

December 4, 2015

Bank Liquidity Requirements

Federal Reserve Board Proposes Public Disclosure Requirements for the Liquidity Coverage Ratio

On November 24, 2015, the Board of Governors of the Federal Reserve System (the “*Federal Reserve*”) issued a notice of proposed rulemaking (the “*Proposed Rule*”) that would require bank holding companies subject to the liquidity coverage ratio (the “*LCR*”)—a Basel III-based 30-day liquidity metric²—to publicly disclose quantitative and qualitative information regarding their respective LCR calculations on a quarterly basis. Under the Proposed Rule, the quantitative components of the LCR would be disclosed using a standardized template, to “promote market discipline by providing investors and other stakeholders with comparable information,”³ accompanied by a qualitative discussion of the LCR calculation results.

Scope of Applicability

The Proposed Rule would apply to (i) all bank holding companies (“*BHCs*”) and certain savings and loan holding companies (“*SLHCs*”) that, in each case, have \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure—that is, advanced approaches BHCs and SLHCs, (ii) BHCs and certain SLHCs that have \$50 billion or more in total consolidated assets but do not meet the thresholds for the advanced approaches and are therefore subject to the modified LCR requirement (the LCR as applied to such institutions, the “*Modified LCR*”),⁴ and (iii) systemically important nonbank financial companies designated by the Financial Stability Oversight Council to which the Federal Reserve has applied the LCR by order⁵ (collectively, “*covered companies*”). Depository institution subsidiaries of advanced approaches BHCs and SLHCs would not be required to disclose separately their own LCR data under the Proposed Rule even though they may be subject to the LCR at the depository institution level. The Federal Reserve notes, however, that in the future it may, along with the other Federal banking agencies, develop a different or modified reporting form that would be required for such depository institutions.⁶

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Compliance Dates

The timeline for compliance with the Proposed Rule depends on the size of the covered company and whether or not it is currently subject to the LCR. For covered companies currently subject to the LCR, disclosures under the Proposed Rule would be required by:

- July 1, 2016 for covered companies with \$700 billion or more in total consolidated assets or \$10 trillion or more in assets under custody; or
- July 1, 2017 for other covered companies.

For covered companies that become subject to the LCR after the effective date of the Proposed Rule, disclosures under the Proposed Rule would be required:

- three months after the date that the covered company becomes subject to the LCR because its total consolidated assets equal or exceed \$250 billion or it has \$10 billion or more in total consolidated on-balance sheet foreign exposure, each as of the most recent year-end;⁷ or
- 18 months after the date that the covered company becomes subject to the Modified LCR Rule.⁸

Common Template for Quantitative Disclosures

The proposed template for quantitative disclosures is largely consistent with the LCR common disclosure template developed by the Basel Committee on Banking Supervision (the “BCBS”),⁹ subject to certain modifications reflecting the differences between the U.S. LCR rule and the Basel III liquidity framework, including making the terminology consistent with the U.S. LCR rule and disaggregating certain categories of data that are aggregated in the BCBS template. In addition, although the BCBS template includes only disclosure of the weighted amount of secured wholesale funding, the Proposed Rule would require disclosure of both the average unweighted and average weighted amounts of secured wholesale funding (for example, repurchase agreements) and asset exchange outflows, to “allow market participants and other parties to better understand the composition of assets supporting these types of transactions.”¹⁰

The proposed template is attached as *Annex A*.

Qualitative Description

To “facilitate an understanding of the data provided,” the Proposed Rule would also require a qualitative discussion of covered companies’ LCR results, consistent with BCBS disclosure standards.¹¹ The Proposed Rule suggests eight items for qualitative discussion “to the extent they are significant” to the LCR results of a given covered company, including: (i) the main drivers of the LCR results; (ii) changes in the LCR results over time; (iii) the composition of eligible HQLA; (iv) concentration of funding sources; (v) derivative exposures and potential collateral calls; (vi) currency mismatch in the LCR; (vii) the centralized liquidity management function of the covered company and its interaction with other functional areas of the company; and (viii) other inflows, outflows, or other factors in the LCR calculation that are not captured in the quantitative disclosures required by the Proposed Rule, but which the covered company considers relevant to facilitate an understanding of its liquidity risk profile. In addition, a brief discussion

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of any significant changes that make current or previous quantitative disclosures no longer reflective of a covered company's liquidity risk profile would also be required.

Timing and Placement of Disclosure

Under the Proposed Rule, a "timely" public disclosure after each calendar quarter would mean:

- for calendar quarters that do not correspond to a covered company's fiscal year-end, within 45 days of the end of the calendar quarter (60 days for the first reporting period for which it is subject to the disclosure requirement); and
- for the end of a calendar quarter that corresponds to a covered company's fiscal year-end, no later than the applicable SEC disclosure deadline for the corresponding annual report on Form 10-K. Where a covered company's fiscal year-end does not coincide with the end of a calendar quarter, the Federal Reserve would consider the timeliness of disclosures on a case-by-case basis.

Covered companies would be required to publish their required disclosures in a "direct and prominent manner" on their public internet sites or in their public financial or other regulatory reports.

Observations

Although the Proposed Rule presents an analogue to the Basel III-based Pillar 3 regulatory capital disclosures required under the U.S. capital rules,¹² there are several notable differences. For instance: (i) unlike the capital rules, the Proposed Rule does not require the covered company to adopt a formal disclosure policy for the LCR, approved by the board of directors; (ii) although both the capital rules and the Proposed Rule provide that disclosure be made on an internet site or in public financial or regulatory reports, only the Proposed Rule specifies that the disclosure must be made "in a direct and prominent manner"; and (iii) although the capital rules provide an exemption from disclosure for certain confidential commercial or financial information,¹³ the Proposed Rule does not contain a similar provision.

