

September 22, 2015

## Bank Capital Plans and Stress Tests

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

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#### SUMMARY

On September 16, 2015, the Board of Governors of the Federal Reserve System (the “*Federal Reserve*”) issued a notice of proposed rulemaking (the “*Proposal*”)<sup>1</sup> that would require the chief financial officer (the “*CFO*”) of bank holding companies that are overseen by the Federal Reserve’s Large Institution Supervision Coordinating Committee (the “*LISCC Firms*”) and are required to report on Forms FR Y-14A, FR Y-14Q and FR Y-14M (collectively, the “*FR Y-14 Forms*”) to make attestations regarding those forms. The attestations would include that the:

- actual and projected data reported on the FR Y-14 Forms was prepared in accordance with the applicable Federal Reserve form instructions;
- actual reported data (as opposed to projections) is “materially correct to the best of [the CFO’s] knowledge”;
- actual data being reported is 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”; and
- internal controls are “audited annually by internal audit or compliance staff, and are assessed regularly by management of” the LISCC Firm.

In addition, the Proposal would require the CFO of such entities to “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.”

The Proposal also addresses certain other changes to the FR Y-14 Forms, including with respect to the scope of information required by the forms.

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The FR Y-14 Forms are required to be submitted by top-tier U.S. bank holding companies with \$50 billion or more in consolidated assets to provide certain historical and projected financial data in support of the Federal Reserve's stress testing and capital planning frameworks.

The attestation requirements would become effective on June 30, 2016, meaning that attestations would not be required as part of the 2016 annual capital planning and stress testing cycle. Other proposed revisions to the FR Y-14 Forms themselves would become effective on December 31, 2015, March 31, 2016 and June 30, 2016.

Comments are due by November 16, 2015.

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### BACKGROUND

The FR Y-14 Forms are used to report (i) granular loan- and portfolio-level data on a monthly basis (the FR Y-14M), (ii) information regarding various asset classes and pre-provision net revenue on a quarterly basis (the FR Y-14Q), and (iii) quantitative projections of balance sheet, income, losses and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios for stress testing purposes (the FR Y-14A).

In July of 2012, the Federal Reserve proposed to add an attestation requirement to the FR Y-14 Forms (the "2012 Proposal")<sup>2</sup> which would have required a respondent's CFO to attest to the accuracy of the data reported in the FR Y-14 Forms. However, in light of commenters' concerns, including as to the lack of maturity of the data collection process and the appropriateness of attesting to financial projections, such an attestation requirement was not included in the final rule adopted October 4, 2012.

The Federal Reserve now states that the FR Y-14 Forms have matured sufficiently since 2012 to support attestation requirements and that the CFO is the appropriate person to provide the attestations as the CFO has primary business line responsibility for internal controls. However, the attestation requirements in the new Proposal differ from that proposed in 2012 in various aspects that reflect some of the comments received in connection with the 2012 Proposal,<sup>3</sup> as well as concerns expressed by industry participants since then.<sup>4</sup> With regard to projected data, for example, the Proposal would require an attestation as to proper preparation of the FR Y-14 Forms in accordance with the relevant instructions but not as to the accuracy of the projections. The Proposal also provides more specificity regarding the attestation requirements than was provided in 2012 and limits the financial institutions subject to these requirements to the LISCC Firms.

The Proposal indicates that the accuracy of data reported on the FR Y-14 Forms is critical to the Federal Reserve's Comprehensive Capital Assessment and Review program ("CCAR") and supervisory stress tests as the Federal Reserve uses such data to assess whether an entity has sufficient capital to absorb losses under stress. However, the Federal Reserve also asserts that it has identified material inaccuracies in information reported on the FR Y-14 Forms in previous CCAR and stress test cycles. As

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such, the proposed attestation requirements for the FR Y-14 Forms are intended by the Federal Reserve to encourage subject bank holding companies to improve their systems for developing the data used for CCAR and the stress tests.

