

January 26, 2016

## Bank Capital Plans and Stress Tests

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### Federal Reserve Finalizes Rule Revising FR Y-14 Forms to Include CFO Attestation Requirements for Certain Large Bank Holding Companies

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On January 21, 2016, the Federal Reserve published in the Federal Register a final rule (the “*Final Rule*”)<sup>1</sup> modifying Forms FR Y-14A, FR Y-14Q and FR Y-14M (collectively, the “*FR Y-14 Forms*”). Most notably, the Final Rule requires the chief financial officer (“*CFO*”) of each bank holding company (“*BHC*”) that is overseen by the Federal Reserve’s Large Institution Supervision Coordinating Committee (the “*LISCC Firms*”) and that reports on the FR Y-14 Forms to make attestations regarding those forms and to “agree to report material weaknesses and any material errors in the data” reported on those forms.

Although the Final Rule is generally consistent with the Federal Reserve’s proposed rule issued in September 2015 (the “*Proposed Rule*”),<sup>2</sup> the Final Rule contains several important revisions made in response to industry comments.<sup>3</sup> Key provisions of the Final Rule include:

- ***Delayed implementation timing:*** The initial attestation requirement for the FR Y-14 Forms will be delayed by six months. The first attestation will be required for reports with a December 31, 2016 as-of date, in place of the June 30, 2016 date included in the Proposed Rule.
- ***Attestation that actual and projected data reported on the FR Y-14 Forms were prepared in good faith using reasonable efforts to conform with the applicable Federal Reserve form instructions:*** Under the Final Rule, this attestation includes qualifying language to reflect the Federal Reserve’s expectation that it will not penalize a firm for incorrect reporting where the firm has made a good faith effort to reasonably interpret the instructions or seek input from the Federal Reserve on a question or interpretation. This attestation will be required for all reports on the FR Y-14 Forms, including the monthly, quarterly and semiannual reports as of March 31, June 30 and September 30 (the “*Intra-Year Reports*”), beginning with the FR Y-14 Forms as of December 31, 2016.
- ***Attestation that actual reported data are “materially correct to the best of [the CFO’s] knowledge”:*** The language of this attestation in the Final Rule remains unchanged from the Proposed Rule. This attestation will be required for all reports on the FR Y-14 Forms, including the Intra-Year Reports, beginning with the FR Y-14 Forms as of December 31, 2016.

