June 18, 2018

# Single Counterparty Credit Limits

## Federal Reserve Board Finalizes Rule to Establish Single Counterparty Credit Limits

On June 14, the Federal Reserve issued a final rule[1] to impose single counterparty credit limits ("*SCCL*") on large bank holding companies and large foreign banking organizations with respect to their U.S. operations, pursuant to Section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Vice Chair for Supervision Quarles stressed in his Opening Statement that the final rule is "a useful complement to the *principal* protection against contagion: the robust capital and liquidity positions of the financial system today." The final rule is the latest statutorily mandated enhanced prudential standard to be implemented[2] and reflects a significant evolution in approach since it was first proposed in 2011. As initially proposed, the methodologies for measuring credit exposures were largely insensitive to risk and would have been a binding constraint on covered companies' transactions. The rule as re-proposed in 2016, which followed the finalization of the Basel Large Exposure Framework in 2014 and incorporated many of its elements, introduced greater risk-sensitivity but also significant compliance complexity from its proposed broad and subjective definitions of both covered companies and their counterparties, as well as its approach to assessing the interconnections among counterparties. The final rule extends the 2016 proposed rule's risk sensitivity to permit measurement of exposure from securities financing transactions under internal models and eases compliance burdens by using more objective and transparent standards—importantly by replacing traditional banking law control tests with accounting consolidation as the standard for aggregating exposures of multiple entities to a single counterparty or group of connected counterparties.

The final rule's definitions of "covered company" and "covered foreign entity"[3] reflect the change in thresholds for application of enhanced prudential standards introduced in the Economic Growth, Regulatory Relief, and Consumer Protection Act ("*EGRRCPA*") in May 2018 and include:

- U.S. bank holding companies ("*BHCs*") that are global systemically important BHCs ("*G-SIBs*") and all BHCs with $250 billion or more in total consolidated assets;
- Foreign banking organizations ("*FBOs*") with $250 billion or more in total consolidated assets (total consolidated assets are measured on a global basis, although the final rule would apply with respect to a FBO's combined U.S. operations); and
- U.S. intermediate holding company subsidiaries ("*IHCs*") of such FBOs with $50 billion or more in total consolidated assets (including any U.S. IHC that is also a BHC). Application of the final rule to IHCs is tailored depending on the IHC's total consolidated assets.

For all U.S. BHCs subject to the final rule, the SCCL imposes a 25 percent of tier 1 capital limit on aggregate net credit exposure to a single counterparty. In addition, for U.S. G-SIBs, defined in the final rule as "major covered companies"[4] the final rule imposes a stricter 15 percent of tier 1 capital limit on the G-SIB's aggregate net credit exposure to a "major counterparty," which includes major covered companies, FBOs that are G-SIBs, and any nonbank financial company supervised by the Federal Reserve. This continues a Federal Reserve policy of distinguishing U.S. G-SIBs from other institutions subject to enhanced prudential standards. A FBO subject to the final rule is subject to these same limits with respect to its combined U.S. operations, but, in a significant departure from the proposed rule, may comply with the final rule by certifying to the Federal Reserve that it complies with a comparable home country regime.[5]

The final rule requires U.S. BHCs and FBOs that are G-SIBs and major IHCs[6] to comply by January 1, 2020 and requires all other covered firms to comply by July 1, 2020, providing compliance periods of 18 months and 2 years, respectively. The release of the final rule was accompanied by a proposed reporting form, described below, on which the Federal Reserve is soliciting comment.