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### DISCUSSION OF THE PROPOSAL

#### Applicability

The Proposal states that the attestation requirements would be applicable only to the FR Y-14 reporting companies that are LISCC Firms, which include certain foreign banking organization (“FBO”) parent entities. Bank holding companies with total consolidated assets of \$50 billion or more, as defined by the Federal Reserve’s capital plan rule in Section 225.8 of Regulation Y,<sup>5</sup> are subject to the FR Y-14 reporting requirements. Under Section 225.8(b)(1), this includes only top-tier bank holding companies domiciled in the United States and therefore excludes FBO parent entities. Although the Federal Reserve has not yet indicated when FBO intermediate holding companies (“IHCs”) having \$50 billion or more in consolidated assets will be subject to the FR Y-14 reporting requirements, it is expected that such IHCs will be required to report on these forms sometime after the July 1, 2016 IHC implementation deadline. The text of the Proposal does not address whether an IHC subsidiary of a LISCC Firm would be deemed to be a LISCC Firm subject to the attestation requirements.

#### Attestation for Projected and Actual Data as to Form Instructions

With respect to both projected data reported on Forms FR Y-14A and FR Y-14Q as well as actual data reported on all the FR Y-14 Forms, the CFO, or an equivalent senior officer, of a LISCC Firm would be required to attest that the forms were “prepared in conformance with the instructions” issued by the Federal Reserve. The Proposal clarifies that these instructions are limited to the instructions to the FR Y-14 Forms themselves and do not include the requirements set forth in the annual CCAR Summary Instructions and Guidance, which outlines, among other things, the Federal Reserve’s qualitative expectations concerning the “methodology for projected information.” While not explicitly stated in the Proposal, this would also presumably exclude from this attestation requirement the Federal Reserve’s 2013 capital planning qualitative expectations and range of practices white paper<sup>6</sup> and Supervisory Letter 11-07 on model risk management.<sup>7</sup> Notably, this conformance attestation is the only *formal* attestation required for projections in the FR Y-14 Forms—the Proposal does not require attestation as to the accuracy of projected data as described below.

#### Additional Attestations for Actual Data

The CFO of a reporting LISCC Firm would be required to make four additional attestations regarding actual data reported on the FR Y-14 Forms. First, the Proposal would require the CFO to attest that he or she is responsible for the internal controls over the reporting of such actual data.

Second, the Proposal would require the CFO to attest that, to the best of his or her knowledge, the actual data reported is materially correct. The Proposal indicates that the LISCC Firms should have a policy in

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place for determining materiality in this context. Such materiality policy should include “a robust analysis of all relevant quantitative and qualitative considerations, including, but not limited to, the size and effect of the omission or misstatement on [the LISCC Firm’s] projected regulatory capital ratios in stressed scenarios.” Qualitative factors, including the repeat occurrence of inaccuracies and the proximity of the LISCC Firm’s regulatory capital ratios to minimum capital requirements, could result in the conclusion that a small change in regulatory capital ratios is material.

Third, the Proposal would require the CFO to attest that the internal controls over the reporting of actual data “are effective and include those practices necessary to provide reasonable assurance as to the accuracy of [the actual] data.” In determining whether internal controls are effective, the materiality policy discussed above should apply. The Federal Reserve specifically indicated that this proposed attestation requirement is intended to be similar to the existing attestation requirement for internal controls over financial reporting under the Sarbanes-Oxley Act of 2002 (“SOX”). In addition, guidance as to effective internal controls also may be found in a publication by the Committee of Sponsoring Organizations of the Treadway Commission titled *Internal Control—Integrated Framework* (the “COSO Report”), which the Federal Reserve explicitly identified as providing “a suitable and available framework for purposes of establishing and assessing internal controls.”<sup>8</sup> Although projected financial data is not technically subject to this internal controls attestation, the conformance with form instructions attestation requirement, if ultimately adopted as proposed, may effectively cause LISCC Firms to include form instruction compliance for projected data in the internal controls attestation process for actual data in order to provide the CFO a reasonable basis for making the specific conformance attestation.

In addition to the internal controls attestations, the various other attestation requirements set forth in the Proposal appear to be analogues, albeit not necessarily identical, to certain requirements of SOX—for example, Section 906 of SOX and the Proposal’s attestation as to compliance with the FR Y-14 Forms instructions, as well as Section 302 of SOX and the Proposal’s attestation as to the accuracy of the actual reported data. Thus, it appears likely that LISCC Firms may be able to leverage existing SOX infrastructure and policies and procedures for these purposes.<sup>9</sup>

Fourth, the Proposal would require the CFO to attest that the internal controls are audited annually by internal audit function or compliance staff and assessed regularly by management. The Federal Reserve indicated that such audit would provide “reliable reassurance” as to the effectiveness of the internal controls, which the CFO would be required to attest to as described above.

In addition to these attestations, the Proposal would require the CFO to agree to report promptly material weaknesses<sup>10</sup> in the internal controls as well as material errors or omissions in the data submitted to the Federal Reserve as such weaknesses, errors and omissions are identified. Material weaknesses would be defined as weaknesses which would result in a material misstatement of the data reported on the FR Y-14 Forms.

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Attached as Annex A hereto is a copy of the Federal Reserve's form of attestation.

### Timing of Proposed Attestation Requirements

The proposed attestation requirements for the FR Y-14 Forms would not become effective until June 30, 2016, although other revisions to the forms (summarized below) would take effect at earlier respective dates. As a practical matter, the various attestations would therefore not be required as part of the 2016 annual capital planning and stress testing cycle. This timing is consistent with industry comments on the 2012 Proposal requesting six months for implementation. The proposed timing is also intended to provide LISCC Firms with sufficient time to make any necessary modifications "to enhance certain systems and processes in order to meet the attestation requirement, such as enhancing information technology infrastructure and adding or modifying internal control frameworks and data governance committees to include accountability and escalation processes, as well as to increase the frequency of audits of internal controls over the [FR Y-14 Forms]."

### Other Proposed Revisions to FR Y-14 Forms

In addition to the attestation requirements, the Proposal includes various other revisions to the FR Y-14 Forms which would take effect on December 31, 2015, March 31, 2016 or June 30, 2016, as applicable. Such other revisions would impact all financial institutions subject to FR Y-14 reporting, not just LISCC Firms. Revisions to Form FR Y-14A include the separation of Schedule A.2.b (Retail Repurchase) from Schedule A to be its own separate, semi-annual schedule, and the addition of Schedule F (Business Plan Changes) to formalize the collection of information about the effects of an intended business plan change on a financial institution's asset, liability and capital projections. The addition of Schedule F would take effect on December 31, 2015, while the separation of Schedule A.2.b into its own schedule would take effect on June 30, 2016.

Revisions to Form FR Y-14Q include additions to Schedule C.3 (Regulatory Capital Instruments—Issuances During Quarter) to collect additional information related to subordinated debt instruments as well as swaps that are matched to subordinated debt instruments. These changes would require separate one-time submissions of all subordinated debt instruments on each of December 31, 2015 (the proposed effective date for changes relating to subordinated debt instruments) and June 30, 2016 (the proposed effective date for changes relating to swaps matched to subordinated debt instruments).

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## OTHER OBSERVATIONS

In response to industry concerns and comments since the 2012 Proposal, the Federal Reserve indicates that it is continuing to improve the FAQ process for CCAR and capital plan submissions, including the FR Y-14 Forms, and that it expects to conclude its large-scale review and incorporate the "numerous relevant historical FAQs into the [Form] instructions" before the Proposal is finalized. This should make the conformance to instructions attestation process more efficient as the relevant instructions should all be found in one place.

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Furthermore, the Proposal states that with respect to questions submitted to the Federal Reserve that are not answered in a timely manner “[a]s long as a firm has a reasonable and timely process for identifying questions and submitting FAQs, the firm makes a good faith effort to reasonably interpret the instructions while awaiting a response, and the firm, in fact, follows that process, the Federal Reserve would not expect to penalize a firm for incorrect reporting” on the FR Y-14 Forms.

Finally, the Federal Reserve provides notice in the Proposal that, pursuant to a request from the Office of Financial Research (“OFR”) of the Department of Treasury and their assurances of confidentiality, the Federal Reserve will provide the OFR access to the data submitted on the FR Y-14 Forms.

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### REQUESTED FEEDBACK

The Federal Reserve requested comments on the Proposal by November 16, 2015. With regard to all proposed revisions to the FR Y-14 Forms, the Federal Reserve invited comments regarding whether the revisions are necessary for the proper performance of the Federal Reserve’s functions; whether the information to be collected has practical utility; ways to enhance the quality, utility and clarity of such information; the accuracy of the estimated burden to be imposed on financial institutions by the Proposal; ways to minimize this burden and estimates of costs associated with providing the information (including start-up and ongoing costs).

In addition to comments on the Proposal, the Federal Reserve specifically requested feedback regarding the most efficient and cost-effective manner of collecting information related to the performance of a first lien that is related to a junior lien reported on Form FR Y-14M Schedule B, as well as standards that could be established to make this item easier to report. The Federal Reserve recommended that commenters concerned about providing information regarding the costs and burdens associated with collecting this information in a public comment letter should submit their responses anonymously.

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ENDNOTES

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- 1 Proposed Agency Information Collection Activities; Comment Request, 80 Fed. Reg. 55,621 (Sept. 16, 2015).
- 2 See Proposed Agency Information Collection Activities; Comment Request, 77 Fed. Reg. 40,051 (July 6, 2012).
- 3 See, e.g., The Clearing House Association L.L.C. *et al.*, *Comment Letter Regarding Capital Assessments and Stress Testing Information Collection* (September 4, 2012).
- 4 See The Clearing House Association L.L.C. & Securities Industry and Financial Markets Association, *Comment Letter Regarding FR Y-14 Series of Reporting Forms: Contemplated Attestation Requirement* (September 11, 2015).
- 5 12 C.F.R. § 225.8.
- 6 Federal Reserve, *Capital Planning at Large Bank Holding Companies: Supervisory Expectations and Range of Current Practice*, (August 19, 2013), available at <http://www.federalreserve.gov/bankinfo/bcreg20130819a1.pdf>.
- 7 Federal Reserve, *Supervisory Letter 11-07: Guidance on Model Risk Management*, (April 4, 2011), available at <http://www.federalreserve.gov/bankinfo/srletters/sr1107.pdf>.
- 8 The COSO Report is available at <http://www.coso.org/ic.htm>.
- 9 To the extent the U.S. top-tier bank holding company/IHC of an FBO that is a LISCC Firm is not currently subject to Section 404 of SOX, it may need to develop such compliance infrastructure for purposes of complying with this requirement.
- 10 By contrast, SOX Section 302 requires the disclosure of “significant deficiencies” in the design or operation of disclosure controls and procedures to the audit committee of the board of directors and the external auditors.

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**FR Y-14A/Q/M**  
**Proposed Attestation for Cover Page**

The Federal Reserve proposes one cover page for each of the FR Y-14A, FR Y-14Q, and FR Y-14M filing to allow for attestation by one or more senior officers of a bank holding company subject to the Large Institution Supervision Coordinating Committee framework. The senior officer must be the bank holding company's chief financial officer or equivalent senior officer.

**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 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 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") for this report date have been prepared in conformance 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 responsible for the internal controls over the reporting of these data, and these data are materially correct to the best of my knowledge. I attest that the internal controls 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.

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 Printed Name and Title of Senior Officer

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 Legal Title of Bank Holding Company

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 Signature of Senior Officer

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 (Mailing Address of the Bank Holding Company) Street / P.O. Box

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 Date of Signature (MM/DD/CCYY)

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 City State Zip Code