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- **Attestation that actual data being reported are subject to internal controls over reporting that “are effective and include those practices necessary to provide reasonable assurance as to the accuracy of [such] data”:** Under the Final Rule, the attestation will explicitly acknowledge that the internal controls are the joint responsibility of management (rather than the individual responsibility of the CFO, as suggested by the attestation language included in the Proposed Rule). This attestation will be required only for the FR Y-14 Forms as of December 31 of each year. For the forms as of December 31, 2016, the attestation will relate solely to the internal controls over submissions as of December 31, 2016. Beginning with the forms as of December 31, 2017, the attestation will also relate to the internal controls over Forms FR Y-14Q and FR Y-14M “throughout the year.”
- **Attestation that internal controls “are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company”:** Under the Final Rule, the CFO will be required to give this attestation only for the FR Y-14 Forms as of December 31 of each year. The language of this attestation remains unchanged from the Proposed Rule, and the first attestation will be required for the FR Y-14 Forms as of December 31, 2016.
- **Agreement to report promptly material weaknesses in internal controls for the FR Y-14 Forms and material errors or omissions in submitted data:** This attestation will be required for all reports on the FR Y-14 Forms, including the Intra-Year Reports. The language of this attestation in the Final Rule remains unchanged from the Proposed Rule.<sup>4</sup> Under the Final Rule, this attestation will be required for all reports beginning with the FR Y-14 Forms as of December 31, 2016.
- **“Enhanced” FAQ system:** In response to public comments suggesting improvements to the Federal Reserve’s FAQ process of responding to questions concerning the FR Y-14 Forms, the Federal Reserve states in the preamble to the Final Rule that it has recently implemented a new FAQ system intended to “enhance the Federal Reserve’s ability to track and respond to questions.”<sup>5</sup> The Federal Reserve believes this new system will allow reporting firms to gain “more insight into the status of FAQs” and “help ensure more consistent timing on responses.”<sup>6</sup> The Federal Reserve also notes that it has incorporated all relevant historical FAQs into the final reporting instructions issued under the Final Rule.
- **Intermediate Holding Companies:** In the preamble to the Final Rule, the Federal Reserve notes that it “expects to invite comment through a notice and comment process” on reporting requirements for intermediate holding company (“IHC”) subsidiaries of foreign banking organizations, noting that it would “evaluate the particular circumstances and challenges surrounding IHC formation vis-à-vis the full spectrum” of the Federal Reserve’s regulatory reporting requirements.<sup>7</sup> It “reiterate[s],” however, “that the attestation requirement applies to LISCC firms.”<sup>8</sup>
- **Other Changes:**
  - The Final Rule also includes several technical changes to the various specific reporting schedules for the FR Y-14 Forms, including changes with respect to certain line items and to the effective dates for certain changes to those schedules. For example, with respect to Schedules H.1 and H.2 of Form FR Y-14Q, the Final Rule (1) delays implementation for changes related to disposed loans and the syndicated pipeline by two quarters, to schedules as-of September 30, 2016, and for all other changes by one quarter, to schedules as-of June 30, 2016, (2) clarifies what information is intended to be captured regarding disposed loans and the syndicated loan pipeline, including clarifying that data for disposed loans are to be reported as of the date of disposition.
  - In addition, certain changes are included in the Final Rule to align reports on the FR Y-14 Forms with changes in the final capital rule recently approved by the Federal Reserve and with other existing requirements or to formalize information collections that are already reported as part of the supervisory process. Such changes include the shift in the Form FR Y-14A as-of date from September 30 to December 31 in accordance with modifications to the capital plan and stress test rules, removal of certain items related to tier 1 common capital, formalization of the Form FR Y-14Q Business Plan Changes schedule as a regulatory report (rather than as a case-by-case

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supervisory collection of information) and elimination of the Form FR Y-14Q Securities B.2 sub-schedule.

The Final Rule's phased implementation of the various CFO certification requirements described above is reflected in the required forms of certifications that change over the implementation period. Copies of the prescribed forms of certifications are attached hereto, along with comparisons showing the progressive changes from form to form.

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### ENDNOTES

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<sup>1</sup> 81 Fed. Reg. 3,412 (Jan. 21, 2016).

<sup>2</sup> Federal Reserve System, Proposed Agency Information Collection Activities; Comment Request, 80 Fed. Reg. 55,621 (Sep. 16, 2015). For a discussion of the Proposed Rule, see our memorandum to clients, *Bank Capital Plans and Stress Tests: Federal Reserve Board Proposes Rule Revising FR Y-14 Forms to Include CFO Attestation Requirements for Certain Large Bank Holding Companies* (Sep. 22, 2015), available at <https://www.sullcrom.com/bank-capital-plans-and-stress-tests-9-22-15>.

<sup>3</sup> See The Clearing House Association L.L.C. *et al.*, *Comment Letter Regarding Proposed Agency Information Collection Activities; Comment Request: Capital Assessment and Stress Testing Information Collection* (Nov. 16, 2015).

<sup>4</sup> Although, under the Final Rule, the Intra-Year Reports do not include an attestation as to the effectiveness of internal controls over the reporting of data, the language of this attestation retains a reference to "these internal controls" from the year-end attestation cover page.

<sup>5</sup> 81 Fed. Reg. 3,412, 3,414 (Jan. 21, 2016).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3,415.

<sup>8</sup> *Id.*

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# Annex A

*December 31, 2016 Attestation*

**FR Y-14A/Q/M as of 12/31/16  
Attestation for Cover Page**

## **Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A report form for this report date has been prepared in good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System.

Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that management is responsible for the internal controls over the reporting of these data and that these data are materially correct to the best of my knowledge. I attest that the internal controls for the FR Y-14A/Q/M as of December 31, 2016, are effective and include those practices necessary to provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.

