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Bank Capital Plans and Stress Tests

Federal Reserve Issues Instructions and Guidance for the 2014 Comprehensive Capital Analysis and Review Program

Last Friday, the Federal Reserve issued its summary instructions and guidance[1] (the "*CCAR 2014 Instructions*") for the supervisory 2014 Comprehensive Capital Analysis and Review program ("*CCAR 2014*") applicable to bank holding companies with $50 billion or more of total consolidated assets ("*Covered BHCs*"). Eighteen Covered BHCs will be participating in CCAR for the fourth consecutive year in 2014.[2] An additional 12 institutions will be participating in a full CCAR for the first time during this 2013–2014 cycle.[3]

CCAR 2014 is being conducted under the Federal Reserve's capital plan rule, which requires the submission and supervisory review of a Covered BHC's capital plan under stressed conditions (the "*Capital Plan Rule*").[4] The Federal Reserve recently amended the Capital Plan Rule to clarify how Covered BHCs must incorporate the new Common Equity Tier 1 measure ("*CET1*") and methodology for calculating risk-weighted assets from the recently adopted U.S. Basel III-based final capital rules into their capital plan submissions and Dodd-Frank stress tests for the 2013–2014 cycle.[5] Under the Capital Plan Rule and CCAR 2014, a Covered BHC's capital plan is evaluated by the Federal Reserve on both quantitative (that is, whether the Covered BHC can meet applicable numerical regulatory capital minimums and a Tier 1 common ratio of at least five percent) *and* qualitative grounds.[6]

In addition, elements of CCAR 2014 are implemented through the Federal Reserve's rules implementing the stress test requirements of Section 165(i) of the Dodd-Frank Act (the "*Stress Test Rules*").[7] All 30 of the Covered BHCs subject to CCAR 2014 must submit their capital plans to the Federal Reserve on or before January 6, 2014.

In general, the CCAR 2014 Instructions follow previous CCAR iterations. Nevertheless, notable aspects of the CCAR 2014 Instructions, including changes for this year, include:

- ***Participants and Expectations.*** As noted, for the first time for CCAR 2014, Covered BHCs that previously participated only in CapPR 2013 now will be subject to CCAR. In the CCAR 2014 Instructions, the Federal Reserve recognizes the potential challenges facing these institutions that are new to CCAR. Accordingly, the Federal Reserve's qualitative assessment of their capital plans likely will reflect that these institutions "will continue to develop and enhance their capital planning systems and processes to meet supervisory expectations."[8]

  In contrast, the capital plans submitted by the largest and most complex Covered BHCs (presumably those that have been designated by the Basel Committee as global systemically important financial institutions ("*SIFIs*")) will be subject to enhanced qualitative scrutiny. The CCAR 2014 Instructions specifically emphasize that the Federal Reserve has "significantly heightened supervisory expectations for the largest and most complex BHCs—in all aspects of capital planning—and expects these BHCs to have the most sophisticated, comprehensive, and robust capital planning practices."[9]

- ***Increased Emphasis on Qualitative Factors.*** The CCAR 2014 Instructions contain an increased general emphasis on the Federal Reserve's intention to review the qualitative elements of Covered BHCs' capital plans. For example, with respect to the stressed scenario developed by the institution for purposes of the company-run stress tests submitted as part of the capital plan, the CCAR 2014 Instructions note that "[i]t is critical that the BHC stress scenario be well developed to capture potential risks stemming from a BHC's idiosyncratic positions and activities."[10] The stress scenario also should be relevant to the "direction and strategy" set by the board of directors of a Covered BHC, such as contemplated changes in the institution's business model.[11]

  The Federal Reserve could nonetheless object to an institution's capital plan if, among other things, the Federal Reserve deems the assumptions and analyses underlying the plan inadequate or the institution's capital adequacy process, including the risk-measurement and risk-management practices supporting this process and the governance and controls around such practices, are not sufficiently robust.[12]

- ***Disclosure of Results Under Supervisory Adverse Scenario.*** As in prior years, the Federal Reserve expects to disclose stress tests results under the supervisory severely adverse scenario by March 31, 2014. However, for the first time for CCAR 2014, the Federal Reserve expects *also* to publish the results conducted under the supervisory adverse scenario as well. Aside from the additional disclosure of the supervisory adverse scenario and the new Basel III-based capital rules detailed capital disclosures, including CET1, as applicable, the scope and content of the Federal Reserve's expected disclosure for CCAR 2014 is substantively the same as it was for CCAR 2013.

  In addition to the disclosure required under CCAR 2014, the Stress Test Rules continue to require Covered BHCs to publish a summary of their annual company-run stress test results, but only under the supervisory severely adverse scenario (not the adverse scenario), between March 15 and March 31, 2014.[13]

- ***Continued Limited One-time Adjustment to Planned Capital Actions.*** Like CCAR 2013, the Federal Reserve will provide Covered BHCs with the initial results of the supervisory post-stress analysis of capital results and a one-time opportunity to make a downward adjustment to its planned capital distributions from its initial capital plan submission before the Federal Reserve renders a final public objection/non-objection with respect to an institution's proposed capital plan. In addition, the Federal Reserve will continue to publicly disclose an institution's *pro forma* capital ratios and Tier 1 common ratio under stressed scenarios using *both* the Covered BHC's initial planned capital actions and the capital actions revised under this adjustment mechanism.

- ***Timing of Federal Reserve Disclosure.*** The CCAR 2014 Instructions do not explicitly address whether the Federal Reserve will continue to follow its approach from last year of publishing the CCAR supervisory stress test results (using standardized distribution assumptions) and its capital plan objection/non-objection results (based on a Covered BHC's capital distribution proposals from its capital plan submission) on two separate dates.

- ***Additional Scenario Components.***
  - As in prior years, six of the Covered BHCs with large trading operations will be required to factor in a global market shock as part of their supervisory adverse and severely adverse scenarios and to conduct a stress test of their trading books and private equity positions (including their credit valuation adjustments) as of a specific market close date.[14] All estimated losses associated with the provided global market shock should be reported in the initial quarter of the planning horizon, and the six Covered BHCs should assume no recoveries of the losses generated by the global market shock over the nine-quarters, which has the effect of carrying out the capital impact over the planning horizon.[15]
  - The Federal Reserve has recently focused increased regulatory scrutiny on systemic risk to Covered BHCs from short-term wholesale funding markets, in particular those for securities financing transactions ("*SFTs*").[16] Consistent with this focus, for the first time for CCAR 2014, the six Covered BHCs required to include the global market shock plus two additional Covered BHCs with substantial trading or custodial operations[17] will be required to incorporate into their supervisory adverse and severely adverse scenarios a counterparty default scenario component to their SFT and derivatives-related counterparty exposures.[18]

    The counterparty default scenario component involves an instantaneous and unexpected default of the Covered BHC's largest counterparty and the potential losses and effects on capital associated with such a default. The largest counterparty should be selected by identifying the counterparty that represents the largest total net stressed loss if the counterparty defaulted on its obligations related to derivatives and SFT activities as of a specified trading date.[19] In calculating the losses associated with the counterparty default scenario component, these Covered BHCs must apply the global market shock to stress the current exposure, any collateral posted or received, and, for derivatives-related exposures, the value of the transaction. All estimated losses from the counterparty default scenario component should be assumed to occur instantaneously and should be reported in the initial quarter of the planning horizon. The eight Covered BHCs are required to assume a conservative recovery rate of 10 percent and no additional recovery in subsequent quarters of the planning horizon.[20]

    These Covered BHCs will also be required to submit additional data in the form of a supplemental template and documentation to the Federal Reserve related to the counterparty default scenario component, including information regarding their SFT and derivative activities.
- ***Transparency of Supervisory Models.*** The discussion of the Federal Reserve's models and assumptions in the CCAR 2014 Instructions is substantially identical to the discussion in the prior year's instructions, providing no additional clarity regarding the Federal Reserve's models and perpetuating the so-called "black box" models issue. In addition, the CCAR 2014 Instructions appear to confirm that the Federal Reserve may, in certain instances, use non-models-based supervisory estimates as part of its CCAR supervisory analysis.[21]
- ***Estimates of Projected Revenues, Losses, Reserves, and Pro Forma Capital Levels.***
  - For CCAR 2014, in preparing its estimates for purposes of its capital plan, a Covered BHC that is an advanced approaches institution[22] should project other comprehensive income and the effect of changes in accumulated other comprehensive income ("*AOCI*") "in a manner consistent with" the phasing in of the Federal Reserve's recently adopted U.S. Basel III-based final capital rules.[23] As a result, these Covered BHCs will have to factor in the removal of the existing filter for unrealized gains and losses accumulated from available for sale securities recorded in AOCI from regulatory capital measurements. Presumably because of their ability to make an election to retain the AOCI filter under the Federal

Reserve's new Basel III-based capital rules, this aspect of the CCAR 2014 Instructions does not appear to apply to non-advanced approaches Covered BHCs.

- The Federal Reserve continues to emphasize the importance of both internal and external consistency in deriving *pro forma* projections in the capital plan. In particular, the CCAR 2014 Instructions state that Covered BHCs should demonstrate that the various components of their *pro forma* results are internally consistent. By way of illustration, the CCAR 2014 Instructions note that "it might be inconsistent to project a shrinking balance sheet while also projecting large increases in net income in a stress or baseline environment."[24] Specifically with respect to balance sheet projections, the CCAR 2014 Instructions state that Covered BHCs are expected to demonstrate that the approach used to generate projections is consistent both internally with related processes and externally with implications of the macroeconomic scenario.[25]

- Like last year, the CCAR 2014 Instructions provide that a Covered BHC should factor in contractual loss-mitigation arrangements or other aspects of its portfolio and exposures not adequately captured in the Federal Reserve's required reports (FR Y-14Q or FR Y-14M) but may not factor in as a mitigating factor for purposes of loan-loss estimates hypothetical behavioral responses by the institution's management.[26]

- In addition, as in the prior year, when estimating losses associated with requests by mortgage investors to repurchase loans deemed to have breached representations and warranties for purposes of the pre-provision net revenue estimate, the CCAR 2014 Instructions specify that a Covered BHC should consider not only how macro scenarios could affect losses from repurchased loans, but also a range of legal process outcomes, including "worse-than-expected" resolutions of the various contract claims, among other specified outcomes.[27] In light of recent developments concerning mortgage litigation and related matters, this particular element may take on increased significance for purposes of CCAR 2014.

- ***Capital Surcharge for Systemically Important Banks.*** For CCAR 2014, like CCAR 2013, a Covered BHC must include in its required Basel III transition plan "its best estimate" of the SIFI surcharge to which the Covered BHC expects to be subject along with an explanation for its estimate.[28] As a practical effect, notwithstanding that the Capital Plan Rule requires Covered BHCs to meet the *pro forma* minimum capital ratios and Tier 1 common ratio, Covered BHCs that are global SIFIs may have to meet these metrics taking into account applicable capital buffers and the Basel SIFI surcharge to obtain a non-objection to their capital plan from the Federal Reserve. For CCAR 2014, it does not appear that the Federal Reserve expects Covered BHCs to take into account the Basel Committee's proposal for *domestic* SIFIs, which was released last year.[29]