## KEY ELEMENTS OF THE FINAL RULE

Key elements of the final rule, including changes from the 2016 proposed rule,[7] include the following:

- ***Definitions of Covered Company and Counterparty.*** The SCCL applies to the credit exposure of a covered firm and all of its subsidiaries to a single counterparty and all of its affiliates and connected entities. The final rule introduces new definitions of "subsidiary" and "affiliate" under a financial consolidation standard that is consistent with applicable accounting standards, generally U.S. Generally Accepted Accounting Principles or the International Financial Reporting Standards.[8] By contrast, the 2016 proposed rule would have included as a subsidiary of the covered firm any company that was directly or indirectly controlled by the covered firm for purposes of the Bank Holding Company Act, and would have included as an affiliate of a counterparty any company connected to the counterparty through 25 percent or more voting equity or total equity ownership—standards that commenters found overly broad, opaque and a source of unnecessary complexity.
- ***Calculation of SFT Exposure Amounts.*** The final rule adopts a more risk-sensitive exposure measurement methodology for securities financing transactions that includes the use of any method authorized under the Federal Reserve's capital rules, including internal models, which parallels the exposure measurement methodology permitted for derivatives under both the proposed and final rules.[9] By contrast, the 2016 proposed rule would have required firms to apply a standardized approach to calculate the credit exposure amount of a securities financing transaction. Vice Chair for Supervision Quarles noted in his Opening Statement that "as we

implement the revisions to the Basel III reform package agreed to at the end of last year, additional improvements to the securities financing transaction methodology will be reflected in this rule as well."[10]

- ***Narrowing the Scope of Counterparties.*** To facilitate compliance, the final rule introduces minimum thresholds below which a covered firm need not track exposures of a counterparty, which means that covered firms will not need to expend resources "proving the negative" with respect to counterparties that would never be expected to even approach the SCCL. The final rule also relies on more objective tests for determining whether interconnections exist.
  - ***Aggregating Exposures to Connected Counterparties.*** The final rule permits a covered firm to determine whether counterparties are connected under either the "economic interdependence" or "control" tests[11] when a company has an exposure to a counterparty that exceeds 5 percent of the covered firm's tier 1 capital rather than applying a 5 percent threshold only to the "economic interdependence" test as in the 2016 proposed rule.[12] Both the economic interdependence and the control tests have been modified to rely on more objective criteria.
  - ***Applying the Look-Through Approach to Investments in and Exposures to SPVs.*** The final rule narrows the circumstances in which a covered firm must look through a securitization vehicle, investment fund or other special purpose vehicle (generally, an "*SPV*") and determine its exposure to the underlying assets rather than just to the SPV itself. The final rule requires a look-through only to individual underlying assets to which the covered firm has an exposure of at least 0.25 percent of a covered firm's eligible capital base, even in cases where the covered firm cannot demonstrate that each underlying asset in an SPV is less than 0.25 percent of the covered firm's tier 1 capital.
    - The final rule also limits the third parties a covered firm must identify whose failure or distress would likely result in a loss in the value of the company's investment in the SPV (for example, credit enhancement providers) and recognize an exposure to only those third parties that have a contractual obligation to provide credit or liquidity support to an SPV. The final rule also explicitly limits the exposure that a covered firm is required to attribute to the third party by capping the recognized exposure at the maximum contractual obligation of the third party to the SPV.[13]
  - ***Natural Persons.*** In contrast to the 2016 proposed rule, which would have required aggregation of a natural person with members of the natural person's immediate family in all cases, aggregation under the final rule is required only if the credit exposure to a natural person alone exceeds 5 percent of the covered firm's tier 1 capital.
- ***Cure Period.*** To address concerns that the cure period provided in the 2016 proposed rule would not have applied to all breaches beyond the covered firm's control, the final rule includes an "additional factor for relief during a period of noncompliance": an unforeseen and abrupt change in the status of a counterparty as a result of which the covered firm's credit exposure to the counterparty becomes limited by the requirements of the final rule.[14]
- ***Modifications for FBOs.*** In addition to permitting a top-tier FBO to comply with the final rule, which applies with respect to its U.S. operations, by providing a certification of compliance with a comparable home country standard, the final rule uses G-SIB characteristics, rather than a $500 billion in total global consolidated assets threshold, to define "major foreign banking organization,"[15] although it retains the $500 billion threshold to define "major U.S. intermediate holding company," which subjects the IHC to the more stringent 15 percent of tier 1 capital limit but does not make it a "major counterparty."[16] There are currently no U.S. IHCs with $500 billion in total consolidated assets, and of the 39 FBOs that would have been classified as major covered companies based on the $500 billion total global consolidated assets threshold in the 2016 proposed rule, only 22 were G-SIBs that would be considered major FBOs under the final rule.[17] Otherwise, the changes to the requirements applicable to FBOs generally are consistent with the changes to those applicable to domestic BHCs except that the final FBO rule provides additional relief to IHCs in the under $250 billion category by exempting them not only from the

requirement to apply the specialized SPV treatment, as under the 2016 proposed rule, but also from the requirement to apply the economic interdependence and control relationship tests to aggregate connected counterparties.

