June 30, 2014

Bank Capital Plans and Stress Tests

Federal Reserve Proposes New Submission Deadlines and Other Revisions to Its Capital Plan Rule; Federal Banking Agencies Propose New Submission Deadlines for Dodd-Frank Act Company-Run Stress Tests

SUMMARY

The Board of Governors of the Federal Reserve System (the "*FRB*") recently released a notice of proposed rulemaking (the "*FRB NPR*", and the rules set forth therein, the "*FRB Proposed Rules*") that would amend the FRB's capital plan rule (the "*Capital Plan Rule*")[1] as well as its supervisory stress test rule (the "*FRB Supervisory Stress Test Rule*") and company-run stress test rules (the "*FRB Stress Test Rules*").[2] The FRB Proposed Rules would shift the start date of the annual capital plan and supervisory and company-run stress test cycles, the filing date for capital plans and company-run stress tests and the related planning horizon[3] back by approximately three months. The FRB Proposed Rules would not modify the upcoming capital plan and stress test cycle beginning on October 1, 2014 and ending September 30, 2015. Rather, they would amend the cycle that would otherwise begin on October 1, 2015 to instead begin on January 1, 2016 and end December 31, 2016 and correspondingly amend subsequent cycles. Key dates under the FRB Proposed Rules applicable to bank holding companies ("*BHCs*") and state member banks are summarized in the tables below. Savings and loan holding companies ("*SLHCs*"), once they are subject to the FRB Stress Test Rules, would be required to follow the schedule outlined below for BHCs of comparable size.

Key dates of the proposed timeline applicable to BHCs with total consolidated assets of $50 billion or more ("*Large BHCs*") and their state member bank subsidiaries

Supervisory stress test action	Company-run stress test action	Capital plan action	For the cycle beginning October 1, 2014 (same as under current FRB rules)	For the cycle beginning January 1, 2016 and thereafter
As-of date for financial data for capital plan and stress tests			September 30, 2014	December 31 of the preceding calendar year
	FRB notifies a Large BHC and/or its state member bank subsidiary that it will require the institution(s) to use one or more additional scenarios		By September 30, 2014	By December 31 of the preceding calendar year
FRB publishes scenarios for upcoming annual stress test cycle			By November 15, 2014	By February 15
	FRB communicates description of any additional components or scenarios to institution(s)		By December 1, 2014	By March 1
	Submission date for the results of the annual company-run stress test	Submission date for a Large BHC's capital plan	By January 5, 2015	By April 5
FRB publishes summary results of a Large BHC's supervisory stress test	Disclosure date for summary results of the annual company-run stress test	FRB responds to a Large BHC's capital plan and publicly discloses the results	By March 31, 2015	By June 30
	FRB notifies a Large BHC that it will require the company to use one or more additional scenario(s) in the mid-cycle stress test		By March 31, 2015	By June 30
	FRB communicates description of any additional components or scenarios to a Large BHC for the mid-cycle stress test		By June 1, 2015	By September 1
	Submission date for the results of a Large BHC's mid-cycle stress test		By July 5, 2015	By October 5
	Disclosure date for results of a Large BHC's mid-cycle stress test		July 5– July 20, 2015	October 5 – October 20

**Key dates of proposed timeline applicable to
BHCs with assets between $10 and $50 billion ("*Covered BHCs*") and state member banks subject to the FRB Stress Test Rules that are not subsidiaries of Large BHCs**

Company-run stress test action	For the cycle beginning October 1, 2014 (same as under current FRB Stress Test Rules)	For the cycle beginning January 1, 2016 and thereafter
As-of date for financial data for stress tests	September 30, 2014	December 31 of the preceding calendar year
FRB notifies a BHC/state member bank that it will require the institution to use one or more additional scenarios	By September 30, 2014	By December 31 of the preceding calendar year
FRB publishes scenarios for upcoming annual stress test cycle	By November 15, 2014	By February 15
FRB communicates description of any additional components or scenarios to BHC/state member bank	By December 1, 2014	By March 1
Submission date for the results of the annual company-run stress test	By March 31, 2015	By July 31
Disclosure date for summary results of the annual company-run stress test	June 15 through June 30, 2015	October 15 through October 31

The FRB Proposed Rules include a number of other changes, including proposals that would:

- modify the Capital Plan Rule to limit a Large BHC's ability to make capital distributions in a given quarter to the extent that its actual capital issuances in that quarter were less than the amount indicated in its capital plan;
- clarify the application of the Capital Plan Rule to a Large BHC that is a subsidiary of a U.S. intermediate holding company (an "*IHC*") of a foreign banking organization (an "*FBO*");[4]
- clarify that BHCs and state member banks that have been notified that they have exited their parallel run are not permitted to use the Basel III "advanced approaches" to calculate regulatory capital requirements until the stress test cycles, and, for Large BHCs, the capital plan cycle, beginning on January 1, 2016;
- permit, rather than require, resubmission of a capital plan following the FRB's objection;
- eliminate the need to obtain prior approval for "accretive" issuances of capital instruments (including common and preferred shares) that would qualify for inclusion in the numerator of regulatory capital ratios; and
- add a stricter definition of "BHC stress scenario" to the Capital Plan Rule and make other conforming changes to related rules and guidance.

Like the FRB, the Office of the Comptroller of the Currency (the "*OCC*") and the Federal Deposit Insurance Corporation (the "*FDIC*" and, together with the OCC and FRB, the "*Agencies*") each also recently issued a notice of proposed rulemaking (the "*OCC NPR*" and the "*FDIC NPR*", respectively, and the rules set forth therein, the "*OCC Proposed Rules*" and the *FDIC Proposed Rules*", respectively) that would amend the OCC's and FDIC's annual stress test rules[5] (the "*OCC Stress Test Rules*" and the

"*FDIC Stress Test Rules*", respectively) by shifting the timing of the stress test cycle, filing dates and planning horizon by three months. The key dates under the OCC Proposed Rules and FDIC Proposed Rules applicable to national banks, savings banks and FDIC-insured, state nonmember banks subject, as applicable, to the OCC Stress Test Rules and FDIC Stress Test Rules (collectively, *"Covered Banks*") are summarized in the tables below.

Key dates of proposed timeline applicable to Covered Banks with $50 billion or more in assets

Company-run stress-test action	For the cycle beginning October 1, 2014 (same as under current OCC Stress Test Rules/FDIC Stress Test Rules)	For the cycle beginning January 1, 2016 and thereafter
As-of date for financial data for stress tests	September 30, 2014	December 31
FDIC/OCC publishes scenarios for upcoming annual stress test cycle	By November 15, 2014	By February 15
Submission date for the results of the annual company-run stress test	By January 5, 2015	By April 7
Disclosure date for summary results of the annual company-run stress test	Between March 15 and March 31, 2015	Between June 15 and July 15, *except no earlier than FRB publication of the supervisory stress test results of the Covered Bank's parent holding company*

Key dates of proposed timeline applicable to Covered Banks with between $10 billion and $50 billion in assets

Company-run stress-test action	For the cycle beginning October 1, 2014 (same as under current OCC Stress Test Rules/FDIC Stress Test Rules)	For the cycle beginning January 1, 2016 and thereafter
As-of date for financial data for stress tests	September 30, 2014	December 31
FDIC/OCC publishes scenarios for upcoming annual stress test cycle	By November 15, 2014	By February 15
Submission date for the results of the annual company-run stress test	By March 31, 2015	By July 31
Disclosure date for summary results of the annual company-run stress test	Between June 15 and June 30, 2015	Between October 15 and October 31

Like the FRB Proposed Rules, the OCC Proposed Rules also clarify that national banks and federal savings banks subject to the OCC Stress Test Rules that have been notified that they have exited their parallel run will not have to calculate their regulatory capital requirements over the stress test planning horizon using the Basel III "advanced approaches" until the stress testing cycle beginning on January 1, 2016 and for stress test cycles thereafter. The FRB Proposed Rules, OCC Proposed Rules and FDIC Proposed Rules are collectively referred to herein as the "*Agencies' Proposed Rules*", and the current

FRB Stress Test Rules, OCC Stress Test Rules and FDIC Stress Test Rules are collectively referred to as the "*Agencies' Stress Test Rules*".

Comments to the FRB NPR are due August 11, 2014. Comments to the OCC NPR and FDIC NPR must be received within 60 days from the date of publication of those NPRs in the Federal Register, which is expected shortly.

AGENCIES' PROPOSED RULES

A. TIMING OF ACTIONS

Timing of capital plan and stress test cycles. As noted above, under the current Capital Plan Rule, the capital plan cycle begins on October 1 of a calendar year and ends September 30 of the following calendar year.[6] Large BHCs must submit their capital plans to the FRB by January 5 (for a nine-quarter planning horizon beginning October 1 of the prior year), and the FRB issues an objection or non-objection to the capital plan by March 31.[7] Similarly, under the Agencies' Stress Test Rules, the stress test cycle begins on October 1 of a calendar year and ends September 30 of the following calendar year,[8] and the Agencies distribute stress scenarios by November 15.[9] Large BHCs and their state member bank subsidiaries, as well as Covered Banks with $50 billion or more in assets, are required to complete and submit the results of their stress tests by January 5 (for a nine-quarter planning horizon beginning October 1 of the prior year)[10] and publish a summary of their results during the period beginning March 15 and ending March 31.[11] Large BHCs also must complete and submit the results of their mid-cycle company-run stress tests by July 5 and publish a summary of their results approximately three months later during the period beginning September 15 and ending September 30.[12] Covered Banks with between $10 and $50 billion in assets, Covered BHCs and state member banks with over $10 billion in assets that are not Large BHC subsidiaries are required to submit their stress test results by March 31 (for a nine-quarter planning horizon beginning October 1 of the prior year)[13] and publish a summary of their results in the period beginning June 15 and ending June 30.[14]

Recognizing that, under these rules, institutions with $50 billion or more in assets are required to conduct their annual company-run stress tests at the end of the calendar year, when there are often other demands on resources due to other financial reporting requirements and "living will" requirements, the Agencies' Proposed Rules would generally shift the timing of the stress test cycles by one calendar quarter. Acknowledging the added burden for Large BHCs, which also are completing their capital plans at year end, the FRB Proposed Rules would similarly shift the timing of the capital plan cycle. These changes would take effect beginning with the capital plan and stress test cycle that would begin October 1, 2015. Accordingly, under the Agencies' Proposed Rules, that stress test cycle would now begin for all institutions subject to the Agencies' Stress Test Rules, and that capital plan cycle would now begin for Large BHCs under the FRB Capital Plan Rule, on January 1, 2016 and end on December 31, 2016. Thereafter, capital plan and stress test cycles would begin on January 1 of a calendar year and end December 31 of the same year. Beginning with the January 1, 2016 cycle, the Agencies would provide scenarios that institutions must use in conducting annual stress tests by February 15,[15] and they would provide the as-of date and description of the trading and counterparty component for institutions with significant trading activity subject to that component by March 1.[16] The FRB would notify institutions subject to the FRB Stress Test Rules that are subject to any additional scenarios or scenario components (through notice-and-comment procedures) of the additional requirement(s) by December 31 of the preceding calendar year and provide a description of such additional components and scenarios by March 1. The FRB would notify a Large BHC of a requirement to use any additional components and scenarios in the mid-cycle stress tests by June 30.[17] The FRB Proposed Rules also would make the same amendments to the supervisory stress test cycle and the dates on which the FRB would notify Large BHCs and other institutions subject to the FRB Supervisory Stress Test Rule of the scenarios and, if applicable, additional scenarios and components for purposes of the supervisory stress test.[18]

The Agencies' Proposed Rules also would amend the timing of public disclosure of company-run stress test results consistent with the proposed changes to other elements of the stress test cycle for Covered BHCs, SLHCs, Covered Banks and state member banks that are not subsidiaries of a Large BHC, IHC or nonbank financial company designated by the Financial Stability Oversight Council for supervision by the FRB (a "*SIFI*"). The proposed amendments for Large BHCs and their state member bank subsidiaries, however, would align those institutions' disclosure with that by the FRB under the FRB Supervisory Stress Test Rule. Currently, the FRB discloses the results of a Large BHC's supervisory stress test on or before March 31,[19] and a Large BHC is required to publish the results of its annual stress test in the period beginning March 15 and ending March 31. For stress test cycle beginning January 1, 2016 and cycles thereafter, the FRB Proposed Rules would amend the date on which the FRB would disclose the results of its supervisory stress test results to no later than June 30 and provide that Large BHCs and their state member bank subsidiaries would disclose the results of their annual stress tests within 15 calendar days after the date of the FRB's disclosure. The FRB would announce the expected date of public disclosure of the supervisory stress test results at least two weeks in advance.[20] The FRB NPR indicates that the FRB does not expect to disclose these results before June 1 for the January 1 cycles.[21] Furthermore, noting that the FRB does not engage in an in-depth review of the results of mid-cycle stress tests because such tests are designed to reflect a Large BHC's own assessment of its capital adequacy,[22] the FRB Proposed Rules would accelerate the public disclosure of mid-cycle stress test results in an effort to clarify that the FRB does not play a direct role in these stress tests.

In summary, for the proposed modified capital plan and stress test cycles beginning January 1, 2016 and thereafter, the proposed shift in the FRB's Proposed Rules to the capital plan and supervisory stress test deadlines and the Agencies' Proposed Rules to the company-run stress test deadlines is as follows:

- **For BHCs.**
  - Large BHCs would be required to submit their capital plan and annual stress test results to the FRB by April 5 for a planning horizon that begins in the first quarter of that year (that is, January 1) and goes for nine quarters. The FRB would issue an objection or non-objection to the capital plan by June 30.[23] Although the timing of the upcoming capital plan cycle beginning October 1, 2014 remains unchanged under the FRB Proposed Rules, in order to provide a transition to the proposed timing, the FRB NPR indicates that the FRB's objection or non-objection to a capital plan submitted January 5, 2015 would cover a five-quarter period commencing with the second quarter of 2015 and extending through the second quarter of 2016.[24] As noted above, the FRB would disclose the results of its supervisory stress tests by June 30, and Large BHCs would be required to publicly disclose the results of their annual stress tests within 15 calendar days after the date on which the FRB discloses those results.[25]
  - For the mid-cycle stress tests, Large BHCs would be required to conduct their mid-cycle stress tests using data as of June 30 of the calendar year, to report the results of their mid-cycle stress tests to the FRB by October 5[26] and to disclose the results of the mid-cycle stress tests within 15 calendar days after submitting the results of the stress tests to the FRB (that is, in the period beginning October 5 and ending October 20).
  - Covered BHCs would have until July 31 to conduct their stress tests and submit the results to the FRB, and they would be required to disclose the results of their stress tests in the period beginning October 15 and ending October 31.[27]

- **For State Member Banks.**
  - A state member bank that is a subsidiary of a Large BHC, IHC or SIFI would be required to conduct its stress test and submit the results to the FRB by April 5 for a planning horizon that begins in the first quarter of that year and goes for nine quarters. These state member banks would be required to disclose the results of their stress tests within 15 calendar days after the date on which the FRB discloses the results of their parent institutions' supervisory stress tests.[28]
  - A state member bank that is not a subsidiary of a Large BHC, IHC or SIFI would be required to conduct its stress tests and submit the results to the FRB by July 31 for the same planning horizon and to disclose the results of its stress test in the period beginning October 15 and ending October 31.[29]

- **For SLHCs.**
  - For SLHCs, as under the current FRB Stress Test Rules, the annual stress test requirements would not apply to an SLHC until the SLHC becomes subject to the FRB's minimum regulatory capital requirements. SLHCs (other than those substantially engaged in commercial activities or insurance underwriting activities) are subject to the capital requirements of the FRB's Regulation Q beginning on January 1, 2015.[30]
  - An SLHC subject to the FRB's minimum regulatory capital requirements with assets of $50 billion or more would be required to conduct its annual stress tests and submit the results to the FRB by April 5 for a planning horizon that begins in the first quarter of that year and goes for nine quarters and to disclose the results of its stress test in the period beginning June 15 and ending June 30.[31]
  - An SLHC subject to the FRB's minimum regulatory capital requirements with assets between $10 and $50 billion would be required to conduct its stress test and submit the results to the FRB by July 31 for the same planning horizon and to disclose the results of its stress test in the period beginning October 15 and ending October 31.[32]

- **For Covered Banks.**
  - Covered Banks with $50 billion or more in assets would be required to conduct their stress tests and submit the results by April 7 for a planning horizon that begins in the first quarter of that year

and goes for nine quarters and to disclose the results in the period beginning June 15 and ending July 15. However, a consolidated subsidiary of a Large BHC would not be permitted within this period to disclose the results of its stress tests any earlier than the FRB's publication of the supervisory stress test results of the parent institution.[33] The OCC Proposed Rules and FDIC Proposed Rules each would allow a Covered Bank to publish its stress test results prior to June 15 if the FRB publishes the supervisory stress test results of the Covered Bank's parent prior to that date through either actual publication by the Covered Bank or publication by the parent as currently permitted under the OCC Stress Test Rules and FDIC Stress Test Rules.

- Covered Banks with between $10 and $50 billion in assets would be required to conduct their stress tests and submit the results by July 31 for the same planning horizon and to disclose the results of their stress tests in the period beginning October 15 and ending October 31.[34]

As compared to the Agencies' Stress Test Rules, the Agencies' Proposed Rules would provide an additional 30 days beyond a one-quarter shift for reporting the results of stress tests to the Agencies for SLHCs and Covered Banks with between $10 and $50 billion in assets and Covered BHCs, as well as for state member banks that are not subsidiaries of Large BHCs, IHCs or SIFIs. The FRB NPR notes that this change is intended to further tailor the stress test requirements for these institutions by providing them an additional month to conduct stress tests. However, despite significant advocacy by the industry to obtain additional time between the date on which the Agencies release scenarios and the filing dates for capital plans and stress test results, particularly for Large BHCs and Covered Banks with $50 billion or more in assets, the Agencies' Proposed Rules do not amend the release date for scenarios relative to the filing deadlines.

Transition/Applicability provisions. As a general matter, the Agencies' Stress Test Rules currently provide that an institution is subject to the stress testing requirements in the year following the year in which it meets or crosses the applicable asset threshold.[35] The current stress test cycle that begins on October 1 of a given year, therefore, gives an institution approximately three to six quarters to come into compliance with the Agencies' Stress Test Rules after it meets or exceeds the applicable asset threshold. The Agencies' Proposed Rules generally seek to preserve the length of this transition period. Thus, to take into account the proposed timing changes to the stress test cycles described above, the Agencies' Proposed Rules would amend the current transition/applicability provisions of the Agencies' Stress Test Rules, and the FRB Proposed Rules would amend the transition provisions in the FRB Supervisory Stress Test Rule and the Capital Plan Rule.

In general, the Agencies' Proposed Rules each would establish a cutoff date of March 31 and provide that BHCs, state member banks, SLHCs and Covered Banks that meet or cross the relevant asset threshold (that is, $10 or $50 billion) on or before March 31 of a given year would be subject to the applicable Agencies' Stress Test Rules (and, for Large BHCs, the FRB Supervisory Stress Test Rule) beginning on January 1 of the next calendar year after the year in which the institution first meets or crosses the asset threshold. BHCs, state member banks, SLHCs and Covered Banks that meet or cross the relevant asset threshold after March 31 of a given year would be subject to the applicable Agencies' Stress Test Rules (and, for Large BHCs, the FRB Supervisory Stress Test Rule) beginning on January 1 of the second calendar year after the institution first meets or crosses the relevant asset threshold.[36] For example, a BHC that crosses the $10 billion threshold on March 31, 2015 would be required to submit the results of its first annual stress test on April 5, 2016 for the stress test cycle starting January 1, 2016 and ending December 31, 2016 and the planning horizon of January 1, 2016 through March 31, 2018. However, if the BHC crosses the $10 billion threshold as of September 30, 2015, it would be required to submit the results of its first annual stress test on April 5, 2017 for the stress test cycle starting January 1, 2017 and ending December 31, 2017 and planning horizon of January 1, 2017 through March 31, 2019. The OCC NPR and FDIC NPR note that these amendments are intended to prevent a situation in which, for example, a national bank or savings association meets the applicable threshold on September 30 of a given year and, under the new proposed stress testing timeline, would be required to conduct its first stress test only three months later in the modified stress test cycle beginning on January 1 of the following year.[37]

With respect to Covered BHCs that transition to Large BHCs (that is, meet or cross the $50 billion threshold), currently under the FRB Stress Test Rules, such a Covered BHC is given at least several months to comply with the accelerated stress test reporting and disclosure requirements applicable to Large BHCs. However, during that transition period, the BHC is required to submit a capital plan to the FRB on the accelerated time frame applicable to Large BHCs. In an effort to align the reporting of stress test results with the submission of capital plans, as well as the reporting and disclosure time frame for state member banks and Covered Banks,[38] the FRB Proposed Rules would provide that a Covered BHC that becomes a Large BHC would be subject to company-run stress test requirements for Large BHCs on the first day of the first stress test cycle following the date on which it grows to meet or exceed the $50 billion threshold. However, as noted above, depending on whether the BHC met or exceeded the threshold before or after March 31, the BHC may not be subject to the FRB Supervisory Stress Test Rule until the second cycle after it grows to $50 billion or over.

Other proposed amendments to transition/applicability provisions of the FRB Stress Test Rules and FRB Supervisory Stress Test Rule, as well as proposed amendments to those provisions in the Capital Plan Rule and with respect to institutions subject to advanced approaches, are summarized below. In general, for FRB-supervised institutions, the transition dates discussed below would apply unless the time is extended by the FRB in writing.

- **For BHCs Under the Capital Plan Rule.**
  - Currently, under the Capital Plan Rule, a BHC that becomes a Large BHC after January 5 of a given year is not subject to the Capital Plan Rule until January 1 of the next calendar year.[39] Under the FRB Proposed Rules, a BHC would be subject to the Capital Plan Rule beginning on the first day of the first capital plan cycle after the BHC meets or exceeds the $50 billion asset threshold for the first time.[40] In other words, a BHC that becomes a Large BHC after October 1, 2014 (the next capital plan cycle) would not be required to file a capital plan on January 5, 2015; rather, the next capital plan cycle that it would be subject to would be the one starting on

October 1, 2015 (modified to be January 1, 2016 under the FRB Proposed Rules),[41] and such BHC would be required to submit its capital plan on April 5, 2016.

- **For Subsidiaries of Certain FBOs Under the FRB's Rules.**
  - A BHC that meets the $50 billion asset threshold and is relying, as of July 20, 2015, on the FRB's Supervision and Regulation Letter SR 01-01 would be subject to the Capital Plan Rule for the cycle beginning January 1, 2016 (rather than after July 21, 2015 as under the current Capital Plan Rule)[42] and would be required to comply with the applicable stress test requirements beginning on January 1, 2016 (rather than beginning October 1, 2015 as under the current rules).[43]
- **For SIFIs Under the FRB Stress Test Rules and FRB Supervisory Stress Test Rule.**
  - Under the current FRB Stress Test Rules and FRB Supervisory Stress Test Rule, SIFIs are subject to stress test requirements in the year after they become subject to minimum regulatory capital requirements.[44] Under the FRB Proposed Rules, the FRB would notify a SIFI through a rule or order before applying the supervisory and company-run stress test requirements to the institution. In general, SIFIs would have between nine and 10 months to comply after they receive notice from the FRB. If the FRB issues such a rule or order on or before March 31, the SIFI would be required to comply with stress test requirements beginning on January 1 of the following year. If the FRB issues such an order after March 31 of a given year, the SIFI would be required to comply with stress test requirements beginning on January 1 of the second year following the year in which the FRB issued the rule or order.[45] The FRB NPR notes that this revised notice-and-transition period would provide the FRB flexibility to tailor the FRB Stress Test Rules to SIFIs.[46]
- **For Institutions Subject to Advanced Approaches Under the FRB's and OCC's Rules.**
  - Under the FRB Proposed Rules, beginning with the capital plan and stress test cycle starting January 1, 2016, a Large BHC that has been notified that it has exited a successful parallel run would be required to use Basel III advanced approaches to estimate regulatory capital for purposes of preparing and submitting its capital plan, and all FRB-supervised institutions that have received such notice with respect to their parallel run would be required to use the advanced approaches to estimate regulatory capital for purposes of conducting and disclosing results of stress tests, if they receive notification of this requirement from the FRB before the first day of the capital plan or stress test cycle in which they are required to use the advanced approaches method. With the proposed timing shift, these institutions would, therefore, receive such notification, if applicable, by December 31 of the prior year.[47]
  - Under the OCC Stress Test Rules, a national bank or federal savings bank that is an advanced approaches banking organization is required to use the advanced approaches to calculate its minimum regulatory capital ratios if it is notified that it has exited a satisfactory parallel run.[48] Under the OCC Proposed Rules, no national bank or federal savings association would be required to use the Basel III advanced approaches in its stress tests until the stress testing cycle beginning on January 1, 2016, even if the organization has exited a satisfactory parallel run, thus deferring incorporation of the advanced approaches into stress tests for one stress testing cycle. According to the OCC NPR, this transition period will provide the OCC with sufficient time to integrate the advanced approaches into its stress testing examination processes and to provide guidance to advanced approaches banking organizations regarding supervisory expectations on the use of advanced approaches in stress testing projections.[49]

B. ADDITIONAL PROPOSED AMENDMENTS TO FRB CAPITAL PLAN RULE

Consequences for failure to execute planned actions, including capital issuances. Under the Capital Plan Rule and the FRB's Comprehensive Capital Analysis and Review Program ("*CCAR*"), when reviewing a Large BHC's capital plan, the FRB considers the description of all planned capital actions for each quarter of a planning horizon, including both capital issuances and capital distributions, and relies on these descriptions of the planned capital actions as a basis for its action on a capital plan. Noting behavior in previous capital plan cycles when some Large BHCs included issuances of capital instruments in their capital plans but did not execute those issuances, the FRB Proposed Rules would prevent a Large BHC from making capital distributions in a given quarter to the extent that it does not execute planned capital issuances for that quarter. Specifically, under the FRB Proposed Rules, if the FRB does not object to a capital plan and the Large BHC raises a smaller dollar amount of regulatory capital in a calendar quarter than the amount of capital the Large BHC projected that it would issue under baseline conditions in its capital plan, the Large BHC would be required to reduce the amount of its capital distributions on regulatory capital instruments or increase the amount of its capital issuances. The reduction or increase must be with respect to instruments with greater or equal ability to absorb losses, such that the net dollar amounts of the Large BHC's actual capital issuances and capital distributions in that calendar quarter are no less than the amounts projected in the Large BHC's capital plan for the calendar quarter. The FRB Proposed Rules would identify common equity tier 1 capital as having the greatest ability to absorb losses, followed by additional tier 1 capital and tier 2 capital (each as defined in the FRB's Regulation Q).[50]

The FRB NPR notes that this proposed change would memorialize in the Capital Plan Rule the FRB's current practice of approving repurchases of common stock on both a net and gross basis so that a company is required to reduce repurchases to the extent that it does not issue as much common stock as it had planned to mitigate the fact that when a Large BHC does not execute planned capital issuances, it will have a lower amount of capital, all other things being equal. The FRB Proposed Rules would exempt from this offset requirement scenarios where the contemplated capital issuances were to support a merger or acquisition that was not consummated, demonstrating the FRB's recognition that it would be appropriate for the Large BHC in this scenario to maintain the gross amount of its capital distributions.

The FRB NPR notes that consistent failure to execute planned capital issuances may be indicative of shortcomings in a Large BHC's capital planning processes. As such, consistent failure to execute planned capital issuances may result in the FRB's objection to a capital plan on qualitative grounds because the assumptions and analysis underlying the plan, or the methodologies for reviewing the robustness of the Large BHC's capital adequacy process, are not reasonable or appropriate. The FRB's discussion of this proposed modification also notes that, in the FRB's view, the observed practice of widely varying planned capital distributions based on whether they occur in an "out-quarter" as compared to a quarter that is subject to a possible objection, may result in a similar objection to a capital plan on the basis that this increasing practice erodes the credibility of Large BHCs' capital plans.

These proposed modifications, if adopted, would create a significant disincentive for Large BHCs to include in their capital plans issuances that are not necessary for the Large BHC to meet its regulatory capital targets but that the Large BHC would pursue if market conditions warrant to avoid the need for adjustments, or a possible FRB objection, if market conditions prevent the Large BHC from proceeding as planned.

Modifications to Capital Plan Rule's resubmission requirements. The FRB Proposed Rules would modify the current requirement in the Capital Plan Rule that a Large BHC must resubmit a revised capital plan within 30 days of the FRB issuing an objection to the plan. In an effort to allow a Large BHC sufficient time to remediate the deficiencies in its capital plan prior to resubmission, such as material outstanding supervisory issues or material deficiencies in the company's risk measurement and management practices or internal controls, the FRB Proposed Rules would provide flexibility by *permitting* rather than requiring a Large BHC to resubmit its capital plan within the 30-day time frame if the FRB objects to the capital plan. As under the Capital Plan Rule, if a Large BHC does not resubmit its plan for the FRB's approval, the Large BHC would be limited to capital distributions approved by the FRB until the FRB provides a non-objection to the resubmitted capital plan.[51] As such, a Large BHC may choose to resubmit its plan if it wishes to seek the FRB's non-objection to its capital plan prior to the next capital plan cycle.

The FRB Proposed Rules would continue to require a Large BHC to resubmit its capital plan within 30 days if it determines there has been or will likely be a material change in the Large BHC's risk profile (including a material change in its business strategy or any risk exposure), financial condition or corporate structure. The FRB Proposed Rules also would not change the current provisions in the Capital Plan Rule permitting the FRB to direct a Large BHC to revise and resubmit its capital plan under certain circumstances.[52]

Clarification of CCAR process for BHC subsidiaries of FBOs. The FRB's Enhanced Prudential Standards Rule requires an FBO with U.S. non-branch assets of $50 billion or more to establish, by July 1, 2016, an IHC that is generally subject to the same prudential standards as a U.S. BHC, including capital planning and stress testing requirements.[53] Under the Enhanced Prudential Standards Rule, an IHC is required to submit its first capital plan on January 5, 2017 (which would be modified under the FRB Proposed Rules to April 5, 2017 for the capital plan cycle starting January 1, 2017 and ending December 1, 2017)[54] and to conduct its first stress test under the stress test rules beginning with the following stress test cycle (which would be modified under the FRB Proposed Rules to the cycle beginning January 1, 2018). The Enhanced Prudential Standards Rule also provides that each subsidiary BHC of an FBO is subject to applicable stress testing requirements until the stress test cycle beginning October 1, 2017 (which would be modified under the FRB Proposed Rules to the cycle beginning January 1, 2018), when its IHC parent would be subject to the full CCAR process. Thus, under the FRB Proposed Rules, there would be no overlap in stress testing requirements vis-à-vis an IHC and its subsidiary BHC. That is, the BHC subsidiary would submit the results of its last stress test on April 5, 2017 for the stress test cycle starting January 1, 2017 and ending December 31, 2017 and the planning horizon of January 1, 2017 through March 31, 2019, and the IHC would submit the results of its first one on April 5, 2018 for the stress test cycle starting January 1, 2018 and ending December 31, 2018 and the planning horizon of January 1, 2018 through March 31, 2020.

The Enhanced Prudential Standards, however, did not address how the Capital Plan Rule would apply to a subsidiary BHC with total consolidated assets of $50 billion or more prior to application of the Capital Plan Rule to the IHC.[55] The FRB Proposed Rules would clarify that a BHC that is a subsidiary of an IHC and that was subject to the Capital Plan Rule on January 1, 2016 would remain subject to the general requirement to submit a capital plan under the Capital Plan Rule, and the FRB would continue to evaluate the subsidiary BHC through the CCAR process, through the cycle ending December 31, 2017.[56] Such BHC subsidiary also would be subject to requirements regarding review of capital plans and publication of results, and approval requirements for certain capital actions, until the FRB issues an objection or non-objection to the capital plan of the relevant IHC.[57] BHC subsidiaries of IHCs would no longer be subject to the Capital Plan Rule at that time. Thus, under the FRB Proposed Rules, an existing BHC subsidiary of an IHC would continue to submit a capital plan on April 5, 2016 and again on April 5, 2017, and both the IHC and its BHC subsidiary would submit capital plans on April 5, 2017. The FRB NPR notes, however, that the FRB expects for this capital plan cycle that the IHC and its subsidiary BHC may be able to submit certain aspects of the capital plan jointly or in a single capital plan.

In a footnote, the FRB NPR also addresses the treatment of an existing BHC that an FBO designates as its IHC for purposes of compliance with the Enhanced Prudential Standards Rule. In such a case, that BHC would continue to be subject to FRB's capital rules in Regulation Q until December 31, 2017, and the FRB Stress Test Rules until September 30, 2017. In this event, the IHC would be required to submit a capital plan on April 5, 2017, and the IHC would be subject to the CCAR process for that capital plan cycle (that is, the cycle starting January 1, 2017), and the IHC would submit the results of its annual company-run stress tests on April 5, 2018 for the following stress test cycle.[58] The intent appears to be that there is no lapse between the capital plan and stress test filings.

Finally, the FRB NPR also includes guidance on the FRB's expectations for the evaluation of an IHC's capital plan. Because an IHC would not be subject to supervisory or company-run stress tests under the FRB Stress Test Rules during the stress test cycle that begins on January 1, 2017, the FRB NPR indicates that the FRB will not base its assessment of the IHC's initial capital plan on supervisory stress test estimates conducted under the FRB Stress Test Rules applicable to the stress test cycle beginning on that date. Instead, for the capital plan cycle beginning January 1, 2017, the FRB would use a more limited quantitative assessment that is expected to be based on the IHC's own baseline and stress scenario, and any severely adverse scenarios provided by the FRB, and a qualitative assessment of the IHC's capital planning processes and supporting practices. The FRB NPR notes that, for the following capital plan cycle beginning January 1, 2018 in which a capital plan would be due to the FRB by April 5, 2018 and cycles thereafter, the IHC will be subject to supervisory and company-run stress tests, and the FRB expects to evaluate each IHC under the full CCAR supervisory process.

Capital actions not requiring approval. Under the Capital Plan Rule, a Large BHC must request prior approval or provide prior notice of a capital distribution if the "dollar amount of the capital distribution will exceed the amount described in the capital plan for which a non-objection was issued".[59] The Federal Reserve has previously taken the position that this requires prior approval of the issuance of new regulatory capital instruments not included in a capital plan that received a non-objection.[60] Recognizing that the FRB generally approves and expects to continue approving these requests in the future, the FRB Proposed Rules would remove the requirement to obtain approval or provide notice for the issuance of "accretive" regulatory capital instruments. Specifically, the FRB Proposed Rules would carve out of the prior approval requirement distributions involving incremental issuances of instruments that would qualify for inclusion in the numerator of regulatory capital ratios (that is, common equity tier 1, additional tier 1, and tier 2 capital). The FRB Proposed Rules also would clarify that Large BHCs should look at the distributions for each quarter in order to determine whether the dollar amount of the capital distribution will exceed the amount described in the capital plan for which a non-objection was issued, thus triggering the notice or approval requirement.[61] The FRB Proposed Rules do not, however, provide explicit guidance with respect to the FRB's expectation to make an instrument "accretive" and the associated time period (*e.g.*, capital planning cycle, planning horizon).

Definition of "BHC stress scenario". The Capital Plan Rule requires each Large BHC to design its own stress scenario that is appropriate to its business model and portfolios, the evaluation of which is a key part of the qualitative assessment in CCAR. In light of the FRB's growing focus on an institution's ability to design appropriate stress scenarios that take into account its own idiosyncratic vulnerabilities and operations, the FRB Proposed Rules would add to the FRB Capital Plan Rule a new defined term for "BHC Stress Scenario" to describe the FRB's expectations regarding scenario design. The FRB Proposed Rules would define "BHC stress scenario" as "a scenario designed by the BHC that stresses the specific vulnerabilities of the BHC's risk profile and operations, including those related to the company's capital adequacy and financial condition".[62] Most significantly, the FRB NPR notes that an appropriately tailored scenario is expected to result in an impact to projected pre-tax net income that is at least as severe as the results of the Large BHC's company-run stress test under the FRB's severely adverse scenario. However, a stress scenario that produces regulatory capital and tier 1 capital ratios that are lower than those produced under the FRB's severely adverse scenario would not, by itself, constitute an appropriate BHC stress scenario. Accordingly, the FRB would expect any BHC stress scenario to be designed to capture potential risks stemming from a Large BHC's idiosyncratic positions and activities.

C. OTHER MODIFICATIONS

Clarification of assumptions regarding capital actions under the FRB Stress Test Rules. Under the FRB Stress Test Rules, BHCs, SLHCs and state member banks subject to those rules currently are required to use a consistent approach for incorporating assumed capital actions into their stress tests. The FRB NPR notes that this requirement was designed to help ensure comparability across companies with respect to the publicly disclosed results of stress tests. In the FRB Proposed Rules, the FRB is proposing to clarify these assumptions with the intent of further enhancing this comparability and to account for certain contractual obligations.[63] Specifically, the FRB Proposed Rules would provide that, for the second through the ninth quarters of the planning horizon, institutions should assume no issuances of capital instruments eligible for inclusion in the numerator of a regulatory capital ratio, except for issuances related to expensed employee compensation.[64] The FRB NPR notes that this change would be in keeping with the FRB's current practices and the existing requirement that institutions assume no repurchase or redemption of capital instruments eligible for inclusion in the numerator of a regulatory capital ratio so that capital actions that are subject to future adjustment, market conditions or regulatory approvals are not reflected in a company's projected regulatory capital.[65]

Other modifications. The FRB Proposed Rules also would revise the FRB's Policy Statement on the Scenario Design Framework for Stress Testing to reflect the timing changes in the cycle shift and applicability to IHCs, discussed above. In addition, the FRB Proposed Rules would revise the hearing procedures in the Capital Plan Rule to replace the formal hearing with informal procedures, and a Large BHC would have 15 days to request an informal hearing that would be held within 30 days of the request. The FRB would provide written notice of its final decision following the hearing within 60 days after the conclusion of the hearing. The FRB NPR notes that these informal hearing procedures are modeled on those used in reviewing notices of appointments of directors and senior executive officers under its Regulation Y. In addition, under the FRB Proposed Rules, a Large BHC would be required to be capable of providing the FRB its loss, revenue and expense estimation models used by the Large BHC for stress scenario analysis, including supporting documentation regarding each model's development and validation status.[66]

D. REQUESTS FOR COMMENTS

The OCC and FDIC solicit comments on the shift in time frames generally, and the FDIC specifically asks what, if any, specific challenges exist with respect to the proposed steps and time frames.[67] The FRB has specifically requested comment on several areas, including the following:

- The proposed timing change to the stress test disclosure requirements, in particular, how much advance notice companies require to prepare their stress test results.[68]
- What, if any, unintended consequences the proposed revisions to the applicability sections will create?[69]

- What, if any, unexpected consequences might result from the proposed treatment of a failure to execute planned capital issuances? Additionally, the FRB solicits comments, including descriptions and explanations, with respect to any circumstances other than a merger or acquisition under which it would be appropriate for a Large BHC to maintain the gross amount of its capital distributions, even where the Large BHC has not executed the planned capital issuance.[70]
- What, if any, limitation should be imposed on the proposed exception for capital actions not requiring approval? The FRB NPR provides, as an example, an aggregate dollar limit in the range of 10 to 100 basis points of a Large BHC's tier 1 capital.[71]
- Under what circumstances, if any, should the definition of "BHC stress scenario" include, as a supplement, other types of stress scenarios?[72]
- What, if any, additional exceptions to the general assumption of no issuances of capital instruments should the FRB consider and should issuances relating to an employee stock ownership plan also be treated as an exception, and if so, what would be the rationale for this exception?[73]

*   *   *

ENDNOTES

1 12 C.F.R. § 225.8. For a discussion of the Capital Plan Rule and related stress test requirements for Large BHCs, *see* our memorandum to clients, *Bank Capital Plans: Federal Reserve Board Issues Final Rule Regarding Capital Plan and Formal Stress Test Requirements for Certain Large Bank Holding Companies*. For a discussion of the requirements and expectations for capital planning for Large BHCs, *see* our memoranda to clients, *Bank Capital Plans: Federal Reserve Board Issues Guidance Outlining Supervisory Expectations for Capital Planning at Large Bank Holding Companies*; *Bank Capital Plans and Stress Tests: Federal Reserve Issues Instructions and Guidance for the 2014 Comprehensive Capital Analysis and Review Program*.

2 12 C.F.R. § 252, Subparts B, E and F. For a discussion of the Agencies' Stress Test Rules and certain actions taken by the Agencies following approval of their final rules, *see* our memoranda to clients, *Stress Test Rules: Federal Banking Agencies Publish Final Stress Test Rules on Supervisory and Company-Run Stress Test Requirements Imposed by Dodd-Frank*; *Dodd-Frank Stress Tests: Federal Banking Agencies Propose Company-Run Stress Test Data Reporting Templates and Related Documentation for Financial Institutions with Over $10 Billion but Less Than $50 Billion in Assets*.

3 Under the Capital Plan Rule, "planning horizon" is defined as the period of at least nine quarters, beginning with the quarter preceding the quarter in which the BHC submits its capital plan, over which the relevant projections required under the Capital Plan Rule extend. 12 C.F.R. § 225.8(c)(8). The FRB Proposed Rules do not modify this definition.

4 12 C.F.R. § 252. In February 2014, the FRB issued the enhanced prudential standards rule (the "*Enhanced Prudential Standards Rule*") implementing enhanced prudential standards for U.S. BHCs and FBOs with $50 billion or more in total consolidated assets. An FBO with U.S. non-branch assets of $50 billion or more is required to establish an IHC, which is generally subject to the same prudential standards as a U.S. BHC, including the capital planning and stress test requirements of the FRB Stress Test Rules, Supervisory Stress Test Rule and Capital Plan Rule. For a discussion of the requirements of the Enhanced Prudential Standards Rule, *see* our memorandum to clients, *"Enhanced Prudential Standards" for Large U.S. Bank Holding Companies and Foreign Banking Organizations: Federal Reserve Approves Final Rule Implementing Certain Provisions of Section 165 of the Dodd-Frank Act Increasing Supervision and Regulation of Large U.S. Bank Holding Companies and Foreign Banking Organizations*.

5 12 C.F.R. § 46 and *id*. § 325, Subpart C, respectively. *See also* our memoranda to clients, *supra*, note 2.

6 12 C.F.R. § 225.8(c)(5).

7 *Id.* §§ 225.8(d)(1)(ii), 225.8(e)(2)(i)(A).

8 *Id.* §§ 252.12(t), 252.42(p), 252.52(r); OCC NPR p. 5; FDIC NPR p. 4.

9 12 C.F.R. §§ 252.14(b)(1), 252.54(b)(1); *id*. § 46.5(b); *id*. § 325.204(b).

10 *Id.* §§ 252.16(a)(1), 252.57(a)(1); *id*. § 46.7(b); *id*. § 325.206(a)(2).

11 *Id.* §§ 252.17(a)(1)(ii), 252.58(a)(1)(i); *id*. § 46.8(a)(1); *id*. § 325.207(a)(2).

12 *Id.* §§ 252.57(a)(2), 252.58(a)(1)(ii).

13 *Id.* § 252.16(a)(2); *id*. § 46.7(a); *id*. § 325.206(a)(1).

14 *Id.* § 252.17(a)(1)(i); *id*. § 46.8(a)(2); *id*. § 325.207(a)(1).

15 FRB Proposed Rules §§ 252.54(b)(1), 252.14(b)(1); OCC Proposed Rules § 46.5(b); FDIC Proposed Rules § 325.204(b).

ENDNOTES (CONTINUED)

16 FRB Proposed Rules §§ 252.14(b)(2), 252.54(b)(2)(i); OCC Proposed Rules § 46.5(c); FDIC Proposed Rules § 325.204(c).

17 FRB Proposed Rules §§ 252.54(b)(4), 252.55(b)(4).

18 *Id.* § 252.44(b).

19 12 C.F.R. § 252.46(c).

20 FRB Proposed Rules § 252.46(b)(2).

21 FRB NPR p. 15.

22 *See id.* pp. 15-16.

23 FRB Proposed Rules §§ 225.8(e)(1)(ii), 225.8(f)(2)(i)(B), § 252.54(a).

24 FRB NPR pp. 7-8.

25 FRB Proposed Rules §§ 252.58(a)(1), 252.46(b)(1).

26 *Id.* §§ 252.55(a), 252.57(a)(2).

27 *Id.* § 252.17(a)(3)(iii).

28 *Id.* §§ 252.14(a)(3)(i), 252.16(a)(3)(i), 252.17(a)(3)(i). We note that the FRB Proposed Rules appear to have a typo because they include two sections designated 252.14(a)(2). For purposes of this memorandum, we refer to the section regarding timing of stress test cycles beginning after October 1, 2014 as section 252.14(a)(3).

29 *Id.* §§ 252.14(a)(3)(ii), 252.16(a)(3)(ii).

30 12 C.F.R. Part 217.

31 FRB Proposed Rules §§ 252.14(a)(3)(i), 252.16(a)(3)(i), 252.17(a)(3)(ii).

32 *Id.* §§ 252.14(a)(3)(ii), 252.16(a)(3)(ii), 252.17(a)(3)(iii).

33 FDIC Proposed Rules § 325.204(a)(2); OCC Proposed Rules § 46.7(b).

34 OCC Proposed Rules § 46.7(a); FDIC Proposed Rules § 325.204(a); *see also* OCC NPR p. 5 and FDIC NPR pp. 7-8. We note that, under the current OCC Stress Test Rules, a national bank or federal savings bank with between $10 and $50 billion in assets that is controlled by a BHC or an SLHC that is subject to annual stress test requirements under the FRB Stress Test Rules may elect to conduct its stress tests under the stress test requirements applicable to a national bank or federal savings bank with assets of $50 billion and over. In that case, the bank also would be subject to the proposed disclosure requirements applicable to those institutions with $50 billion or more in assets. Under the FDIC Stress Test Rules, a state savings bank or FDIC-insured state nonmember bank with between $10 and $50 billion in assets that is a consolidated subsidiary of a BHC or SLHC that is subject to annual company-run stress test requirements under the FRB Stress Test Rules may elect to conduct its stress tests on the same timeline as its parent. In that case, the bank would be subject to the disclosure requirements of its parent company.

35 12 C.F.R. §§ 252.13(b)-(c), 252.53(b); *id*. §§ 43(b)(1), 46.3(c); *id*. § 325.203(b).

36 FRB Proposed Rules §§ 252.13(b), 252.43(b), 252.53(b); OCC Proposed Rules § 46.3(c); FDIC Proposed Rules § 325.203(b)(3). We note that under the FRB Proposed Rules, the cutoff date is March 31 (after October 1, 2014); under the OCC Proposed Rules, the cutoff date is March 31 (after 2014); and under the FDIC Proposed Rules, the cutoff date is March 31 (after December 31, 2014). The OCC NPR and FDIC NPR expressly clarify that a Covered Bank that meets or crosses the $50 billion threshold after March 31, 2014 but before March 31, 2015 would be required to conduct its first annual stress test beginning with the cycle starting January 1, 2016. Although not expressly stated, the FRB Proposed Rules would operate such that BHCs,

state member banks and SLHCs that cross the threshold between October 1, 2014 and March 31, 2015 would have the same result.

37 OCC NPR pp. 6-7; FDIC NPR pp. 6-7.

38 FRB NPR pp. 12-13.

39 12 C.F.R. § 225.8(b)(2)(ii).

40 FRB Proposed Rules § 225.8(c).

41 *See* FRB NPR p. 11.

42 FRB Proposed Rules § 225.8(c)(2)(i).

43 *Id*. §§ 252.13(b)(1)(iii), 252.43(b)(2), 252.53(b)(2).

44 12 C.F.R. § 252.43(b)(2).

45 FRB Proposed Rules §§ 252.43(b)(3), 252.53(b)(3).

46 *See* FRB NPR pp. 11-12.

47 FRB Proposed Rules §§ 252.43(c), 252.53(b)(4), 252.13(b)(3). We note that the FRB Proposed Rules appear to have a typo because they include two sections designated 252.53(b)(3). For purposes of this memorandum, we refer to the section regarding transition periods for covered companies subject to the advanced approaches as section 252.53(b)(4). *See also* FRB NPR pp. 13-14. For further discussion of the rules addressing incorporation of the Basel III Framework into the Capital Plan Rule and FRB Stress Test Rules, *see* our memorandum to clients, *Bank Capital Plans and Stress Tests: Federal Reserve Issues Interim Final Rules Addressing Application of New Basel III-Based Capital Framework for Purposes of 2013-2014 Capital Plan and Stress Test Cycle*.

48 12 C.F.R. § 3.21(c).

49 OCC Proposed Rules § 46.6(a)(2). *See also* OCC NPR p. 8.

50 FRB Proposed Rules § 225.8(f)(2)(v)(A)-(B).

51 12 C.F.R. §§ 225.8(d)(4)(i)(B), 225.8(e); FRB Proposed Rules § 225.8(e)(4)(ii); *see* FRB NPR pp. 17-18.

52 These circumstances include if: (i) the capital plan is incomplete or the capital plan, or the Large BHC's internal capital adequacy process, contains material weaknesses; (ii) there has been or will likely be a material change in the Large BHC's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure; (iii) the stress scenario(s) developed by the Large BHC are not appropriate to its business model and portfolios, or changes in financial markets or the macroeconomic outlook that could have a material impact on a Large BHC's risk profile and financial condition require the use of updated scenarios; or (iv) the capital plan or the condition of the Large BHC raises any of the issues that serve as a basis for the FRB to object to a Large BHC's capital plan. 12 C.F.R. § 225.8(d)(4).

53 *Id.* § 252.153(a)(1).

54 FRB Proposed Rules § 225.8(c)(2)(ii). The FRB Proposed Rules would incorporate this requirement into the Capital Plan Rule by adding a provision providing that an IHC would be subject to the Capital Plan Rule beginning on the first day of the next capital cycle after the date on which it is required to be established (which is July 1, 2016 under the Enhanced Prudential Standards Rule).

55 FRB NPR pp. 25-26.

ENDNOTES (CONTINUED)

[56] The FRB NPR notes that the FRB and the company may mutually consent to having another U.S. BHC owned by the FBO comply with the requirements of the Capital Plan Rule in lieu of the subsidiary BHC.

[57] FRB Proposed Rules §§ 225.8(e)-(g), 225.8(c)(2)(iii).

[58] FRB NPR p. 25, n. 17.

[59] 12 C.F.R. § 225.8(f).

[60] *See* FRB NPR p. 28.

[61] FRB Proposed Rules § 225.8(g).

[62] *Id*. § 225.8(d)(2).

[63] FRB NPR p. 29.

[64] FRB Proposed Rules § 252.15(b)(2)(iv).

[65] 12 C.F.R. § 252.15(b)(2)(iii).

[66] *See* FRB NPR pp. 30-31; FRB Proposed Rules § 225.8(f)(3)(ii).

[67] *See* OCC NPR p. 8; FDIC NPR p. 8.

[68] *See* FRB NPR p. 15.

[69] *See id*. p. 14.

[70] *See id*. pp. 22-24.

[71] *See id*. p. 29.

[72] *See id*. p. 17.

[73] *See id*. p. 29.

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