- ***Missing Data or Data Deficiency.*** Under the Capital Plan Rule, failure to submit complete data to the Federal Reserve in a timely manner may be a qualitative basis for objection to a capital plan. The CCAR 2014 Instructions further emphasize that the Federal Reserve has the ability to penalize a Covered BHC that submits data, the quality of which the Federal Reserve deems deficient, with an assumed high loss rate (e.g., 90th percentile).[30] This explicit reminder may be in response to perceived data submission and quality problems that may have occurred during CCAR 2013. If a Covered BHC submits a capital plan that is late, incomplete, or unclear, the Federal Reserve could qualitatively "fail" the institution's capital plan and require the plan to be resubmitted. In that case, the new plan will not be reviewed until the following quarter, and the Covered BHC may not make any capital distributions under the plan without the Federal Reserve's written non-objection until the new plan receives a non-objection.[31]

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[1] *See* Federal Reserve, *Comprehensive Capital Analysis and Review 2014: Summary Instructions and Guidance* (Nov. 1, 2013), *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131101a2.pdf

[2] The 18 bank holding companies that were previous CCAR participants are: Ally Financial Inc.; American Express Co.; Bank of America Corp.; The Bank of New York Mellon Corp.; BB&T Corp.; Capital One Financial Corp.; Citigroup Inc.; Fifth Third Bancorp; The Goldman Sachs Group; JPMorgan Chase & Co.; KeyCorp; Morgan Stanley; The PNC Financial Services Group, Inc.; Regions Financial Corp.; State Street Corp.; SunTrust Banks, Inc.; U.S. Bancorp; and Wells Fargo & Co. These institutions also participated in the Federal Reserve's 2009 Supervisory Capital Assessment Program ("*SCAP*").

[3] The 12 bank holding companies that will participate in CCAR for the first time in 2014 are: BMO Financial Corp.; BBVA Compass Bancshares, Inc.; Comerica Inc.; Discover Financial Services; HSBC North America Holdings Inc.; Huntington Bancshares Inc.; M&T Bank Corp.; Northern Trust Corp.; RBS Citizens Financial Group, Inc.; Santander Holdings USA, Inc.; UnionBanCal Corp.; and Zions Bancorp. Aside from Santander Holdings USA, each of these institutions participated in the Federal Reserve's 2013 Capital Review Program ("*CapPR 2013*") applicable to Covered BHCs that were not subject to prior iterations of CCAR or SCAP, but were required under the Capital Plan Rule to submit capital plans under the prior CapPR program.

[4] *See* 12 C.F.R. § 225.8. For additional information on the Capital Plan Rule, please refer to our Memorandum to Clients, dated November 29, 2011, "*Bank Capital Plans: Federal Reserve Board Issues Final Rule Regarding Capital Plan and Formal Stress Test Requirements for Certain Large Bank Holding Companies*."

[5] *See* Federal Reserve, *Regulations Y and YY: Application of the Revised Capital Framework to the Capital Plan and Stress Test Rules*, 78 Fed. Reg. 59779 (Sept. 30, 2013). For additional information about these amendments, please refer to our Memorandum to Clients, dated October 2, 2013, "*Bank Capital Plans and Stress Tests: Federal Reserve Issues Interim Final Rules Addressing Application of New Basel III-Based Capital Framework for Purposes of the 2013-2014 Capital Plan and Stress Test Cycle*."

[6] The Federal Reserve's qualitative assessment includes a review of "the comprehensiveness of the capital plan, including the suitability of the BHC scenarios, and the extent to which the risk measurement and other analysis underlying the plan capture and appropriately address potential risks stemming from all activities across the BHC under baseline and stressed operating conditions; [and] the reasonableness of the BHC's assumptions and analysis underlying the capital plan and a review of the robustness of the BHC's overall [capital adequacy process]." CCAR 2014 Instructions, at 1. Earlier this year, the Federal Reserve published a guidance document that sets forth observations regarding the qualitative capital planning processes and related measures at Covered BHCs that previously participated in CCAR and outlines the Federal Reserve's expectations and best practices for internal capital planning for CCAR 2014. *See* Federal Reserve, "*Capital Planning at Large Bank Holding Companies: Supervisory Expectations and Range of Current Practice*" (Aug. 19, 2013), *available at* www.federalreserve.gov/newsevents/press/bcreg/20130819a.htm. For additional information on this guidance, please refer to our Memorandum to Clients, dated September 11, 2013, "*Bank Capital Plans: Federal Reserve Board Issues Guidance Outlining Supervisory Expectations for Capital Planning at Large Bank Holding Companies*."