- ***Upcoming Initiatives.*** In the staff memo, the preamble of the final rule and in Vice Chair Quarles' Opening Statement, the Federal Reserve indicates that it is developing a comprehensive proposal on the extent to which the Federal Reserve should apply the SCCL and other enhanced prudential standards to banking organizations with between $100 billion and $250 billion in total consolidated assets. In addition, staff indicates that they are conducting further analysis regarding the scope of application of the SCCL and other enhanced prudential standards to U.S. IHCs as part of its broader implementation of EGRRCPA.

The final rule retains elements of the 2016 proposed rule that may still pose compliance complexities, including:

- ***Aggregation of States and Their Political Subdivisions.*** The final rule continues to treat a State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) as a single counterparty and does not exclude municipal revenue bonds from the aggregation, despite the fact that these bonds are supported by a specific stream of revenue derived from a particular project.
- ***Treatment of Foreign Sovereigns.*** Under the final rule applicable to U.S. BHCs, foreign sovereign governments that do not receive a zero percent risk weight under the standardized approach of the Federal Reserve's capital rules, as well as their political subdivisions, are included in the definition of "counterparty."[18] The final rule applicable to FBOs and their IHCs, however, would not apply to exposures of a U.S. IHC or the combined U.S. operations of a FBO to the FBO's home country sovereign, regardless of the risk weight assigned to that sovereign entity under the Federal Reserve's capital rules, but this home country exemption does not extend to political subdivisions of the foreign sovereign.[19] The Federal Reserve confirms in the final rule that each political subdivision of a foreign sovereign entity (together with any agencies and instrumentalities of the political subdivision, collectively) will be treated as a separate counterparty from the foreign sovereign entity, as is the case with respect to states of the United States.[20] The final rule does not extend the exclusion for exposures to zero risk weight foreign sovereigns to their zero risk weight public sector entities.[21]
- ***No Distinction between Banking Book and Trading Book Positions.*** Unlike the Basel Large Exposures Framework, the final rule does not make a distinction between positions in a firm's trading and banking books and instead imposes banking book concepts on credit and equity derivatives that would be covered positions under the market risk capital rule. Specifically, under the final rule, these covered positions are subject to maturity and currency mismatch adjustments under the general risk-based capital rules and a requirement that the protection be purchased from an "eligible protection provider" in order to reduce gross exposure. These concepts are more straightforward to apply and more directly relevant to banking book positions that are typically held for a longer term than to trading book exposures and hedges that tend to be of short duration and generally liquid positions. Furthermore, equity derivatives are treated like credit protection and subject to the requirement to shift the risk to the derivative counterparty rather than as part of a covered firm's net long or net short position with respect to the issuer as would be the case under the market risk capital rule.

The chart below identifies the types of covered firms and how the final rule applies to them.

