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Regulatory Tailoring for Foreign Banking Organizations

Federal Bank Regulators Propose Significant Revisions to the Application of Prudential Standards to Foreign Banking Organizations and Seek Comment on Whether to Impose Standardized Liquidity Requirements on their U.S. Branches and Agencies

SUMMARY

On April 8, the Federal Reserve Board adopted two proposals that would tailor how certain aspects of the post-crisis bank regulatory framework, including certain capital and liquidity requirements and other prudential standards, apply to foreign banking organizations (“FBOs”) that have significant U.S. operations (the “FBO Proposals”). One of the proposals was also adopted on April 16 by the FDIC and will be issued jointly by the FDIC, Federal Reserve, and OCC.¹ The other was issued solely by the Federal Reserve.² Our [Memorandum to Clients](#) published on April 8 highlights key aspects of these proposals.

The FBO Proposals follow the federal bank regulators’ analogous proposals for large U.S. banking organizations released in the fourth quarter of 2018 (the “domestic tailoring proposals”).³ As described in our [Memorandum to Clients](#), dated November 5, 2018, the regulators proposed to assign all domestic bank holding companies (“BHCs”) and certain domestic savings and loan holding companies (“SLHCs”) with \$100 billion or more in total consolidated assets to one of four categories of tailored regulatory requirements. One category applies to all U.S. G-SIBs and the other three are based on size and four other “risk-based indicators”.

The FBO Proposals similarly would tailor prudential standards by assigning FBOs with \$100 billion or more in combined U.S. assets to categories similar to those proposed for domestic BHCs and SLHCs that are not G-SIBs. The Federal Reserve’s objectives for the proposed tailoring approach for FBOs, as

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described by Vice Chairman for Supervision Quarles, are to “creat[e] a level playing field between foreign banks operating in the United States and domestic firms of similar size and business models, and giv[e] due regard to the principle of national treatment”. Vice Chairman Quarles added, however, that, due to the “important differences between domestic firms and foreign banks operating in the United States”, the proposed tailoring for FBOs shares the “same basic framework” with, but is not a “direct transposition of”, the template proposed for U.S. banking organizations.⁴

In the FBO Proposals, the agencies describe risks they believe to be associated with certain funding models employed in connection with the U.S. operations of FBOs, and the tailoring takes these models directly into account. Specifically, the Federal Reserve notes that, during the financial crisis, funding models that “relied on dollar-denominated short-term wholesale funding obtained in the United States to fund . . . global investment activities” presented “unique vulnerabilities”.⁵ The agencies also state that “reliance on short-term, generally unsecured funding from more sophisticated counterparties can make . . . operations vulnerable to large-scale funding runs”.⁶

Citing these concerns, the agencies also request comment on whether they should impose standardized liquidity requirements on U.S. branches and agencies of FBOs, as well as possible approaches for doing so. Vice Chairman Quarles acknowledged that these potential requirements are “novel in the realm of international regulation”, but described them as a potential means to create the “optimal balance of certainty for host supervisors and local operations in a time of crisis and freely available liquidity for home supervisors and consolidated firms in good times”.⁷ Any such requirements would be subject to a separate notice-and-comment rulemaking.

Notably, the Federal Reserve did not propose any increase in the \$50 billion U.S. non-branch asset threshold for application of the U.S. intermediate holding company (“*IHC*”) requirement.

Federal Reserve Board Chairman Powell, Vice Chairman Clarida, Vice Chairman Quarles, and Governor Bowman voted in favor of the FBO Proposals. Governor Brainard dissented, principally because the proposals do not include standardized liquidity requirements for the U.S. branches and agencies of FBOs.⁸

FDIC Chairman McWilliams, Comptroller Otting, and CFPB Director Kraninger voted in favor of the interagency proposal. FDIC Director Gruenberg dissented because of the proposal’s similarity to the domestic interagency proposal, which he also voted against.⁹

Comments on the FBO Proposals are due by June 21, 2019.

BACKGROUND

The Economic Growth, Regulatory Relief, and Consumer Protection Act (the “*EGRRCPA*”) was signed into law on May 24, 2018. As discussed in our [Memorandum to Clients](#) published on that date, the

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statute generally preserves the fundamental elements of the regulatory framework established after the 2010 enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“*Dodd-Frank*”), but includes a variety of measures intended to result in meaningful regulatory relief for smaller and certain regional banking organizations. Of particular note, EGRRCPA increased the statutory asset threshold (often referred to as the “*SIFI*” threshold), above which the Federal Reserve is required to apply the enhanced prudential standards (“*EPS*”) in Section 165 of Dodd-Frank to a BHC.¹⁰

EGRRCPA authorizes the Federal Reserve, after the SIFI threshold increases to \$250 billion on November 24, 2019, to apply any EPS to any BHC or BHCs with between \$100 billion and \$250 billion in total consolidated assets that would otherwise be exempt under the legislation. Exercising this discretionary authority, however, requires the Federal Reserve to (i) act by order or rule promulgated pursuant to Section 553 of the Administrative Procedure Act (requiring notice and comment) and (ii) determine that the application of EPS is “appropriate . . . to prevent or mitigate risks to [U.S.] financial stability” or “to promote the safety and soundness of the [BHC] or [BHCs]”, taking into consideration the BHC’s or BHCs’ capital structure, riskiness, complexity, financial activities, size, and “any other risk-related factors that the [Federal Reserve] deems appropriate”.¹¹ Further, EGRRCPA amended what was previously an area of regulatory discretion to require that the Federal Reserve, in prescribing EPS, differentiate among BHCs “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 [Federal Reserve] deems appropriate”.¹²

FBOs are treated as BHCs for purposes of Section 165,¹³ and therefore the increase in the SIFI threshold—from \$50 billion to \$100 billion, effective as of May 24, 2018 (the date of EGRRCPA’s enactment), with a further increase to \$250 billion effective November 24, 2019 (18 months after enactment)—nominally applies to FBOs. For FBOs, however, the increase is of limited consequence because the revised SIFI threshold is calculated based on an FBO’s total *global* consolidated assets. As a result, the requirement that an FBO establish a U.S. IHC still applies, as noted above, if the FBO has \$50 billion or more in U.S. non-branch assets, and certain EPS are applied to FBOs based in part on the extent of their combined U.S. assets or their U.S. non-branch assets.¹⁴ EGRRCPA did not require the Federal Reserve to modify these FBO-specific thresholds.

The FBO Proposals would render most EPS inapplicable to FBOs with total global consolidated assets of less than \$100 billion, however, there are few if any such FBOs with significant U.S. operations. The remainder of this Memorandum addresses how EPS would apply to FBOs with \$100 billion or more in total global consolidated assets under the FBO Proposals.

PROPOSED TAILORING CATEGORIES

The FBO Proposals provide for the tailored application of five types of regulatory requirements: (i) regulatory capital requirements; (ii) capital-related EPS (other than home country capital stress testing);

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(iii) standardized liquidity requirements; (iv) liquidity-related EPS; and (v) certain other EPS, including single counterparty credit limits and risk management, risk committee, and home country capital stress testing requirements. The application of these regulatory requirements to a particular FBO would depend on its tailoring category. There is significant variation among both the organizational level subject to the requirements (e.g., an FBO's U.S. IHC or its combined U.S. operations ("CUSO")) and the level at which the applicable category would be determined (IHC or CUSO).

For the first two types of requirements—regulatory capital requirements and capital-related EPS (other than home country capital stress testing)—the characteristics of an FBO's U.S. IHC would determine the applicable tailoring category. The applicable regulatory capital requirements would apply to both the IHC and any subsidiary depository institution, but capital-related EPS would apply only to the IHC. Annex I to this Memorandum summarizes the capital requirements and capital-related EPS (other than home country capital stress testing) that would apply to each of the tailoring categories.

For the next three types of requirements—standardized liquidity requirements, liquidity-related EPS, and certain other EPS—the characteristics of an FBO's CUSO would determine the applicable tailoring category. Standardized liquidity requirements would apply to the FBO with respect to its IHC and, for certain tailoring categories, to any subsidiary depository institution with \$10 billion or more in total consolidated assets (a "covered depository institution subsidiary"). Liquidity-related and certain other EPS would apply, depending on the requirement, to one or more of the FBO, its IHC, its U.S. branches and agencies, and its CUSO. Annex II to this Memorandum summarizes the liquidity requirements, liquidity-related EPS, and other EPS that would apply in each of the tailoring categories.

Under the proposals, FBOs would be assigned to one of three potential tailoring categories if they have at least \$100 billion in U.S. assets. FBOs with \$100 billion or more in total global consolidated assets but less than \$100 billion in U.S. assets would not be assigned to a designated "category", but would generally be subject to requirements that are less stringent than those applicable to the least restrictive category. These categories are generally similar to the proposed categories in the domestic tailoring proposals, but the FBO Proposals would not include a fourth category (Category I) included in the domestic tailoring proposals that would apply only to U.S. G-SIBs. There is no such category for FBOs because, under the agencies' capital rules, only a top-tier U.S. BHC can be identified as a U.S. G-SIB.¹⁵ The categories in the FBO Proposals are described below.

Category II. The most restrictive category would apply to FBOs with \$700 billion or more in U.S. assets or \$75 billion or more in cross-jurisdictional activity, defined as discussed below. These amounts would be calculated at the IHC organizational level with respect to capital requirements and capital-related EPS (other than home country capital stress testing) and at the CUSO organizational level with respect to liquidity requirements and liquidity-related and certain other EPS.

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Category III. The next most restrictive category would apply to FBOs with \$250 billion or more in U.S. assets or \$100 billion or more in U.S. assets and \$75 billion or more in any one of three other risk-based indicators: (i) nonbank assets, (ii) weighted short-term wholesale funding (“*STWF*”), or (iii) off-balance sheet exposure, each defined as discussed below. These amounts would be calculated at the same organizational levels discussed above in respect of Category II.

Category IV. The next most restrictive category would apply to FBOs with \$100 billion or more in U.S. assets that are not subject to Category II or III—*i.e.*, they have less than \$250 billion in U.S. assets and less than \$75 billion in cross-jurisdictional activity, nonbank assets, weighted *STWF*, and off-balance sheet exposure. These amounts would be calculated at the same organizational levels discussed above in respect of Category II.

“Other Firms”. Other Firms include FBOs with \$100 billion or more in total global consolidated assets and between \$50 billion and \$100 billion in U.S. assets. Amounts of U.S. assets would be calculated at the same organizational levels discussed above in respect of Category II.

Under the FBO Proposals, an FBO with combined U.S. assets of \$100 billion or more would be required to determine the applicable tailoring category at its IHC organizational level and its CUSO organizational level, depending on the applicable regulatory requirement. This determination would be based on a four-quarter average of the risk-based indicators defined as discussed below. An FBO would remain subject to the applicable tailoring category until it no longer meets the relevant criteria in each of the four most recent calendar quarters.¹⁶

The Federal Reserve staff memorandum released with the proposals indicates that, based on data for the third quarter of 2018 and an approach to measuring cross-jurisdictional activity that, unlike the FBO Proposals, would exclude all transactions with non-U.S. affiliates, six FBOs may be in Category II or III (Barclays, Credit Suisse, Deutsche Bank, Mizuho, MUFG, and Toronto-Dominion); three FBOs would be in Category III (HSBC, Royal Bank of Canada, and UBS); seven FBOs would be in Category IV (Banco Santander, Bank of Montreal, BBVA, BNP Paribas, BPCE, Société Générale, and Sumitomo Mitsui); and seven FBOs would be “Other Firms” (Bank of China, Bank of Nova Scotia, Canadian Imperial, Crédit Agricole, I & C Bank of China, Norinchukin, and Rabobank). The staff memorandum notes that FBOs do not currently report all data necessary to determine the applicable categories, which is why certain firms could be in one of two categories.¹⁷

In addition to the approach described above that would use risk-based indicators to determine the applicable tailoring categories, the FBO Proposals also seek public comment on an alternative approach to categorization that would use a “single, comprehensive score”. Specifically, the agencies solicit comment on the potential use of the Federal Reserve’s G-SIB identification methodology, under which a banking organization’s size and its score under one of two calculation methods would be used to assign a category at the IHC organizational level or the CUSO organizational level, as applicable.¹⁸ The domestic

tailoring proposals similarly requested comment on the use of the G-SIB identification methodology to determine applicable categories for U.S. banking organizations.¹⁹

DEFINITIONS OF RISK-BASED INDICATORS

Under the FBO Proposals, tailoring categories would be assigned based on five risk-based indicators, which are described below.

Size. This measure would be defined as total assets at the relevant organizational level of an FBO, as reported on the FR Y-9C (if calculated at the IHC organizational level) or on the FR Y-7 or FR Y-7Q (if calculated at the CUSO organizational level).²⁰

Cross-jurisdictional activity. This measure would be defined as the sum of the cross-jurisdictional assets and liabilities at the relevant organizational level, excluding (i) intercompany liabilities and (ii) intercompany claims to the extent they are collateralized by “financial collateral”, as defined in the agencies’ capital rules, valued in a manner consistent with the collateral haircut approach in those rules.²¹ The cross-jurisdictional activity measure differs from the measure in the domestic tailoring proposals in that the measure applicable to FBOs would include only certain intercompany exposures (*i.e.*, claims on non-U.S. affiliates to the extent the claims are not secured by eligible financial collateral, as determined subject to applicable haircuts). The agencies explain that uncollateralized exposures to non-U.S. affiliates should be included in this measure for FBOs because these exposures often result from the U.S. operations of an FBO intermediating transactions between U.S. clients and foreign markets and engaging in transactions to manage enterprise-wide risks. The agencies explain that liabilities to non-U.S. affiliates would be excluded from this measure for FBOs because these liabilities frequently represent funding from the FBO to its U.S. operations and may be required by regulation, such as the Federal Reserve’s total loss-absorbing capacity (“*TLAC*”) and long-term debt requirements applicable to the IHCs of non-U.S. G-SIBs. The FBO Proposals also seek comment on alternative approaches to the measurement of cross-jurisdictional activity, including an approach that would exclude all transactions with non-U.S. affiliates and another approach that would involve increasing the threshold without excluding any affiliate transactions. Notably, the proposals each include 17 questions relating to the application of the cross-jurisdictional activity indicator to FBOs.²²

Nonbank assets. This measure would be defined as the average amount of assets in consolidated nonbank subsidiaries at the relevant organizational level, and any direct investments at that level in unconsolidated nonbank subsidiaries. This measure would align with the measure of “average nonbank assets” calculated for purposes of the Federal Reserve’s capital plan rule and reported on FR Y-9LP.²³

Off-balance sheet exposure. This measure would be defined as the difference between total exposure (including on-balance sheet assets, plus certain off-balance sheet exposures, including derivative

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exposures, repo-style transactions, and commitments) and on-balance sheet assets at the relevant organizational level.²⁴

Weighted short-term wholesale funding. This measure would be defined as the amount of funding obtained at the relevant organizational level of an FBO from wholesale counterparties or retail brokered deposits and sweeps with a remaining maturity of one year or less. In this measure, different categories of STWF would be weighted based on maturity, collateral (if any) backing the funding, and counterparty characteristics. Although the cross-jurisdictional activity measure, as noted above, would exclude all liabilities owed to non-U.S. affiliates, short-term funding from non-U.S. affiliates would be included in this indicator because, according to the agencies, “reliance on [STWF] from foreign affiliates can contribute to the funding vulnerability of [an FBO’s] U.S. operations in times of stress”.²⁵

The Federal Reserve would make changes to several reporting forms to allow for reporting of these risk-based indicators at the IHC and CUSO organizational levels. For example, the Federal Reserve would modify the FR Y-15 to subject FBOs to FR Y-15 reporting requirements with respect to their CUSOs. The Federal Reserve would also modify the FR 2052a, FR Y-7, FR Y-7Q, FR Y-9C, and FR Y-14 forms to reflect other aspects of the FBO Proposals, including modifications to reporting thresholds and, in the case of the FR 2052a, reporting frequencies.²⁶

REQUIREMENTS IN EACH TAILORING CATEGORY

A. REGULATORY CAPITAL REQUIREMENTS

These requirements would apply based on the tailoring category determined at the FBO’s IHC organizational level and would apply to the IHC and any depository institution subsidiary. The agencies do not propose to apply capital requirements (or capital-related EPS) to U.S. branches and agencies, which do not maintain regulatory capital separate from the foreign bank of which they are a part.²⁷

Generally Applicable Capital Requirements. These requirements would apply to all categories, as well as IHCs and depository institutions that are subsidiaries of Other Firms. Consistent with current requirements for IHCs, and unlike U.S. banking organizations that would be in Category II under the domestic tailoring proposals, IHCs and their depository institution subsidiaries in Category II would not be required to calculate risk-based capital requirements for credit and operational risk using the models-based advanced approaches in subpart E of the agencies’ capital rules. Rather, Category II IHCs and depository institution subsidiaries would use only the standardized approach, similar to other IHCs and their depository institution subsidiaries.

Notably, in the discussion of model-based approaches, the agencies refer to the revisions the Basel Committee on Banking Supervision released in December 2017 to finalize the Basel III framework (commonly referred to as “*Basel IV*”), which, among other things, provide a new standardized approach for market risk and a revised standardized operational risk framework. The agencies note that they are

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considering how to “most appropriately implement these standards in the United States, including potentially replacing the advanced approaches with [revised] risk-based capital requirements based on the [new] Basel standardized approaches for credit risk and operational risk”. Any such changes would be the subject of a future notice-and-comment rulemaking.²⁸

Supplementary Leverage Ratio. The requirement to maintain a minimum supplementary leverage ratio of three percent of Tier 1 capital to on-balance sheet assets and certain off-balance sheet exposures would apply only to Category II and III IHCs and depository institution subsidiaries.

Opt-Out of Accumulated Other Comprehensive Income (“AOCI”). The requirement to recognize most elements of AOCI in regulatory capital would apply to Category II IHCs and depository institution subsidiaries. Other IHCs and depository institution subsidiaries would be permitted to opt out of this requirement.

Countercyclical Capital Buffer. The requirement to expand the capital conservation buffer by the amount of any applicable countercyclical capital buffer would apply only to Category II and III IHCs and depository institution subsidiaries. Other IHCs and depository institution subsidiaries would be subject only to the capital conservation buffer.

Capital Rules Simplification (Proposed). Category II IHCs and depository institution subsidiaries would be treated as “advanced approaches” banking organizations for the purposes of the simplifications to the agencies’ capital rules proposed in 2017,²⁹ and therefore not eligible for the proposed relief. IHCs and depository institution subsidiaries in the other categories would be treated as “non-advanced approaches” banking organizations and therefore the proposed simplifications would be applicable to them.

Standardized Approach to Counterparty Credit Risk (“SA-CCR”) (Proposed). The requirement proposed in 2018 to use SA-CCR for calculating the exposure amount of derivative contracts under the agencies’ capital rules would apply to Category II IHCs and depository institution subsidiaries, which would be treated as “advanced approaches” banking organizations for this purpose. Other IHCs and depository institution subsidiaries would be treated as “non-advanced approaches” banking organizations and could choose to use the proposed SA-CCR, but would not be required to do so.³⁰

Deduction for TLAC Issued by G-SIBs (Proposed). The FBO Proposals do not reference the proposal that would require “advanced approaches” banking organizations to deduct certain holdings of TLAC-eligible debt issued by G-SIBs from regulatory capital, which was released on April 2. The proposal relating to TLAC holdings likewise does not refer to the FBO Proposals; rather, it refers only to the domestic tailoring proposals, noting that because the deductions would apply to “advanced approaches” banking organizations, the deductions would be treated as Category I and II standards for purposes of the domestic tailoring proposals.³¹ Although not expressly stated, the proposed deductions for TLAC

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holdings would presumably apply to Category II IHCs and depository institution subsidiaries, but not others.

B. CAPITAL-RELATED EPS (OTHER THAN HOME COUNTRY CAPITAL STRESS TESTING)

These requirements would apply based on the tailoring category determined at the FBO's IHC organizational level and would apply to the IHC only. IHCs that are subsidiaries of Other Firms and not subject to Category II, III, or IV standards would not be subject to capital-related EPS.

Capital Plan Submissions. The requirement to submit a capital plan annually would apply to Categories II, III, and IV. With respect to Category IV only, the Federal Reserve intends to propose as part of a future capital plan proposal that stress buffer requirements—which would apply to large U.S. BHCs and IHCs and which are the subject of an outstanding notice of proposed rulemaking issued by the Federal Reserve in April 2018³²—be updated annually to reflect planned distributions, but biennially to reflect stress loss protections.³³ Further, the Federal Reserve intends to provide greater flexibility with respect to Category IV IHCs in developing capital plans, noting that “Category IV standards could require a capital plan to include estimates of revenues, losses, reserves, and capital levels based on a forward-looking analysis, taking into account the U.S. [IHC’s] idiosyncratic risks under a range of conditions; however, [the Federal Reserve] would not require submission of the results of company-run stress tests on the FR Y-14A”.³⁴

Assessments through the Comprehensive Capital Analysis and Review (“CCAR”) Process. The CCAR process would apply to Categories II, III, and IV. It would apply annually to Categories II and III, and on a two-year cycle to Category IV.

Supervisory Stress Testing. Supervisory stress testing would be conducted annually with respect to Categories II and III, and on a two-year cycle with respect to Category IV.

Company-Run Stress Testing Under Dodd-Frank (“DFAST”). Company-run stress testing under DFAST would be required annually with respect to Category II and biennially for Category III. Like the domestic tailoring proposals, the FBO Proposals would remove any requirement to conduct a semiannual company-run stress test. Although IHCs in Category III would be required to conduct and publicly disclose the results of company-run stress test under DFAST every two years, because these IHCs also would be required to conduct an “internal capital stress test” for purposes of the capital plan submissions and participation in CCAR, the practical impact of biennial—as opposed to annual—company-run DFAST may not be significant. Category IV IHCs would not be subject to company-run stress testing requirements.

FR Y-14 Reporting. Reporting under FR Y-14 would apply to Categories II, III, and IV.

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C. STANDARDIZED LIQUIDITY REQUIREMENTS

The applicable standardized liquidity requirements would be determined based on the characteristics of an FBO's CUSO and would apply with respect to the FBO's IHC and, in some cases as discussed below, any covered depository institution subsidiary (*i.e.*, a depository institution subsidiary with \$10 billion or more in total consolidated assets).

Liquidity Coverage Ratio (“LCR”). The full LCR, including daily calculation, would apply with respect to any IHC in Category II and its covered depository institution subsidiaries, if any. The same requirement with respect to the IHC and any covered depository institution subsidiary would apply to Category III if the FBO has weighted STWF of \$75 billion or more at the CUSO organizational level. A “reduced” daily LCR would apply with respect to an IHC and any covered depository institution subsidiary in Category III if the FBO has weighted STWF of less than \$75 billion at the CUSO organizational level. With respect to Category IV, a reduced LCR requirement, with monthly calculation, would apply with respect to the IHC only (and not any covered depository institution subsidiary) if the FBO has weighted STWF of \$50 billion or more at the CUSO organizational level. No LCR requirement would apply to other Category IV FBOs or Other Firms.

Net Stable Funding Ratio (“NSFR”) (Proposed). The application of the proposed NSFR requirement would mirror the application of the LCR requirement. The full NSFR would apply with respect to an IHC in Category II and its covered depository institution subsidiaries, if any. The same requirement with respect to the IHC and any covered depository institution subsidiary would apply to Category III if an FBO has weighted STWF of \$75 billion or more at the CUSO organizational level. A reduced NSFR would apply with respect to an IHC and any covered depository institution subsidiary in Category III if the FBO has weighted STWF of less than \$75 billion at the CUSO organizational level. A reduced NSFR requirement would apply with respect to the IHC only (and not any covered depository institution subsidiary) in Category IV if the FBO has weighted STWF of \$50 billion or more at the CUSO organizational level. No NSFR requirement would apply to other Category IV FBOs or Other Firms.

Application of the LCR and Proposed NSFR Requirements. Notable aspects of how the LCR and proposed NSFR requirements would be applied under the FBO Proposals are described below.

- **Differences from current application.** The agencies note that an FBO or U.S. IHC is currently not subject to the LCR rule, except to the extent a depository institution holding company or covered depository institution subsidiary is itself subject to LCR requirements.³⁵ According to the agencies, expanding the application of the LCR rule (as well as the proposed NSFR rule, which is proposed to have the same applicability) would “serve as a complement” to liquidity risk management, internal liquidity stress testing, and liquidity buffer requirements, by requiring “use of uniform inflow and outflow rates and other standardized assumptions that reflect broader industry and supervisory experience”.³⁶
- **Application of “reduced” requirements.** The reduced LCR and NSFR requirements would be applied in the same manner as proposed in the domestic tailoring proposals: The denominator for the proposed reduced LCR would be equal to the net cash outflows calculated under the full LCR

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requirement, multiplied by a factor that reduces its stringency; similarly, the denominator for the proposed reduced NSFR would equal the required stable funding requirement calculated under the full NSFR requirement, multiplied by a factor that reduces its stringency. In each, the factor would be between 70% and 85%. Consistent with the domestic tailoring proposals, the agencies note that an FBO subject to the reduced LCR with respect to its IHC would not be permitted to include in its high-quality liquid assets (“HQLA”) eligible HQLA of a consolidated subsidiary except up to the amount of net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the requirement), plus any amount of assets that would be available for transfer to the top-tier holding company during times of stress without statutory, regulatory, contractual, or other supervisory restrictions. A similar restriction would apply under the NSFR proposed rule. The agencies request comment, however, on whether they should “consider the approach the [Federal Reserve] currently permits for depository institution holding companies subject to a modified LCR [whereby] . . . a holding company may include in its HQLA amount eligible HQLA held at a subsidiary up to 100 percent of the net cash outflows of the subsidiary, plus amounts that may be transferred without restriction to the top-tier company” without adjusting those net cash outflows for the factor reducing the stringency of the requirement at the holding company level.³⁷

- *Differences from proposed application to U.S. banking organizations.* Under the FBO Proposals, the application of LCR and proposed NSFR requirements with respect to IHCs would be “nearly identical” to those proposed for U.S. banking organizations. However, among other differences, the agencies would, in applying LCR and NSFR requirements with respect to IHCs, treat each IHC as if it were the top-tier Federal Reserve-regulated institution. As a result, transactions between the IHC and affiliates outside the IHC, including any U.S. branch or agency, would be treated in the same manner as transactions with unaffiliated third parties.³⁸

Further, LCR and NSFR requirements would not apply directly to IHCs: rather, they would apply to an FBO with respect to its IHC. The Federal Reserve notes that it is considering applying requirements directly to IHCs and specifically requests comment on the advantages and disadvantages of doing so. Because the LCR rule, as applied with respect to IHCs, would apply at the FBO level, the FBO would be responsible for satisfying the operational requirements in the LCR rule, including those regarding the operational capability to monetize HQLA. In addition, HQLA for an FBO’s IHC would be required to be held at the IHC or one of its subsidiaries, which would be consistent with the current liquidity buffer requirements in the EPS. Further, because the proposals would require the FBO, rather than the IHC itself, to satisfy LCR requirements with respect to the IHC, “the management function of the [FBO] that is charged with managing liquidity risks must evidence control over the HQLA for the purposes of covering the net cash outflows of the U.S. [IHC]” and the HQLA “must be continually available for use by the management function within the [FBO’s] U.S. operations that is charged with managing U.S. liquidity risks”.³⁹

- *Re-proposal of requirements for Category IV firms in domestic tailoring proposals.* The domestic tailoring proposals, when initially adopted, did not apply LCR or NSFR requirements to Category IV firms. However, in developing the FBO Proposals, the Federal Reserve determined that “some domestic or foreign banking organizations that meet the criteria for Criteria IV standards could potentially have a heightened liquidity risk profile”, for example, if they are not funded by “stable deposits” or if they materially rely on less-stable STWF, and therefore lack “traditional balance sheet structures”.⁴⁰ In line with the proposal for FBOs, which would apply reduced monthly LCR and proposed NSFR requirements as Category IV standards if an FBO has a large amount (\$50 billion or more) of weighted STWF, the agencies are also re-proposing an aspect of the domestic interagency proposal. As re-proposed, the domestic tailoring proposal would apply reduced monthly LCR and reduced proposed NSFR requirements to any U.S. depository institution holding company (but not any depository institution subsidiary) subject to Category IV standards under the domestic tailoring proposals that has \$50 billion or more of weighted STWF.⁴¹ The Federal Reserve staff memorandum notes that no U.S. banking organization would currently satisfy these criteria.⁴²

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D. LIQUIDITY-RELATED EPS

These requirements would apply based on the tailoring criteria applied at the FBO's CUSO organizational level and would apply, depending on the requirement, to one or more of the CUSO, IHC, and U.S. branches and agencies.

Liquidity Risk Management. Existing liquidity risk management requirements applicable at the CUSO organizational level would continue to apply to Categories II and III. These requirements would be reduced with respect to Category IV to require: (i) calculation of collateral positions monthly (as opposed to weekly, as is currently required); (ii) establishing a more limited set of liquidity risk limits than are currently required; and (iii) monitoring fewer elements of intraday liquidity risk exposures than are currently monitored. These requirements would not apply to Other Firms.

Internal Liquidity Stress Testing. Existing requirements of monthly internal liquidity stress testing applicable separately to each of the FBO's CUSO, IHC, and U.S. branch or agency network would apply to Categories II and III. The frequency of these requirements would be reduced to quarterly with respect to Category IV. These requirements would not apply to Other Firms, which would be required to report annually the results of an internal liquidity stress test at either the consolidated global or CUSO organizational level if they have \$250 billion or more in total global consolidated assets.⁴³

Liquid Asset Buffer Requirements. Existing requirements to maintain separate liquid asset buffers for an FBO's IHC and its U.S. branches and agencies would apply only to Categories II, III, and IV.

FR 2052a Reporting. Reporting of certain liquidity data on FR 2052a would be required on a daily basis with respect to Category II. Daily FR 2052a reporting would also apply to Category III if the FBO has weighted STWF (determined at the FBO's CUSO organizational level) of \$75 billion or more. Monthly FR 2052a reporting would apply to other FBOs subject to Category III standards (*i.e.*, FBOs with less than \$75 billion of weighted STWF at the CUSO organizational level) and FBOs subject to Category IV standards.

E. OTHER EPS

These requirements would apply based on the tailoring criteria applied at the FBO's CUSO organizational level and would apply, depending on the requirement, to the CUSO, the IHC, or, in the case of required home country capital stress testing, the FBO itself.

IHC Single-Counterparty Credit Limits. Single-counterparty credit limits would apply to an FBO's IHC only if the FBO is subject to Category II or III standards. Where applicable, these limits would be a single uniform aggregate net credit exposure limit to a single counterparty of 25% of Tier 1 capital. These limits would also include certain rules regarding exposures to special purpose vehicles and the application of economic interdependence and control relationship tests, as well as compliance requirements, as they currently apply to IHCs with \$250 billion or more in total consolidated assets.⁴⁴

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CUSO Single-Counterparty Credit Limits. Single-counterparty credit limits would apply to an FBO's CUSO for FBOs subject to Category II or III standards. These limits would also apply to Category IV FBOs or Other Firms if the FBO has total global consolidated assets of \$250 billion or more. An FBO would continue to be able to satisfy these requirements by certifying to the Federal Reserve that the FBO meets comparable home country standards that apply on a consolidated basis.⁴⁵

Risk Management and Risk Committee Requirements. Existing risk management and risk committee requirements in Regulation YY, including the chief risk officer requirement, would continue to apply to all FBOs with total global consolidated assets of \$100 billion or more and U.S. assets of \$50 billion or more. Accordingly, these requirements would apply to FBOs subject to Category II, III, and IV standards, as well as Other Firms.⁴⁶

Home Country Capital Stress Testing Requirements. Requirements that FBOs must be subject to a home country capital stress test—whether as a supervisory capital stress test conducted by the FBO's home country supervisor or an evaluation and review by the FBO's home country supervisor of an internal capital adequacy stress test—would continue to apply to FBOs with total global consolidated assets of \$100 billion or more. For FBOs in Category II, III, or IV that have a U.S. branch or agency, these requirements would apply annually to FBOs subject to Category II or III standards, and biennially to FBOs subject to Category IV standards.⁴⁷ For FBOs with total global consolidated assets of \$100 billion or more, but less than \$100 billion of U.S. assets (including Other Firms), home country capital stress testing requirements would apply annually to FBOs with total global consolidated assets of \$250 billion or more and biennially to FBOs with total global consolidated assets of between \$100 billion and \$250 billion.⁴⁸

STANDARDIZED LIQUIDITY REQUIREMENTS FOR U.S. BRANCHES AND AGENCIES

As noted above, the FBO Proposals do not include standardized liquidity requirements for U.S. branches and agencies of FBOs. Instead, the agencies request comment on whether such requirements should be imposed, as well as possible approaches for doing so.⁴⁹

According to the agencies, the imposition of standardized liquidity requirements on the U.S. branches and agencies of FBOs would be intended to address perceived risks to U.S. financial stability. The agencies note that liquidity risks can arise either in an FBO's U.S. subsidiaries or in its branches or agencies; that U.S. branches and agencies have “distinct” risks in that they “tend to rely on less stable, short-term wholesale funding” to a greater extent than U.S. banking organizations because branches and agencies generally may not accept retail deposits from U.S. citizens and residents; and that disruptions in wholesale funding markets can lead to greater liquidity stress on U.S. branches that operate under a “funding branch” model, by engaging in U.S. wholesale borrowing to finance long-term, U.S. dollar-denominated assets in other markets. According to the agencies, a branch liquidity requirement would

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“strengthen the overall resilience of [an FBO’s] U.S. operations to liquidity risks” and complement existing internal liquidity stress testing requirements. Further, even where FBOs are subject to home country standardized liquidity requirements, the agencies argue that standardized liquidity requirements applicable to U.S. branches or agencies would “require these firms to align the location of liquid assets with the location of their liquidity risks in the United States”.⁵⁰

The agencies describe and request comment on two alternative approaches to implementing standardized liquidity requirements. The first would be “generally similar to the LCR rule”, requiring an FBO to calculate and maintain an LCR with respect to its U.S. branches and agencies on an aggregate basis.⁵¹ The second would require an FBO to maintain at its U.S. branches and agencies an amount of liquid assets “of prescribed quality” that exceeds a set percentage of total branch and agency assets.⁵² Any proposal to implement these requirements would be made in a future notice of proposed rulemaking. Notably, the agencies include 14 discrete questions about the potential application of standardized liquidity requirements to FBOs’ branches and agencies.

OTHER NOTABLE ASPECTS OF THE FBO PROPOSALS

A. LCR TRANSITION PERIODS

Due to the changes the FBO Proposals would make to the applicability of LCR requirements, certain FBOs not currently subject to the LCR rule with respect to their IHCs would become subject to LCR requirements.⁵³ The agencies would provide “initial transition periods” for FBOs to comply with LCR and NSFR requirements with respect to their IHCs and for covered depository institution subsidiaries to comply with LCR and NSFR requirements. These periods, as described below, would depend on whether a firm is subject to the requirements as of the effective date of a final rule (the “*Effective Date*”).

- For an FBO with an IHC subject to the full LCR requirement as of the Effective Date, the FBO would be required to comply with the applicable (full or reduced) LCR requirement with respect to the IHC as of the Effective Date, and any covered depository institution subsidiary would likewise be required to comply with the applicable LCR requirement, if any, as of the same date.
- An FBO with an IHC subject to the modified LCR requirement as of the Effective Date would be required to comply with any applicable LCR requirement by continuing, for one year, to follow the modified LCR requirement with respect to the IHC (*i.e.*, during that period, the LCR calculation would be required on a monthly basis, without a maturity-mismatch add-on, and using a 70% outflow adjustment factor). On the date that is the first day of the calendar quarter that is one year after the Effective Date, the FBO with respect to its IHC would be required to comply with the applicable LCR requirement, and any covered depository institution subsidiary would likewise be required to comply with the applicable LCR requirement, if any, as of the same date.
- An FBO with an IHC not subject to an LCR requirement as of the Effective Date would be required to comply with the applicable LCR requirement with respect to the IHC on the date that is the first day of the calendar quarter that is one year after the Effective Date, and any covered depository institution subsidiary would likewise be required to comply with the applicable LCR requirement, if any, as of the same date.

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The agencies also would not change the transition periods in the LCR and proposed NSFR rules that apply to banking organizations newly covered by the rules, including in respect of compliance with a daily LCR calculation requirement.⁵⁴

B. “TECHNICAL CHANGES” TO THE FEDERAL RESERVE’S EPS REGULATORY FRAMEWORK

The Federal Reserve proposes “several technical changes and clarifying revisions” to its EPS rule (*i.e.*, Regulation YY) and certain other Federal Reserve rules. These include additional definitions in Regulation YY related to the FBO Proposals, as well as the removal from Regulation YY of requirements mandating the submission of an implementation plan in connection with the establishment of a U.S. IHC and other “transition and initial applicability provisions”.⁵⁵ Other notable proposals and requests for comment in this section are included below.

- The Federal Reserve would amend Regulation YY to add a “reservation of authority”, under which the Federal Reserve could “permit [an FBO] to comply with the requirements of Regulation YY through a subsidiary foreign bank or company”. In exercising this authority, the Federal Reserve would “consider: (1) the ownership structure of the [FBO], including whether the [FBO] is owned or controlled by a foreign government; (2) whether the action would be consistent with the purposes of [Regulation YY]; and (3) any other factors that the [Federal Reserve] determines are relevant”. According to the Federal Reserve, this provision is “intended to provide additional flexibility to address certain [FBO] structures, as well as to provide clarity and reduce burden for these institutions”. As an example, the Federal Reserve notes that if the top-tier FBO is a sovereign wealth fund that controls a U.S. BHC, with the prior approval of the Federal Reserve, “the U.S. [BHC] could comply with the requirements established under Regulation YY instead of the sovereign wealth fund, provided that doing so would not raise significant supervisory or policy issues and would be consistent with the purposes of section 165 [of Dodd-Frank]”.⁵⁶
- The Federal Reserve requests comment on whether to “more closely align the assets that qualify as highly liquid assets” for the purposes of the liquid asset buffer requirements with “HQLA under the current LCR rule”. The Federal Reserve notes that “[a]fter several years of supervising firms that are subject to [EPS] and [the] LCR rule, [it] is considering whether it would be appropriate to expand the list of enumerated highly liquid assets” for the purposes of the liquid asset buffer requirements to include certain assets that are HQLA, “potentially reflecting operational requirements of the LCR rule”, such as the requirement that HQLA are “easily and immediately convertible into cash with little or no expected loss of value during a period of stress” or other additional, asset-specific requirements. The Federal Reserve is also considering whether to “otherwise adjust the definition of highly liquid assets to align with the LCR rule”.⁵⁷
- The Federal Reserve would amend Regulation YY with respect to the process for requesting an alternative organizational structure for a U.S. IHC, and “clarify that [an FBO] may submit a request for an alternative organizational structure in the context of a reorganization, anticipated acquisition, or prior to formation of a U.S. [IHC]”. The period for the Federal Reserve’s expected action with respect to a request for an alternative organizational structure would be 90 days, instead of the 180 days that currently applies to such requests.⁵⁸

* * *

ANNEX I

Application of Regulatory Capital Requirements and Capital-Related EPS (determined based on an FBO's IHC)				
	Category II ≥\$700bn IHC Assets or ≥\$75bn Cross- Jurisdictional Activity	Category III ≥\$250bn IHC Assets or ≥\$75bn in Nonbank Assets, Weighted STWF (wSTWF), or Off-Balance Sheet Exposure	Category IV Other FBOs with \$100bn-250bn IHC Assets	Other Firms Other FBOs with ≥\$100bn Global Assets and \$50bn-100bn IHC Assets
REGULATORY CAPITAL REQUIREMENTS FOR IHCs AND IDI SUBSIDIARIES				
Generally Applicable Capital Requirements	✓	✓	✓	✓
Supplementary Leverage Ratio	✓	✓		
Opt-Out of AOCI Capital Impact		✓	✓	✓
Countercyclical Capital Buffer	✓	✓		
Capital Rules Simplification (Proposed)		✓ (As non-advanced approaches banking organization)	✓ (As non-advanced approaches banking organization)	✓ (As non-advanced approaches banking organization)
SA-CCR (Proposed)	✓	(Optional)	(Optional)	(Optional)
TLAC Holdings (Proposed) [†]	✓			
CAPITAL-RELATED EPS				
Annual Capital Plan Submission*	✓	✓	✓	
CCAR	✓	✓	✓ (Two-Year Cycle)	
Stress Testing: Supervisory	✓ (Annual)	✓ (Annual)	✓ (Two-Year Cycle)	
Stress Testing: Company-Run (DFAST)	✓ (Annual)	✓ (Every Two Years)		
FR Y-14 Reporting	✓	✓	✓	

* The FBO Proposals do not amend the Federal Reserve's capital plan rule, but the Federal Reserve indicates that it expects to release a future proposal to do so.

† The FBO Proposals do not reference the proposal that would require "advanced approaches" banking organizations to deduct certain holdings of TLAC-eligible debt issued by G-SIBs from regulatory capital, which was released on April 2. The proposal relating to TLAC holdings likewise does not refer to the FBO Proposals; rather, it refers to only the domestic tailoring proposals, noting that because the deductions would apply to "advanced approaches" banking organizations, the deductions would be treated as Category I and II standards for purposes of the domestic tailoring proposals. The application in this chart of these proposed requirements, although not expressly stated in the FBO Proposals, reflects that the proposed deductions for TLAC holdings would presumably apply to Category II IHCs and depository institution subsidiaries, but not others.

ANNEX II

Application of Standardized Liquidity Requirements, Liquidity-Related EPS and Other EPS (determined based on an FBO's CUSO)				
	Category II ≥\$700bn CUSO Assets or ≥\$75bn Cross-Jurisdictional Activity	Category III ≥\$250bn CUSO Assets or ≥\$75bn Nonbank Assets, Weighted STWF (wSTWF), or Off-Balance Sheet Exposure	Category IV Other FBOs with \$100bn-250bn CUSO Assets	Other Firms Other FBOs with ≥\$100bn Global Assets and \$50bn-100bn CUSO Assets
STANDARDIZED LIQUIDITY REQUIREMENTS				
LCR	✓ (IHC and Covered IDI Subsidiaries)	✓ (Reduced* for IHC and Covered IDI Subsidiaries, unless ≥\$75bn in wSTWF)	✓ (Reduced* for IHC, if ≥\$50bn in wSTWF)	
LCR Calculation	Daily	Daily	Monthly, if ≥\$50bn in wSTWF	
NSFR (Proposed)	✓ (IHC and Covered IDI Subsidiaries)	✓ (Reduced* for IHC and Covered IDI Subsidiaries, unless ≥\$75bn in wSTWF)	✓ (Reduced* for IHC, if ≥\$50bn in wSTWF)	
LIQUIDITY-RELATED ENHANCED PRUDENTIAL STANDARDS				
Liquidity Risk Management	✓	✓	✓ (Reduced)	
Internal Liquidity Stress Tests	✓ (Monthly)	✓ (Monthly)	✓ (Quarterly)	✓ (Annually, as to global org. or CUSO)
Liquidity Buffer	✓	✓	✓	
FR 2052a Reporting	✓ (Daily)	✓ (Monthly; daily if ≥\$75bn in wSTWF)	✓ (Monthly)	
OTHER ENHANCED PRUDENTIAL STANDARDS				
Single-Counterparty Credit Limits	✓ (IHC and Home Country)	✓ (IHC and Home Country)	✓ (Home Country only, if Global Assets ≥\$250bn)	✓ (Home Country only, if Global Assets ≥\$250bn)
U.S. Risk Committee [†]	✓	✓	✓	✓
Risk Management [†]	✓	✓	✓	✓
Home Country Capital Stress Testing	✓	✓	✓	✓

* The interagency proposal requests comment on reducing the LCR and NSFR requirements to a level between 70-85%.

† Risk committee and related risk management requirements would continue to apply to FBOs with total global consolidated assets of \$50 billion or more.

ENDNOTES

- ¹ Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Proposed Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries* (Apr. 8, 2019), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/foreign-bank-fr-notice-2-20190408.pdf> (hereinafter the “*Interagency FBO Proposal*”). The Interagency FBO Proposal was adopted by the FDIC on April 16.
- ² Board of Governors of the Federal Reserve System, *Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies* (Apr. 8, 2019), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/foreign-bank-fr-notice-1-20190408.pdf> (hereinafter the “*Federal Reserve FBO Proposal*”).
- In April, the Federal Reserve and the FDIC also jointly adopted a proposal that would revise the resolution planning requirements for FBOs and U.S. bank holding companies under Section 165(d) of Dodd-Frank. See Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Resolution Plans Required* (Apr. 8, 2019), available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plans-fr-notice-20190408.pdf>. The FDIC also separately requested comments on the resolution planning requirements for insured depository institutions under 12 C.F.R. § 360.10. See Federal Deposit Insurance Corporation, *Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets* (Apr. 16, 2019), available at <https://www.fdic.gov/news/board/2019/2019-04-16-notice-dis-c-fr.pdf>. We will address the resolution-planning proposal and request for comments in a forthcoming memorandum to clients.
- ³ Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements*, 83 Fed. Reg. 66,024 (Dec. 21, 2018) (hereinafter the “*Interagency Domestic Proposal*”); Board of Governors of the Federal Reserve System, *Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies*, 83 Fed. Reg. 61,408 (Nov. 29, 2018) (hereinafter the “*Federal Reserve Domestic Proposal*”).
- ⁴ Vice Chairman for Supervision Randal K. Quarles, *Opening Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks* (Apr. 8, 2018), available at <https://www.federalreserve.gov/newsevents/pressreleases/99A5C407E998418CB2CB9DDB85C54B0B.htm#aboutMenu> (hereinafter the “*Quarles Statement*”).
- ⁵ Federal Reserve FBO Proposal, at 7.
- ⁶ Interagency FBO Proposal, at 47.
- ⁷ Quarles Statement, *supra*.
- ⁸ Governor Lael Brainard, *Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks* (Apr. 8, 2019), available at <https://www.federalreserve.gov/newsevents/pressreleases/3B1F641BEB4A485B994EBC38165F0F3B.htm#aboutMenu>.
- ⁹ Director Martin J. Gruenberg, *Statement on Notice of Proposed Rulemaking to Align Capital and Liquidity Requirements for Foreign Banking Organizations with Those Proposed for U.S. Banking Organizations* (Apr. 16, 2019), available at <https://www.fdic.gov/news/news/speeches/spapr1619b.html>.
- ¹⁰ Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, § 401(a)(1)(A), (d) (hereinafter “*EGRRCPA*”).
- ¹¹ EGRRCPA, § 401(a)(1)(B)(iii).
- ¹² EGRRCPA, § 401(a)(1)(B)(i); see 12 U.S.C. § 5365(a)(2)(A).
- ¹³ 12 U.S.C. § 5311(a)(1).
- ¹⁴ 12 C.F.R. § 252.153(a)(1); see 12 C.F.R. Part 252, Subparts N and O.

ENDNOTES (CONTINUED)

- 15 See Federal Reserve FBO Proposal, at 18 n.28; see also 12 C.F.R. Part 217 Subpart H.
- 16 See Federal Reserve FBO Proposal, at 49-50.
- 17 Memorandum from Federal Reserve Board Staff to the Board of Governors re: Notices of Proposed Rulemaking to Align Prudential Standards for Foreign Banking Organizations with Those Proposed for Domestic Banking Organizations, at 20 (Apr. 1, 2019) (hereinafter the “Federal Reserve Board Staff Memorandum”), available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/foreign-bank-board-memo-20190408.pdf>.
- 18 See Federal Reserve FBO Proposal, at 42-48.
- 19 See Federal Reserve Domestic Proposal, 83 Fed. Reg. 61,408, 61,415-17.
- 20 See Interagency FBO Proposal, at 29-32. Consistent with existing prudential standards applicable to FBOs, see, e.g., 12 C.F.R. § 252.142(b)(2), combined U.S. assets would be calculated as the sum of the consolidated assets of each top-tier U.S. subsidiary of an FBO, excluding any subsidiary held under Section 2(h)(2) of the Bank Holding Company Act of 1956, as amended (if applicable), and the total assets of each U.S. branch and U.S. agency of the FBO.
- 21 See 12 C.F.R. §§ 3.2, .37 (OCC), 217.2, .37 (Federal Reserve), 324.2, .37 (FDIC). Proposed modifications to the instructions for the FR Y-15 relating to the calculation of the cross-jurisdictional activity indicator refer to the “methodology for collateralized transactions” in Section 37 of the agencies’ capital rules, which would also include the simple approach, in addition to the collateral haircut approach, for calculating the credit risk mitigation benefits of financial collateral. See Board of Governors of the Federal Reserve System, Proposed Changes to the Instructions for Preparation of Systemic Risk Report, Reporting Form FR Y-15, at 51, available at [https://www.federalreserve.gov/reportforms/formsreview/FR_Y-15%20Instruction%20Revisions%20\(FBO%20Tailoring\)%20Final.pdf](https://www.federalreserve.gov/reportforms/formsreview/FR_Y-15%20Instruction%20Revisions%20(FBO%20Tailoring)%20Final.pdf).
- 22 See Interagency FBO Proposal, at 34-43. In addition, the Federal Reserve noted that, the Basel Committee on Banking Supervision recently amended its measurement of cross-border activity to more consistently reflect derivatives. Any related changes to the proposed cross-jurisdictional activity used for the FBO Proposals and the domestic tailoring proposals would be updated through future proposed changes to the FR Y-15. See Federal Reserve FBO Proposal, at 28 n.39.
- 23 See Interagency FBO Proposal, at 43-45.
- 24 See Interagency FBO Proposal, at 45-47.
- 25 See Interagency FBO Proposal, at 47-48.
- 26 See Federal Reserve FBO Proposal, at 82-88, 93. The proposed modifications to the reporting forms and related instructions are available at <https://www.federalreserve.gov/apps/reportforms/review.aspx>.
- 27 See Interagency FBO Proposal, at 22.
- 28 See Interagency FBO Proposal, at 60. For further information about Basel IV, see our Memorandum to Clients, *Bank Capital Requirements: Basel Committee Releases Standards to Finalize Basel III Framework* (Dec. 19, 2017), available at <https://www.sullcrom.com/bank-capital-requirements-basel-committee-releases-standards-to-finalize-basel-iii-framework>.
- 29 See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996*, 82 Fed. Reg. 49,984 (Oct. 27, 2017). For further information about this proposal, see our Memorandum to Clients, *Bank Capital Requirements: Federal Banking Agencies Propose Capital Rule Simplifications to the Standardized Approach Calculations Applicable Primarily to Non-Advanced Approaches Banking Organizations* (Oct. 4, 2017), available at <https://www.sullcrom.com/bank-capital-requirements-October-4-2017>.

ENDNOTES (CONTINUED)

- 30 See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Standardized Approach for Calculating the Exposure Amount of Derivative Contracts*, 83 Fed. Reg. 64,660 (Dec. 17, 2018). For further information about this proposal, see our Memorandum to Clients, *Bank Capital Requirements: Federal Bank Regulators Propose Standardized Approach for Calculating the Exposure Amount of Derivative Contracts* (Nov. 26, 2018), available at <https://www.sullcrom.com/banking-agencies-propose-new-standardized-approach-for-counterparty-credit-risk-for-capital-rules>.
- 31 Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Regulatory Capital Treatment for Investments in Certain Unsecured Debt Instruments of Global Systemically Important U.S. Bank Holding Companies, Certain Intermediate Holding Companies, and Global Systemically Important Foreign Banking Organizations*, 84 Fed. Reg. 13,814, 13,818-19 (Apr. 8, 2019). For further information on the proposal on deductions from regulatory capital for holdings of debt issued by G-SIBs eligible as TLAC, see our Memorandum to Clients, *Regulatory Capital Treatment of Investments in TLAC-Eligible Debt: Federal Banking Agencies Propose Regulatory Capital Deductions for Investments by Advanced Approaches Banking Organizations in TLAC-Eligible Debt* (Apr. 18, 2019), available at <https://www.sullcrom.com/regulatory-capital-treatment-of-tlac-holdings>.
- 32 See Board of Governors of the Federal Reserve System, *Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules*, 83 Fed. Reg. 18,160 (Apr. 25, 2018). For further details about this proposal, see our Memorandum to Clients, *Bank Capital Requirements, Capital Plans and Stress Tests: Federal Reserve Proposes Substantial Changes to CCAR and Its Capital Rules, Including New Stress Capital Buffer and Stress Leverage Buffer Requirements and the Elimination of the CCAR Quantitative Objection* (Apr. 19, 2018), available at <https://www.sullcrom.com/bank-capital-requirements-capital-plans-and-stress-tests>.
- 33 See Federal Reserve FBO Proposal, at 59-60.
- 34 See Federal Reserve FBO Proposal, at 60.
- 35 Under the proposal, the proposed application of LCR requirements to IHCs would replace any independent LCR requirements that currently apply to a BHC subsidiary of an FBO. See Interagency FBO Proposal, at 81 n.93.
- 36 See Interagency FBO Proposal, at 67-72.
- 37 See Interagency FBO Proposal, at 77-80, 88-89.
- 38 See Interagency FBO Proposal, at 80-81.
- 39 See Interagency FBO Proposal, at 81-88. The Federal Reserve also “expects that the management function that is responsible for managing liquidity risks under the proposal would be the same management function that is responsible for managing liquidity risk under the enhanced prudential standards rule”. Interagency FBO Proposal, at 85 n.101.
- 40 See Interagency FBO Proposal, at 78-79; see Interagency Domestic Proposal, 83 Fed. Reg. at 66,037-38.
- 41 See Interagency FBO Proposal, at 116-18.
- 42 See Federal Reserve Board Staff Memorandum, at 15.
- 43 See Federal Reserve FBO Proposal, at 161 (proposed 12 C.F.R. § 252.145(a)).
- 44 See Federal Reserve FBO Proposal, at 65-66.
- 45 See Federal Reserve FBO Proposal, at 65.
- 46 See 12 C.F.R. § 252.155; see also Federal Reserve FBO Proposal, at 68-70, 156-60 (proposed 12 C.F.R. § 252.144(b)-(c)).
- 47 See Federal Reserve FBO Proposal, at 194-96 (proposed 12 C.F.R. § 252.158).
- 48 See Federal Reserve FBO Proposal, at 162-63 (proposed 12 C.F.R. § 252.146).

ENDNOTES (CONTINUED)

- ⁴⁹ The Federal Reserve also noted that it had “indicated in previous rulemakings its intent to apply standardized liquidity requirements with respect to the U.S. operations of [an FBO] in order to align all elements of its forward-looking liquidity regulatory regime for similarly situated domestic and foreign banking organizations”. See Interagency FBO Proposal, at 70; see also Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Net Stable Funding Ratio: Liquidity Risk Management Standards and Disclosure Requirements*, 81 Fed. Reg. 35,124, 35,128 (June 1, 2016); Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, *Liquidity Coverage Ratio: Liquidity Risk Management Standards*, 79 Fed. Reg. 61,440, 61,447 (Oct. 10, 2014); Board of Governors of the Federal Reserve System, *Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations*, 79 Fed. Reg. 17,240, 17,290-91 (Mar. 27, 2014).
- ⁵⁰ See Interagency FBO Proposal, at 98-101. The agencies provided a similar explanation for the application of LCR and NSFR requirements with respect to IHCs: “Although [an FBO] may be subject to liquidity requirements on a consolidated basis in its home jurisdiction, a requirement to comply with LCR and NSFR requirements with respect to a U.S. [IHC] would require these firms to align the location of liquid assets with the location in the United States of the liquidity risks of their U.S. [IHCs], in order to ensure better protection against risks to safety and soundness and U.S. financial stability”. Interagency FBO Proposal, at 70 n.82.
- ⁵¹ See Interagency FBO Proposal, at 102-03.
- ⁵² See Interagency FBO Proposal, at 108-09.
- ⁵³ See Interagency FBO Proposal, at 121 n.140. The agencies estimate that, under the FBO Proposals, LCR requirements would be applicable with respect to two U.S. IHCs not currently subject to the requirements. The agencies also estimate that LCR requirements would no longer be applicable with respect to two U.S. IHCs that are currently subject to the requirements.
- ⁵⁴ See Interagency FBO Proposal, at 112-15.
- ⁵⁵ See Federal Reserve FBO Proposal, at 74-78.
- ⁵⁶ See Federal Reserve FBO Proposal, at 76-77, 130 (proposed 12 C.F.R. § 252.1(c)).
- ⁵⁷ See Federal Reserve FBO Proposal, at 77-78.
- ⁵⁸ See Federal Reserve FBO Proposal, at 75-76; see also 12 C.F.R. § 252.153(c)(3).

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