[7] *See Supervisory and Company-Run Stress Test Requirements for Covered Companies*, 77 Fed. Reg. 62378 (Oct. 12, 2012) (codified at Subparts F & G of the Federal Reserve's Regulation YY). For additional information on the Stress Test Rules, please refer to our Memorandum to Clients, dated October 26, 2012, "*Stress Test Rules: Federal Banking Agencies Publish Final Stress Test Rules on Supervisory and Company-Run Stress Test Requirement Imposed by Dodd-Frank*." Concurrent with the issuance of the CCAR 2014 Instructions, the Federal Reserve issued the

ENDNOTES (CONTINUED)

supervisory scenarios to be used by Covered BHCs for company-run stress tests for the current stress tests cycle under the Stress Test Rules and in connection with capital plans due under CCAR 2014, as well as by the Federal Reserve in performing its own stress testing to evaluate a Covered BHC's capital plans and planned capital distributions. *See* Federal Reserve, "*2014 Supervisory Scenarios for Annual Stress Tests Required under the Dodd-Frank Stress Testing Rules and the Capital Plan Rule*" (Nov. 1, 2013), *available at* www.federalreserve.gov/newsevents/press/bcreg/bcreg20131101a1.pdf.

8 CCAR 2014 Instructions, at 2, 25.

9 *Id*., at 1-2.

10 *Id*., at 7.

11 *Id*., at 9.

12 *Id*., at 25.

13 *See* 12 C.F.R. § 252.148(c).

14 CCAR 2014 Instructions, at 8, 14. The six Covered BHCs participating in the global market shock are: Bank of America Corp.; Citigroup Inc.; The Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; and Wells Fargo & Co. The Federal Reserve will publish the components of the global market shock by December 1, 2013.

15 CCAR 2014 Instructions, at 14.

16 Earlier this year, Federal Reserve Governor Tarullo expressed special concerns about what he perceives as the systemic risk of large firms that rely on the use of short-term wholesale funding. He was particularly concerned about wholesale funding in the form of SFTs because he believes it can lead to an "adverse feedback loop" from sales of the underlying assets. He suggests that the best approach for addressing this issue is through the imposition of a meaningfully higher liquidity requirement or a meaningfully higher capital requirement. For further information on areas of increased regulatory initiatives discussed in Governor Tarullo's speech, please refer to our Memorandum to Clients, dated May 10, 2013, "*Bank Regulation: Federal Reserve Board Governor Tarullo Outlines Potential Regulatory Initiatives*."

17 CCAR 2014 Instructions, at 8, 15. The eight Covered BHCs participating in the counterparty default component are: Bank of America Corp.; The Bank of New York Mellon Corp.; Citigroup, Inc.; The Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; State Street Corp.; and Wells Fargo & Co. All but State Street Corporation and The Bank of New York Mellon Corporation also participate in the global market shock.

18 The SFT activities subject to the counterparty default scenario component include all activities, excluding intraday transactions, which meet the definition of a repo-style transaction under section 2 of appendix G to the Federal Reserve's Regulation Y. CCAR 2014 Instructions, at 15. Section F.5 of the FR Y-14A instructions includes a full definition of SFT activities subject to the counterparty default scenario component.

19 For purposes of selecting the largest counterparty, these Covered BHCs should exclude the sovereign entities that are members of the G-7—Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States—and designated clearing counterparties. CCAR 2014 Instructions, at 15.

20 CCAR 2014 Instructions, at 16.

21 "Where it may not be feasible to develop results directly through the use of supervisory models, the Federal Reserve may incorporate into its supervisory estimates one or more of the following: (1) BHC estimates, reviewed and adjusted (where applicable) by the Federal Reserve to ensure the scenario was applied as specified and that the BHC's assumptions of potential losses and earnings reflect a credible and conservative translation of the impacts from the stress scenario;

ENDNOTES (CONTINUED)

(2) third-party models; and (3) simple decision rules using conservative assumptions consistently applied across all BHCs." CCAR 2014 Instructions, at 23.

22 A banking organization is subject to the advanced approaches rule if it has consolidated assets greater than or equal to $250 billion, if it has total consolidated on-balance sheet foreign exposures of at least $10 billion, or if it elects to apply the advanced approaches rule.

23 CCAR 2014 Instructions, at 12.

24 *Id*.

25 *Id*., at 13.

26 *Id*., at 12.

27 *Id*., at 17.

28 *Id*., at 18, 24. Earlier this summer, the Basel Committee on Banking Supervision released an updated methodology for assessing and identifying global SIFIs. *See* Basel Committee on Banking Supervision, "*Global Systemically Important Banks: Updated Assessment Methodology and the Higher Loss Absorbency Requirement*" (July 2013), *available at* www.bis.org/publ/bcbs255.htm.

29 *See* Basel Committee on Banking Supervision, "*A Framework for Dealing with Systemically Important Banks*" (Oct. 2012), *available at* www.bis.org/publ/bcbs233.htm.

30 CCAR 2014 Instructions, at 6.

31 *Id*., at 27.

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CONTACTING SULLIVAN & CROMWELL LLP

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CONTACTS

New York

Whitney A. Chatterjee	+1-212-558-4883	chatterjeew@sullcrom.com
H. Rodgin Cohen	+1-212-558-3534	cohenhr@sullcrom.com
Elizabeth T. Davy	+1-212-558-7257	davye@sullcrom.com
Michael T. Escue	+1-212-558-3721	escuem@sullcrom.com
Jared M. Fishman	+1-212-558-1689	fishmanj@sullcrom.com
C. Andrew Gerlach	+1-212-558-4789	gerlacha@sullcrom.com
Andrew R. Gladin	+1-212-558-4080	gladina@sullcrom.com
Wendy M. Goldberg	+1-212-558-7915	goldbergw@sullcrom.com
Erik D. Lindauer	+1-212-558-3548	lindauere@sullcrom.com
Jiang Liu	+1-212-558-3093	liujia@sullcrom.com
Mark J. Menting	+1-212-558-4859	mentingm@sullcrom.com
Camille L. Orme	+1-212-558-3373	ormec@sullcrom.com
Donald J. Toumey	+1-212-558-4077	toumeyd@sullcrom.com
Marc Trevino	+1-212-558-4239	trevinom@sullcrom.com
Janine C. Waldman	+1-212-558-3154	waldmanj@sullcrom.com
Mark J. Welshimer	+1-212-558-3669	welshimerm@sullcrom.com
Michael M. Wiseman	+1-212-558-3846	wisemanm@sullcrom.com

Washington, D.C.

Eric J. Kadel, Jr.	+1-202-956-7640	kadelej@sullcrom.com
William F. Kroener III	+1-202-956-7095	kroenerw@sullcrom.com
J. Virgil Mattingly	+1-202-956-7028	mattinglyv@sullcrom.com

Andrea R. Tokheim	+1-202-956-7015	tokheima@sullcrom.com
Samuel R. Woodall III	+1-202-956-7584	woodalls@sullcrom.com
Los Angeles		
Patrick S. Brown	+1-310-712-6603	brownp@sullcrom.com
Stanley F. Farrar	+1-310-712-6610	farrars@sullcrom.com
Tokyo		
Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com