| Entity Type | Applicable Limit | Compliance Date[22] |
|---|---|---|
| **Covered Firms that are not Major Covered Firms** | *U.S. BHCs and IHCs*: 25 percent of tier 1 capital.<br><br>*FBOs (with respect to combined U.S. operations)*: 25 percent of worldwide tier 1 capital. | July 1, 2020 |
| **Major Covered Firms*** | *U.S. BHCs and IHCs*:<br>• Exposure to a Major Counterparty: 15 percent of tier 1 capital.<br>• Exposure to other counterparties: 25 percent of tier 1 capital.<br><br>*FBOs (with respect to combined U.S. operations)*:<br>• Exposure to a Major Counterparty: 15 percent of worldwide tier 1 capital.<br>• Exposure to other counterparties: 25 percent of worldwide tier 1 capital. | January 1, 2020 |
| **U.S. IHCs** | *U.S. IHCs with total consolidated assets of at least $50 billion but less than $250 billion*:<br>• 25 percent of the IHC's total regulatory capital plus the balance of its ALLL not included in tier 2 capital.<br><br>*U.S. IHCs with total consolidated assets of at least $250 billion but less than $500 billion*:<br>• 25 percent of the IHC's tier 1 capital.<br><br>*U.S. IHCs with total consolidated assets of $500 billion or more*:<br>• Exposure to a Major Counterparty: 15 percent of tier 1 capital.<br>• Exposure to other counterparties: 25 percent of tier 1 capital. | July 1, 2020 (*if not a major U.S. intermediate holding company*)<br><br>January 1, 2020 (*if a major U.S. intermediate holding company*) |

** Major covered firms include U.S. BHCs that have been identified as G-SIBs ("major covered companies"), U.S. IHCs with $500 billion or more in total consolidated assets ("major U.S. intermediate holding companies"), and FBOs with $250 billion or more in total global consolidated assets ("covered foreign entities") and the characteristics of a G-SIB as specified in the final rule ("major foreign banking organizations").*

Nonbank SIFIs are not included as covered companies under the final rule, although nonbank SIFIs are considered "major counterparties" for purposes of the 15 percent limit for major covered companies described above. The preamble notes that the Federal Reserve intends to consider whether to apply similar requirements to nonbank SIFIs separately by rule or by order at a later time.[23]

The release of the final rule was accompanied by a proposal to implement a new reporting form—the Single-Counterparty Credit Limits Report (FR 2590)—that would provide the Federal Reserve with

information to monitor a respondent firm's compliance with the SCCL rule.[24] The reporting requirements were of particular concern to commenters because the level of granularity required was expected to have a significant impact on firms' compliance burden. FR 2590 comprises nine schedules, including five (G-1 through G-5) that collect information on the gross exposures of the respondent to various counterparties—a respondent must add the exposures in the five G schedules to calculate its gross credit exposure.[25] A respondent would also be required to report data relevant to the presence of relationships requiring aggregation under the economic interdependence or controls tests of the final rule in Schedules A-1 and A-2.[26] FR 2590 would be filed quarterly and would capture the credit exposures of a respondent organization to its top 50 counterparties, which the respondent would identify by name and entity type with a single counterparty in each row. Comments are due on the proposed reporting form 60 days after its publication in the Federal Register.

The Federal Reserve staff note in their memo accompanying the final rule the expectation that a number of the modifications introduced in the final rule should reduce the quantitative impact originally estimated with respect to the 2016 proposed rule. In particular, they note that the final rule is "unlikely to have a material impact on covered companies and U.S. IHCs in light of (1) the narrower scope of the final rule, including the narrower definitions of both covered company and counterparty using a financial consolidation approach, (2) allowing covered companies and U.S. IHCs to use internal models to measure exposures from securities financing transactions, "which was one of the major sources of excess exposure," and (3) analysis showing that covered companies and U.S. IHCs have very few single counterparty exposures above 5 percent of their tier 1 capital.

## OBSERVATIONS

In the preamble to the final rule, the Federal Reserve notes that "[s]ome commenters contended that the credit limit on exposures to major counterparties should reflect a reduced probability of default of such major counterparties resulting from a range of post-crisis reforms."[27] The Federal Reserve stated its disagreement with this approach, noting that "SCCL are, by their nature, simple and transparent limits that do not depend on the probability of default of any individual counterparty" and it would thus be "inconsistent with the general motivation for counterparty credit limits to differentiate based on perceived differences in credit quality."[28] This appears to reflect the Federal Reserve's view of how the cumulative post-crisis regulatory reforms should or should not factor into the design and calibration of the SCCL, but not with respect to other post-crisis regulations more generally. As noted by Vice Chair for Supervision Quarles, the Federal Reserve continues to "examine post-crisis reforms and identify what is working well and what can be improved,"[29] and may seek to improve the efficiency of the post-crisis reforms by, for example, "calibrating a given regulation more precisely to the risks in need of mitigation."[30] It remains to be seen whether and how the Federal Reserve will take the interrelation of post-crisis regulatory reforms into account as its evaluation of and work to improve the post-crisis regulatory framework continues.

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## ENDNOTES

[1] Board of Governors of the Federal Reserve System, Final Rule, *Single-Counterparty Credit Limits for Bank Holding Companies and Foreign Banking Organizations* (June 14, 2018) (hereafter, the "*final rule*"), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180614a1.pdf.

[2] Early remediation requirements under Section 166 of the Dodd-Frank Act were proposed in 2011 and 2012 when enhanced prudential standards were proposed for BHCs and FBOs, respectively, but they have not been adopted or reproposed. *See* 77 Fed. Reg. 594 (Jan. 5, 2012) and 77 Fed. Reg. 76628 (Dec. 28, 2012).

[3] The final rule defines "covered company" to include (1) any BHC (other than a FBO that is subject to subpart Q, including any U.S. IHC of such FBO) with total consolidated assets that equal or exceed $250 billion, and (2) any U.S. BHC identified as a G-SIB pursuant to § 217.402 of Regulation Q (12 CFR 217.402). 12 C.F.R. § 252.70(a)(1)(i). The final rule separately defines "covered foreign entity" to include (1) a FBO with total consolidated assets that equal or exceed $250 billion with respect to its combined U.S. operations, and (2) any U.S. IHC of such FBO with total consolidated assets that equal or exceed $50 billion, including a U.S. IHC that is a BHC. 12 C.F.R. § 252.171(a)(1)(i). For FBOs, total consolidated assets are measured on a global basis, although the final rule would apply with respect to its combined U.S. operations.

[4] The final rule applies this stricter limit to U.S. BHCs that have been identified as global systemically important banking organizations under the Method 1 calculation of the Federal Reserve's G-SIB surcharge framework at 12 C.F.R. § 217.402. The final rule defines "major covered company" as covered company that is a U.S. BHC identified as a G-SIB pursuant to 12 C.F.R. § 217.402. 12 C.F.R. § 252.70(a)(1)(ii). The final rule separately defines "major foreign banking organization" as a FBO that is a covered foreign entity and meets the requirements of section 252.172(c)(3)(i)-(ii) (generally, the top-tier FBO, or an IHC, is identified as a G-SIB under the global methodology or would be under the Federal Reserve's Method 1 calculation in 12 C.F.R. § 217.402 if it were subject to the Federal Reserve's Method 1). 12 C.F.R. § 252.170(a)(1)(ii).

[5] The final rule requires each top-tier FBO that controls a U.S. IHC to submit to the Federal Reserve by January 1 of each year (through the U.S. IHC) a notice of (1) whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier FBO has adopted standards consistent with the global methodology, and (2) whether the top-tier FBO prepares or reports the indicators used by the global methodology to identify a banking organization as a G-SIB and, if it does, whether the top-tier FBO has determined that it has the characteristics of a G-SIB under the global methodology pursuant to § 252.153(b)(6). 12 C.F.R. § 252.172(c)(4)(A)-(B). The second notice requirement tracks similar requirements in the TLAC regulations; the Federal Reserve provided that firms are not required to provide separate notice to the Federal Reserve under the SCCL rule if the firm has already provided notice under other regulatory requirements (e.g., the TLAC rule). Preamble to the final rule, at 36.

[6] The final rule defines a "major U.S. intermediate holding company" as any covered foreign entity that is a U.S. intermediate holding company and has total consolidated assets that equal or exceed $500 billion. 12 C.F.R. § 252.170(a)(2)(iii).