**December 31, 2017 Attestation**

**FR Y-14A as of 12/31/17  
Attestation for Cover Page**

**Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A report form for this report date has been prepared in good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System.

Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that management is responsible for the internal controls over the reporting of these data and that these data are materially correct to the best of my knowledge. I attest that the internal controls for the FR Y-14A are effective and were effective throughout the year for the FR Y-14Q/M, and include those practices necessary to provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.

***Intra-Year Attestation***

**FR Y-14Q/M and FR Y-14A semi-annual  
Attestation Cover Page**

**Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A, FR Y-14Q or FR Y-14M schedules for this report date have been prepared in good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System. Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that these data are materially correct to the best of my knowledge. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.

# Annex B

## *Comparison: Proposed Attestation versus December 2016 Attestation*

**FR Y-14A/Q/M**  
**~~Proposed~~ as of 12/31/16**  
**Attestation for Cover Page**

### **Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal controls, including controls over the ~~Federal Reserve's~~ *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection ~~must~~ is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the ~~bank holding company's~~ chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A, ~~FR Y-14Q, and FR Y-14M~~ schedules (the "FR Y-14 schedules") report form for this report date ~~has~~ been prepared in ~~conformance~~ good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System.

Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that ~~I am~~ management is responsible for the internal controls over the reporting of these data, and that these data are materially correct to the best of my knowledge. I attest that the internal controls for the FR Y-14A/Q/M as of December 31, 2016, are effective and include those practices necessary to provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.

**Comparison: Proposed Attestation versus December 2017 Attestation**

**FR Y-14A/Q/M**  
**~~Proposed~~ as of 12/31/17**  
**Attestation for Cover Page**

**Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal controls, including controls over the ~~Federal Reserve's~~ *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection ~~must~~is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the ~~bank holding company's~~ chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A, ~~FR Y-14Q, and FR Y-14M schedules (the "FR Y-14 schedules")~~ report form for this report date ~~has~~ves been prepared in ~~conformance~~good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System.

Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that ~~I am~~management is responsible for the internal controls over the reporting of these data, and that these data are materially correct to the best of my knowledge. I attest that the internal controls for the FR Y-14A are effective and were effective throughout the year for the FR Y-14Q/M, and include those practices necessary to provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.

**Comparison: December 2016 Attestation versus December 2017 Attestation**

**FR Y-14A/~~Q/M~~ as of 12/31/~~16~~17  
Attestation for Cover Page**

**Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A report form for this report date has been prepared in good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System.

Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that management is responsible for the internal controls over the reporting of these data and that these data are materially correct to the best of my knowledge. I attest that the internal controls for the FR Y-14A/~~Q/M as of December 31, 2016~~, are effective and were effective throughout the year for the FR Y-14Q/M, and include those practices necessary to- provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.

**Comparison: December 2017 Attestation versus Intra-Year Attestation**

**FR Y-14Q/M and FR Y-14A as of 12/31/17 semi-annual  
Attestation ~~for~~ Cover Page**

**Attestation**

NOTE: Each bank holding company's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the *Capital Assessments and Stress Testing* information collection (FR Y-14A/Q/M). The *Capital Assessments and Stress Testing* information collection is to be prepared in accordance with instructions provided by the Federal Reserve System. The *Capital Assessments and Stress Testing* information collection must be signed and attested by the chief financial officer or an equivalent senior officer.

I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that the FR Y-14A ~~report form~~, FR Y-14Q or FR Y-14M schedules for this report date has ve been prepared in good faith using reasonable efforts of the bank holding company to conform with the instructions issued by the Federal Reserve System.

Regarding actual data as of the reporting period, I, the undersigned CFO or equivalent senior officer of the named bank holding company, attest that ~~management is responsible for the internal controls over the reporting of these data and that these data are materially correct to the best of my knowledge. I attest that the internal controls for the FR Y-14A are effective and were effective throughout the year for the FR Y-14Q/M, and include those practices necessary to provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of the bank holding company.~~ these these data are materially correct to the best of my knowledge. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified.