LTD proposal, "choose to maintain no instruments that satisfy the [LTD proposal's] requirements in future periods." 88 Fed. Reg. at 64,549. The agencies state that "the funding cost impact of the proposal is l kely between the lower-end estimate from the incremental shortfall approach and the higher-end estimate from the zero baseline approach," while adding that "the incremental shortfall approach may provide a more accurate near-term perspective on funding cost impact." 88 Fed. Reg. at 64,553. Under the incremental shortfall approach, the Agencies estimate that the aggregate LTD shortfall would be approximately $70 billion and pre-tax annual funding costs would increase by approximately $1.5 billion, which would represent a three-basis-point decline in net interest margins. See *id.* at 64,552. Under the zero baseline approach, the agencies estimate that the total principal value of external LTD required of these banking organizations, irrespective of existing LTD, would be approximately $250 billion and pre-tax annual funding costs would increase by approximately $5.6 billion, which would represent an 11-basis-point decline in net interest margins. See *id.* at 64,551. The zero-baseline approach estimate is that pre-tax annual funding costs would increase by approximately $9.4 billion, which would represent a 19-basis-point decline in net interest margins.

[24] 88 Fed. Reg. 64524, 64551–52.

[25] Bank Policy Institute, "The Long-Term Debt Proposal and Bank Profitability," Bank Policy Institute, Dec. 7, 2023, https://bpi.com/wp-content/uploads/2023/12/The-Long-Term-Debt-Proposal-and-Bank-Profitability.pdf.

the incremental shortfall approach. This significant increase in shortfall would again be driven in large part by the internal LTD requirement.[26]

There are several reasons why the internal LTD requirement may force covered entity holding companies to issue significantly higher levels of external LTD. First, while the holding company may be able to raise sufficient external LTD to meet the proposal's requirements, it may not have enough liquid assets to downstream proceeds to its covered IDI subsidiary and also fund the operations of a broker-dealer or other non-bank subsidiary. As a result, the holding company would be forced to issue more external LTD. Second, and more particularly, a covered entity holding company may need to issue additional external LTD because of the impact that downstreaming liquid assets to its covered IDI subsidiary would have on the holding company's LCR. If the holding company also needs to use debt to fund the operations of the broker-dealer or other non-bank subsidiaries, it would need to issue more external LTD to maintain adequate LCR levels. Additionally, under the proposed internal LTD requirement, an IDI would not be able to substitute its holding company's overnight deposits held at the IDI with internal LTD without reducing the high-quality liquid asset ("HQLA") amount counted toward the holding company's LCR. This outcome would reduce the holding company's LCR, which could force the holding company to issue additional external LTD. Firms would also need to factor in management buffers, which could further add to over-calibration and costs. The internal LTD requirement would therefore effectively be doubling the required amount of LTD estimated under the incremental shortfall approach—due in large part to firms' need to comply with the LCR requirements.

As a result, covered entity holding companies—many of which are already facing higher funding costs in light of current economic conditions—would likely see costs increase as they would be forced to issue significant amounts of new external LTD at the holding company level rather than at the IDI level (where spreads would typically be lower). As a result of this increase in external LTD issuances, the market would have to absorb much larger volumes of LTD at more frequent intervals, which could generally impact market capacity in the secondary markets. Indeed, the agencies explicitly recognize this issue in the proposal, noting that "due to the considerable scope of the proposal, there is a risk that efforts by covered entities and covered IDIs to issue a large volume of LTD over a limited period could strain the market capacity to absorb the full amount of such issuance if issuance volume exceeds debt market appetite for LTD instruments."[27] The supply of LTD would therefore increase at a time when the agencies, through the minimum denomination requirement, seek to narrow the pool of potential buyers of such debt.

In addition to these broader market-level impacts, the agencies should consider that, for many types of firms, the impacts of the internal LTD requirement would be particularly harmful, duplicative or unnecessary, which should preclude the need for an internal LTD requirement more generally:[28]

- For instance, the above impacts would be felt most acutely by smaller issuers of LTD. These issuers may face higher credit spreads, not because of concerns with their underlying credit risk, but because of concerns about illiquidity in the secondary market for their debt. This outcome could not only affect the cost of funding, but also restrict access to the markets, making it difficult for these issuers to raise new external LTD.

- Many of the above issues with the internal LTD requirement would also be particularly harmful to non-GSIB LBO firms that are leverage-bound due to the low-risk nature of their assets, such as LBOs that operate primarily as retail broker-dealers.[29] Leverage ratios, particularly LTD leverage ratios, should be a backstop and not a binding constraint, as the

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[26] *Id.*

[27] 88 Fed. Reg. 64524, 64553.

[28] As discussed below in this Section, we have proposed, in many cases, to specifically exempt these firms from the internal LTD requirement in the event that the agencies determine that they will retain the internal LTD requirement in the finalized version of the LTD proposal.

[29] The low-risk nature of these firms' assets further mitigates the need to have LTD at both the holding company and the IDI level.

agencies intended.[30] As SIFMA noted in its January 2023 letter[31] to the Federal Reserve's and FDIC's advance notice of proposed rulemaking ("ANPR") on this issue,[32] these leverage-bound non-GSIB LBOs generally have a simple organizational structure and low-risk profile relative to GSIBs and other non-GSIB LBOs and can be effectively resolved under existing frameworks,[33] especially with a layer of external LTD at the full "capital refill" level at the holding company. Furthermore, such firms are already subject to other enhanced prudential standards established by the agencies in the aftermath of the last financial crisis under the Dodd-Frank Act, including capital, stress testing and liquidity requirements.[34] The internal LTD requirement would therefore seem particularly unnecessary for these firms.

- Finally, IDI subsidiaries of U.S. GSIB firms are already subject to various requirements under the 165(d) resolution planning framework, including Resolution Capital Adequacy and Positioning ("RCAP"), that obviates the need for an internal LTD requirement as this LTD requirement would essentially be duplicative.[35]

In short, the internal LTD requirement would significantly increase the overall amount of external LTD that covered holding companies, including smaller issuers, would need to raise and would do so unnecessarily and to the detriment of many firms. In all cases, the increase in external LTD issuances would negatively affect the ability of firms to provide credit and engage in capital markets intermediation on behalf of clients. The LTD proposal would therefore exacerbate the expected impacts and costs on retail customers, businesses, and other end-users of the Basel III Endgame proposal, which is similarly expected to strain banking organizations' lending and capital markets activities.

Given the Issues Highlighted Above, the Agencies Should Not Adopt the Internal LTD Requirement or, in the Alternative, Should Consider Two Methods for Reconfiguring the Internal LTD Requirement.

In light of the issues with the internal LTD requirement highlighted above, the agencies should not adopt the internal LTD requirement as part of the final LTD rule and should instead permit a covered holding company or IHC to comply with any LTD requirement at either the holding company level or the IDI level.

If, however, the agencies believe internal LTD is necessary in certain cases, the agencies should recalibrate the internal LTD requirement to appropriately reflect the impact this requirement would have on covered entity holding company liquidity requirements as well as its broader impacts on market

[30] Any leverage-based LTD requirements would need to be revised commensurately, reflecting the fact that leverage capital requirements are intended to be a backstop and not a binding requirement. See, e.g., Jerome H. Powell, "Central Clearing and Liquidity" (June 23, 2017), https://www.federalreserve.gov/newsevents/speech/powell20170623a.htm ("A risk-insensitive leverage ratio can be a useful backstop to risk-based capital requirements. But such a ratio can have perverse incentives if it is the binding capital requirement because it treats relatively safe activities, such as central clearing, as equivalent to the most risky activities.").

[31] SIFMA comments on Advanced Notice of Proposed Rulemaking, Resolution-Related Resource Requirements for Large Banking Organizations, Jan. 23, 2023, https://www.sifma.org/wp-content/uploads/2023/01/Advanced-Notice-of-Proposed-Rulemaking-Resolution-Related-Resource-Requirements-for-Large-Banking-Organizations.pdf.

[32] See Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64170 (Oct. 24, 2022).

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

[34] In this respect, SIFMA and SIFMA AMG notes that non-GSIB LBOs affiliated with a retail broker-dealer are already subject to full (100 percent) standardized liquidity requirements (liquidity coverage ratio and net stable funding ratio).

[35] As discussed further below in this Section, the agencies have correctly exempted such IDIs from the internal LTD requirement in the proposal, and we believe that they should continue to do so going forward in the event that the agencies decide to impose an internal LTD requirement for some firms.

capacity and liquidity. This recalibration would require the agencies to re-estimate the impacts of the internal LTD requirement and complete a thorough cost-benefit analysis, prior to finalizing the rule. As discussed above in Section II, the agencies should also take into account the impacts of the Basel III Endgame final rule on overall LTD levels. A lower calibration of the internal LTD requirement for Categories III and IV holding companies would also be appropriate and consistent with the letter and spirit of the requirement to tailor enhanced prudential standards under the EGRRCPA, as Federal Reserve Chair Powell recently highlighted in testimony before Congress.[36]

Although the above impact and cost-benefit analysis should ultimately guide the recalibration of the internal LTD requirement, we recommend that the agencies consider two potential approaches to reconfiguring the requirement. First, the agencies should consider replacing the internal LTD requirement with a more flexible internal "gone loss-absorbing capacity" requirement. Any of the following internal loss-absorbing resources would satisfy this alternate requirement:

- Eligible LTD (with any minimum composition requirement relating to internal LTD at a reduced calibration for IDIs whose parent holding companies have external LTD satisfying any LTD requirement in full);
- Any Level 1 HQLA of a covered entity holding company, covered IHC or funding affiliate, or any internal demand deposit/other short-term debt instruments issued by its IDI, so long as these instruments are pledged to secure the holding company's obligation to use those financial assets to provide capital support to its covered entity IDI subsidiaries, without any such internal deposit or other short-term extension of credit being required to satisfy the conditions of eligible internal debt securities;[37] or
- Any other means jointly approved by the agencies as part of the 165(d) resolution planning process or otherwise.

Second, at a minimum, the internal LTD requirement for covered entities should be recalibrated downwards to 2 percent of RWAs. Under the proposal, the internal LTD requirement is currently calibrated to the "greater of 6 percent of the covered IDI's total [RWAs], 3.5 percent of its average total consolidated assets and 2.5 percent of its total leverage exposure if the covered IDI is subject to the supplementary leverage ratio." According to the agencies, the proposed calibration is intended to "be sufficient to capitalize a newly formed bridge depository institution with an amount necessary to comply with the minimum leverage capital requirements and common equity tier 1 risk-based capital requirements plus buffers applicable to ordinary non-bridge IDIs . . . ."[38] SIFMA and SIFMA AMG believe that this proposed calibration and the agencies' rationale is unrealistic and overly conservative for the following reasons.

As contemplated by the prompt corrective action ("PCA") framework under section 38 of the Federal Deposit Insurance Act ("FDIA"), a covered entity is almost certain to have going-concern leverage capital of at least 2 percent of its average total assets at the time it reaches its point of non-viability.[39] In

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[36] See Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, sec. 401, 132 Stat. 1296 (2018). See also Federal Reserve's Semi-Annual Monetary Policy Report: Hearing Before the H. Comm. on Fin. Servs., 118th Cong. (Mar. 8, 2023) (testimony of Chair Powell in response to a question regarding a potential LTD requirement for Categories I-IV banking organizations) ("We believe strongly and always have in tailoring to address the different size and risk characteristics of financial institutions and certainly nothing like that for the regionals. They won't have anything like what the very large, most systemically important banks have in terms of overall regulation . . . We're required by the law now and we're doing this [tailoring]. Dodd-Frank actually required us, suggested that we should tailor, and then S. 2155 required it. And anything that we do will reflect appropriate tailoring.").

[37] These intercompany deposits or other debt instruments would not, however, be required to meet the definition of eligible internal LTD.

[38] 88 Fed. Reg. 64524, 64533.

[39] See 12 U.S.C. § 1831o; see also 12 CFR § 6.4(b)(5); 12 CFR § 208.43(b)(5); 12 CFR § 324.403(b)(5). The PCA framework generally requires the appropriate Federal banking agency to promptly close a critically undercapitalized IDI and appoint a receiver or conservator. See 12 U.S.C. § 1831o(h).

addition, unlike a resolution strategy involving the recapitalization of material subsidiaries so they can continue to operate as going concerns outside their own resolution proceedings, a bridge-bank, purchase and assumption transaction or other alternative resolution strategy does not require enough LTD to fully recapitalize the IDI subsidiary. It is therefore not reasonable for the agencies to assume that there should be enough internal LTD to fully recapitalize the IDI subsidiary at the requisite capital level, *plus* buffers, applicable to ordinary non-bridge IDIs—even with some balance sheet depletion. The minimum common equity tier 1 ("CET1") capital level of 4.5 percent of RWAs,[40] without any applicable buffers, should be a sufficient recapitalization target. Indeed, the FDIA expressly provides that a bridge bank is not subject to capital requirements.[41] It is unclear why, especially in light of the statutory exemption, the agencies would believe that a bridge bank must be recapitalized at the same level as the pre-failure IDI—that is, at a level able to satisfy both the minimum CET1 capital and buffer requirements.

The agencies should revise these overly conservative assumptions by (1) assuming a starting point of 2 percent of RWAs, as contemplated by the PCA framework, instead of zero capital for full depletion of capital; (2) using an ending point of 4.5 percent of RWAs, reflecting the CET1 capital requirement necessary to be considered adequately capitalized under the agencies' regulations without any buffers; and (3) in light of the revised assumptions, provide for a balance sheet depletion allowance of 0.5 percentage points. These revised assumptions would result in an internal LTD requirement equal to 2 percent of RWAs rather than the proposed 6 percent of RWAs. The agencies should also revise any leverage-based LTD requirements commensurately.

SIFMA and SIFMA AMG Support the Agencies' Proposal to Continue to Exclude U.S. GSIBs from the Internal LTD Requirement. An Internal LTD Requirement Would Also Be Inappropriate for Foreign GSIBs' IHCs and non-GSIB LBOs That Operate Primarily as Retail Broker-Dealers.

To the extent that the agencies retain the internal LTD requirement in the final LTD rule, they should exempt certain firms from this requirement. First, consistent with the LTD proposal, the agencies should abstain from extending internal LTD requirements to IDI subsidiaries of U.S. GSIBs because they are already subject to considerable gone-concern loss-absorbing capacity requirements under the 165(d) resolution planning process. Specifically, as the agencies recognize, U.S. GSIBs (i) are "subject to the most stringent capital, liquidity, and other prudential standards in the United States" and (ii) have adopted resolution plans reflecting guidance from the Federal Reserve and the FDIC that establishes a capital and liquidity framework for resolution.[42] This guidance includes RCAP, which is designed to provide adequate maintenance of loss-absorbing resources at the parent level of material subsidiaries such that all material subsidiaries, including IDIs, could be recapitalized in the event of resolution under the SPOE resolution strategies adopted by U.S. GSIBs. Accordingly, the agencies should continue to not extend the internal LTD requirements to IDI subsidiaries of U.S. GSIBs, and instead should continue to implement gone-concern loss-absorbing requirements through the 165(d) resolution planning process.

The agencies should also exempt IHCs of foreign GSIBs from complying with the internal LTD requirement for their U.S. IDI subsidiaries as these institutions and their parent companies are already subject to sufficiently stringent capital, liquidity and prudential standards. The IHCs of foreign GSIBs are already subject to LTD, TLAC and clean holding company requirements under the TLAC rule as well as 165(d) resolution planning requirements. In addition, the top-tier parent entities of these IHCs are subject to home-country loss-absorbing capacity and resolution-related requirements. In many cases, the supervision and regulation of foreign 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 foreign GSIBs). Considering these requirements together, foreign GSIBs' IHCs are subject to a level of

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[40] See 12 CFR § 6.4(b)(2)(iii); 12 CFR § 208.43(b)(2)(iii); 12 CFR § 324.403(b)(2)(iii).

[41] See 12 U.S.C. § 1821(n)(5).

[42] 88 Fed. Reg. 64524, 64526.

consolidated regulation that should exempt them from the internal LTD requirement for their U.S. IDI subsidiaries.

Beyond the U.S. GSIBs and IHCs of foreign GSIBs, an internal LTD requirement at the IDI level would be inappropriate for covered entity non-GSIB LBOs that operate primarily as retail broker-dealers. As SIFMA noted in its January 2023 letter[43] to the ANPR on this issue,[44] non-GSIB LBOs whose primary business model involves the operation of a retail broker-dealer should be given special consideration in the application of any enhanced resolution-related resource requirements, such as internal LTD requirements. This special consideration first stems from the fact that these firms generally have a simple organizational structure and low-risk profile relative to GSIBs and other non-GSIB LBOs. SIFMA's response to the ANPR contains a more detailed discussion of the relatively low risk that these firms pose to U.S. financial stability and the enhanced prudential standards to which they are already subject (including, in certain cases, full (100 percent) standardized liquidity requirements), as well as potential mechanisms for categorizing such organizations.

In addition, these non-GSIB LBOs that operate primarily as retail broker-dealers can be effectively resolved under existing frameworks without adverse consequences for U.S. financial stability. The resolution of these firms may proceed in an especially smooth and orderly manner, in part because their retail broker-dealer and registered investment adviser subsidiaries can be sold to a wide range of possible acquirers without transferring an affiliated IDI as part of the sale since an affiliated IDI is not necessary to operate a retail broker-dealer business. Any large IDI affiliated with a non-GSIB LBO broker-dealer could be separately resolved under existing IDI resolution planning regimes. There are also existing separate and effective resolution mechanisms for retail broker-dealer firms, such as the SIPA framework. Requiring pre-positioning of resources at the IDI would also generally constrain flexibility for LBO retail broker-dealers to deploy resources where they are most needed, including to their broker dealer subsidiaries, during business-as-usual and times of stress, thus undermining their resiliency in a manner inconsistent with statutory source of strength requirements.[45] Finally, these firms would also be subject to a full external "capital refill" LTD calibration that would already supply the necessary resources to be deployed flexibly, mitigating the need for a separate internal LTD requirement.

For these reasons, we recommend that covered entity non-GSIB LBOs that operate primarily as retail broker-dealers be exempt from an internal LTD requirement, assuming they can meet a full external "capital refill" LTD calibration at the holding company level.

IV. Definition of Covered Debt Instrument: *The agencies should clarify that the definition of "covered debt instrument" only applies to an IDI subject to a LTD requirement.*

Any final rule should be revised to provide that, for purposes of the deduction framework under the capital rule, the definition of "covered debt instrument" only applies to an IDI that is subject to a LTD requirement (*i.e.*, unsecured debt issued by an IDI that is not subject to a LTD requirement is not included). Specifically, clause (1)(i) of the proposed revised definition of covered debt instrument should refer to a subsidiary subject to a LTD requirement under proposed new Part 54, 216, or 374, instead of any subsidiary of a depository institution holding company subject to a LTD requirement under Part 238 or Part 252.

Under the existing definition of a covered debt instrument, only instruments issued directly by a globally systemically important BHC or Covered IHCs are included. The Agencies indicate in the proposal that the amendments to the definition of covered debt instrument are intended to reflect the wider scope

[43] SIFMA, Comments on Advanced Notice of Proposed Rulemaking, Resolution-Related Resource Requirements for Large Banking Organizations (Jan. 23, 2023), https://www.sifma.org/wp-content/uploads/2023/01/Advanced-Notice-of-Proposed-Rulemaking-Resolution-Related-Resource-Requirements-for-Large-Banking-Organizations.pdf.

[44] See Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64170 (Oct. 24, 2022).

[45] Dodd-Frank Wall Street Reform and Consumer Protection Act, Title VI, § 616, 12 USC 1831o–1 (2021).

of organizations (i.e. "covered companies") subject to LTD requirement but do not provide any rationale for the inclusion of instruments issued by subsidiaries of covered companies. The stated intent of these deductions is to "reduce interconnectedness and contagion risk among financial institutions by discouraging banking organizations from investing in the capital [and eligible LTD] of other financial institutions".[46] However, as currently drafted, the proposed definition of covered debt instruments would appear to scope in certain unsecured exposures to subsidiaries of covered companies that do not count as capital or eligible long-term debt.

V. LTD Implementation: ***The transition period for the LTD proposal should follow sequentially after the transition period for the Basel III Endgame proposal to facilitate capital accretion and ensure that the market can absorb new LTD issuances.***

As the agencies acknowledge, because LTD is "generally more expensive than the short-term funding banking organizations could otherwise use, the [LTD proposal] is likely to raise funding costs in the long run."[47] This rise in cost would likely impact the ability of covered entities to accrete additional capital to prepare for any final rule to implement the Basel III Endgame proposal. As a result, banking organizations would need to make more extensive changes to their lending activity to comply with the new rules, which could reduce credit availability and raise costs for borrowers.

To mitigate these concerns, the agencies should consider sequencing the transition period of any new LTD requirement with the transition period for any final rule to implement the Basel III Endgame proposal, which would help to facilitate the accretion of capital at banking organizations and minimize detrimental impacts to borrowers. Specifically, the transition periods for the finalized LTD and Basel III Endgame proposals should run sequentially, rather than concurrently, to allow banking organizations to prioritize capital accretion without increased funding costs related to the issuance of new LTD. In other words, the first year of the transition period for any new LTD requirements should begin following the end of the transition period for any final rule to implement the Basel III Endgame proposal. This approach would appropriately prioritize the accretion of capital. It would also (1) ensure that banking organizations could meet any new LTD requirements in a timely manner; and (2) provide more time for the market to absorb the large volume of expected LTD issuances and for smaller banks to build their investor bases and debt marketing programs.

VI. Clean Holding Company Requirements: ***The proposal's limited exemptions to the prohibition on covered entity holding companies entering QFC arrangements with third parties should be expanded to cover normal course transactions that do not conflict with the agencies' underlying policy objectives. The agencies should also clarify that since clean holding company requirements are primarily designed to facilitate a SPOE resolution, the same requirements should not be applied to firms with alternative resolution strategies.***

We welcome the agencies' decision to provide limited exemptions to the prohibition on covered entity holding companies entering normal course QFC arrangements with third parties, such as underwriting agreements. As the agencies note, these normal course transactions would not pose a material risk to the orderly resolution of covered entities, nor would they affect the stability of the U.S. banking or financial system.[48]

However, we recommend that the agencies extend the exemptions on QFC arrangements with third parties to additional normal course QFC transactions that similarly would not interfere with an orderly

[46] 88 Fed. Reg. 64545.

[47] 88 Fed. Reg. 64524, 64552.

[48] 88 Fed. Reg. 64524, 64547.

VII. Changes to the Existing TLAC Rule: *The proposed changes to the calculation of TLAC should not be adopted. However, if they are adopted, they should only apply to newly issued LTD.*

The proposal would amend the calculation of the TLAC requirement for those firms subject to the TLAC rule (i.e., U.S. GSIBs and foreign GSIBs' IHCs) by allowing only 50 percent of eligible LTD with a maturity of one year or more, but less than two years, to count toward a firm's minimum TLAC requirement (at present, this haircut applies only to these firms' minimum LTD requirement). In the proposal, the Federal Reserve Board states that this amendment is intended both to simplify the rule and to "incentivize firms to reduce reliance on eligible LTD with maturities of less than two years,"[52] thus reducing the vulnerability of their LTD loss-absorbing capacity to potential runs.

Although the proposed change may simplify the rule, it would do little to advance the second objective. Firms subject to the existing TLAC rule already overwhelmingly call LTD instruments prior to the last year before they mature because of the existing LTD haircut and prevailing market practices. There is no evidence provided in the proposal to suggest that there is an over-reliance on debt maturing within one-to-two years amongst this group of firms; indeed, the Federal Reserve Board acknowledges that the potential effects of the proposed change "appear to be modest," raising the question as to why the change is necessary in the first place. Moreover, these firms have developed their funding plans and business strategies based on the current TLAC rule's treatment of LTD. Even if the overall impact is "modest," modifying the TLAC calculation method, particularly at a time when significant RWA increases are likely to result from the implementation of the Basel III Endgame proposal, would needlessly impair firms' funding plans and business strategies without yielding any significant benefit.

Given the above, the current TLAC rule's approach to LTD with a maturity of one year or more but less than two years should be retained in the final rule. In the event that the proposed treatment is adopted in the final rule, then the haircut change should only apply to newly issued LTD and not existing eligible LTD that was issued in reliance on the prior calculation method. As a general matter, impacted firms should have an opportunity to plan and not be subject to such a sudden shift in the treatment of already-issued LTD.

VIII. Uninsured Deposits: *The agencies have asked about the different types of uninsured deposits. We urge them to recognize the differing levels of risks posed by different types of these deposits.*

As reflected in the proposal, the agencies continue to focus on the "rise to vulnerabilities" and amplified systemic contagion risks at banking organizations that increasingly rely on uninsured deposits.[53] We believe that the agencies have missed key nuances in making such broad statements that do not distinguish between different types of uninsured deposits. In evaluating risks associated with uninsured deposits, the agencies should consider that some types of uninsured deposits are observably stable even in periods of financial stress, which they have recognized in the past. For example, the agencies have stated that operational deposits related to the clearing, custody, and cash management services "present less liquidity risk during a stress period" and "are more stable than non-operational funding."[54] We therefore urge the agencies to acknowledge and consider the important distinctions among different types of uninsured deposits and the reasons why many customers place deposits at a bank that exceed the federal deposit insurance limit. For example, deposits associated with payment, settlement, and payroll administration are generally more stable, and must meet requisite criteria under liquidity regulations which recognize such deposit stability.

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[52] 88 Fed. Reg. 64547.

[53] 88 Fed. Reg. 64524, 64525-26.

[54] Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 Fed. Reg. 61439, 61498, 61502 (Oct. 10, 2014). Under the agencies' liquidity coverage ratio rules, operational deposits are assigned outflow rates far lower than other uninsured wholesale deposits. Compare 12 CFR § 329.32(h)(4) (25 percent outflow rate for uninsured operational deposits) with 12 CFR § 329.32(h)(1), (5) (40 to 100 percent outflow rates for uninsured, non-operational unsecured wholesale funding).