[7] In March 2016, the Federal Reserve Board re-proposed the SCCL rule for comment. 81 Fed. Reg. 14328 (Mar. 16, 2016). This memo generally refers to the re-proposed SCCL as the "2016 proposed rule." For additional information on the SCCL Reproposal, please refer to our client memorandum entitled *Single Counterparty Credit Limits: Federal Reserve Board Proposes Revised Rules to Establish Single Counterparty Credit Limits* (Mar. 8, 2016), *available at* https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Single_Counterparty_Credit_Limits.pdf.

In December 2011 (for U.S. BHCs) and December 2012 (for FBOs and IHCs), the Federal Reserve initially proposed single counterparty credit limit rules (the "*Original SCCL Proposal*"), along with other enhanced prudential standards for Covered Companies, but the Original SCCL Proposal was not included in the final package of enhanced prudential standards issued by the Federal Reserve in 2014. The Original SCCL Proposal met with significant criticism due in large part to measurement methodologies that would have produced significant overstatements of realistic economic exposure, which would likely have required Covered Companies to unwind existing transactions on a large scale. Federal Reserve System, *Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies*, 77 Fed. Reg. 594 (Jan. 5, 2012); Federal Reserve System, *Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies*, 77 Fed. Reg. 76628 (Dec. 28, 2012).

8 *See* 12 C.F.R. § 252.71(b), (gg); 12 C.F.R. § 252.171(b).

9 *See* 12 C.F.R. § 252.73(a)(4), (a)(7); 12 C.F.R. § 252.173(a)(4), (a)(7).

The Federal Reserve noted in the 2016 proposed rule that it would consider whether to require the use of the Basel Committee's Standardized Approach for Counterparty Credit Risk ("*SACCR*") when the federal banking agencies consider incorporation of the SACCR into the risk-based capital rules. The final rule, however, is silent on the possible incorporation of SACCR. For information on SACCR, *see* Basel Committee on Banking Supervision, *The standardized approach for measuring counterparty credit risk* (Mar. 2014).

10 The Federal Reserve notes in the preamble to the final rule that it may revisit the approach to securities financing transactions permitted under the capital rules in the futures. Preamble to the final rule, at 53. *See also* Basel Committee on Banking Supervision, *Basel III: Finalising Post-Crisis Reforms* (Dec. 2017) and our client memorandum entitled *Bank Capital Requirements: Basel Committee Releases Standards to Finalize Basel III Framework* (Dec. 19, 2017), *available at* https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Bank_Capital_Requirements_12192017.pdf.

11 The 2016 proposed rule added an "economically interdependent" test to the framework in certain circumstances, requiring a covered company to add to its aggregate exposure to that counterparty all exposures to other counterparties that are "economically interdependent" with that counterparty. Counterparties are considered "economically interdependent" if the failure, default, insolvency or material financial distress of one of the counterparties would cause the failure or distress of the other counterparty. 12 C.F.R. § 252.76(b); § 252.176(b).

The 2016 proposed rule also introduced a requirement that a covered company add to exposures to a counterparty all exposures to other counterparties that are connected by certain control relationships. Unlike the economic interdependence test, for these potential control relationships the 2016 proposed rule did not include a 5 percent threshold, meaning that the operational burden of investigating such indicia of control would not have been alleviated with respect to any given counterparty. In response to industry comment, the final rule includes a 5 percent threshold for the control relationships test. 12 C.F.R. § 252.76(c); § 252.176(c).

12 *See* 12 C.F.R. § 252.76(b)(2)-(3); § 252.176(b)(2)-(3); § 252.76(c)(2); § 252.176(c)(2).

13 *See* 12 C.F.R. § 252.75(c); § 252.175(c).

14 *See* 12 C.F.R. §§ 252.78(c)(2); 252.178(c)(2). The Federal Reserve opines in the Preamble to the final rule that this additional factor, plus the discretionary factor in § 252.78(c)(2) "should sufficiently broaden the scope of the cure period to mitigate the risk of an enforcement due to circumstances outside the control of the covered company." Preamble to the final rule, at 101.

15 A FBO is a "major foreign banking organization" and a "major counterparty" if it has greater than $250 billion in total global consolidated assets and if it meets one of the following conditions

(generally, if it or its IHC has the characteristics of a G-SIB): (i) the top-tier FBO determines, pursuant to 12 CFR 252.153(b)(6), that the top-tier FBO has the characteristics of a G-SIB under the global methodology; and (ii) the Federal Reserve, using information available to the Federal Reserve, determines that the top-tier FBO would be a G-SIB under the global methodology or, if it were subject to the Federal Reserve's Regulation Q, would be identified as a G-SIB under Regulation Q; or (iii) its U.S. IHC, if it were subject to the Federal Reserve's Regulation Q, would be identified as a G-SIB. 12 C.F.R. § 252.170(a)(2)(ii); § 252.171(y)(2); § 252.172(c)(3)-(5).

16 *See* 12 C.F.R. § 252.71(x); § 252.171(y). The Federal Reserve opines in the Preamble to the final rule that this additional factor, plus the discretionary factor in § 252.78(c)(2) "should sufficiently broaden the scope of the cure period to mitigate the risk of an enforcement due to circumstances outside the control of the covered company." Preamble to the final rule, at 101.

17 Based on data submitted to the Federal Reserve by the Institute of International Bankers in 2016. *See* Institute of International Bankers*, Letter to the Board of Governors of the Federal Reserve re: Single Counterparty Credit Limits for Large Banking Organizations* (June 3, 2016).

18 12 C.F.R. § 252.71(e)(4).

19 12 C.F.R. § 252.71(f)(4)-(5).

20 12 C.F.R. § 252.71(e)(5); § 252.171(f)(5). *See* also Preamble to the final rule, at 32.

21 Preamble to the final rule, at 94-95.

22 12 C.F.R. § 252.70(c)(1)(i)-(ii); § 252.170(c)(1)(i)-(ii); § 252.170(c)(2)(i)-(ii).

23 Preamble to the final rule, at 6. By contrast, in the 2016 proposed rule, the Federal Reserve noted in the preamble that "[t]he draft proposed rules would not at this time apply to any such nonbank financial company. The Board *intends to apply* similar requirements to these companies separately by rule or order at a later time" (emphasis added). The different formulation appears to indicate that while in 2016, the Federal Reserve intended to apply SCCL to non-bank SIFIs, in 2018 only intends to *consider whether* to apply the limits.

Section 165(e) authorizes the Federal Reserve to establish single counterparty credit limits for nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve.

24 *Board Staff Memo to the Board of Governors re: Proposal to implement the Single-Counterparty Credit Limits Report (FR 2590) and associated notice requirements* (June 7, 2018).

25 These five proposed Schedules include: Schedule G-1: General Exposures, Schedule G-2: Repurchase Agreement Exposures, Schedule G-3: Securities Lending Exposures, Schedule G-4: Derivatives Exposures, and Schedule G-5: Risk-Shifting Exposures. A respondent would calculate its net credit exposure by adjusting gross credit exposures on Schedule M-1: Eligible Collateral and Schedule M-2: General Risk Mitigants.

26 These include two separate schedules for each of the aggregation tests in the final rule—Schedule A-1: Economic Interdependence and Schedule A-2: Control Relationships.

27 Preamble to the final rule, at 47.

28 Preamble to the final rule, at 47-48.

29 Vice Chair for Supervision Randal K. Quarles, "Early Observations on Improving the Effectiveness of Post-Crisis Regulation," Speech at the American Bar Association Banking Law Committee Annual Meeting, Washington, D.C. (Jan. 19, 2018), *available at* https://www.federalreserve.gov/newsevents/speech/quarles20180119a.htm.

30 Vice Chair for Supervision Randal K. Quarles, "The Federal Reserve's Regulatory Agenda for Foreign Banking Organizations: What Lies Ahead for Enhanced Prudential Standards and the

**ENDNOTES (CONTINUED)**

Volcker Rule," Speech at the Institute of International Bankers Annual Washington Conference, Washington, D.C. (Mar. 5, 2018), *available at* https://www.federalreserve.gov/newsevents/speech/quarles20180305a.htm.

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