Requests for Comment

The Federal Reserve invites comment on the Proposed Rule in general and, in particular, seeks input regarding (i) any unintended consequences that may result from a covered company publicly disclosing the LCR and its components, (ii) under what circumstances the Federal Reserve should require more or less frequent LCR-related disclosures, and (iii) any negative effects should the Federal Reserve require a covered company to disclose qualitative or quantitative information about its LCR or certain components used to calculate its LCR with 30 days' prior written notice.

Comments are due by February 2, 2016.

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ENDNOTES

- ¹ See 12 C.F.R. Part 249 (Federal Reserve System); 12 C.F.R. Part 50 (Office of the Comptroller of the Currency) and 12 C.F.R. Part 329 (Federal Deposit Insurance Corporation) for the final rules adopted by the federal banking agencies to implement a quantitative liquidity requirement for certain banking organizations.
- ² See Sullivan & Cromwell LLP's memorandum to clients on the Federal Reserve's final rule implementing the LCR in the United States: "Basel III Liquidity Framework: Federal Reserve Approves Final Rule Implementing Basel III Liquidity Coverage Ratio for Large U.S. Banks" (Sept. 9, 2014), available at https://sullcrom.com/siteFiles/Publications/SC_Publication_Basel_III_Liquidity_Framework_09_09_2014.pdf.
- ³ 80 Fed. Reg. 75010, 75011.
- ⁴ 12 C.F.R. Part 249, Subpart G. This subpart applies to a covered depository institution holding company domiciled in the United States that has total consolidated assets equal to \$50 billion or more, based on the average of the Board-regulated institution's four most recent FR Y-9Cs (or, if a savings and loan holding company is not required to report on the FR Y-9C, based on the average of its estimated total consolidated assets for the most recent four quarters, calculated in accordance with the instructions to the FR Y-9C) and does not meet the applicability criteria set forth in 12 C.F.R. § 249.1(b).
- ⁵ GECC is the only designated company for which the Federal Reserve Board has, to date, exercised its authority under Section 165 of the Dodd-Frank Act to impose enhanced prudential standards. The Federal Reserve Board did so by an order that was subject to prior notice and comment. Federal Reserve Board, *Application of Enhanced Prudential Standards and Reporting Requirements to General Electric Capital Corporation*, 80 Fed. Reg. 44,111 (July 24, 2015).
- ⁶ 80 Fed. Reg. 75010, 75011 (footnote 7).
- ⁷ 12 C.F.R. § 249.1(b)(1). Total consolidated assets as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y-9C) (or, if not required to report on the FR Y-9C, calculated in accordance with the FR Y-9C instructions) or as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report). Total consolidated on-balance sheet foreign exposures calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report.
- ⁸ 12 C.F.R. Part 249, Subpart G.
- ⁹ BCBS, Liquidity coverage ratio disclosure standards (Jan. 12, 2014), available at <http://www.bis.org/publ/bcbs272.pdf>.
- ¹⁰ 80 Fed. Reg. 75010, 75012. Wholesale funding has been an area of focus for the Federal Reserve. See, for example, our memoranda to clients on the Federal Reserve's proposed and final rules implementing the common equity surcharge for global systemically important bank holding companies ("G-SIBs") in the United States: "Bank Capital Requirements: Federal Reserve Board Proposes Rule Establishing Common Equity Surcharge on U.S. Global Systemically Important Banks" (Dec. 14, 2014), available at https://sullcrom.com/siteFiles/Publications/SC_Publication_Bank_Capital_Requirements_12_14_14.pdf and "Bank Capital Requirements: Federal Reserve Board Approves Final Common Equity Surcharge for U.S. Global Systemically Important Banks" (Jul. 29, 2015), available at https://sullcrom.com/siteFiles/Publications/SC_Publication_Bank_Capital_Requirements_7_29_2015.pdf.
- ¹¹ 80 Fed. Reg. 75010, 75018.
- ¹² See 12 C.F.R. §§ 217.61 – 217.63; 217.171 – 217.173.
- ¹³ In general, under the U.S. capital rules, if a subject banking organization believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public information that is either proprietary or confidential in nature (or would be exempt from

ENDNOTES (CONTINUED)

disclosure by the Board under the Freedom of Information Act (5 U.S.C. § 552)), the institution is not required to disclose those specific items, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed. See 12 C.F.R. § 217.62(c); 217.172(c)(3).

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ANNEX A

TABLE 1 TO § 249.91(A)-DISCLOSURE TEMPLATE

XX/XX/XXXX to YY/YY/YYYY In millions of U.S. Dollars	Average unweighted amount	Average weighted amount
HIGH-QUALITY LIQUID ASSETS		
1. Total eligible high-quality liquid assets (HQLA), of which:		
2. Eligible level 1 liquid assets.		
3. Eligible level 2A liquid assets.		
4. Eligible level 2B liquid assets.		
CASH OUTFLOW AMOUNTS		
5. Deposit outflow from retail customers and counterparties, of which:		
6. Stable retail deposit outflow.		
7. Other retail funding.		
8. Brokered deposit outflow.		
9. Unsecured wholesale funding outflow, of which:		
10. Operational deposit outflow.		
11. Non-operational funding outflow.		
12. Unsecured debt outflow.		
13. Secured wholesale funding and asset exchange outflow.		
14. Additional outflow requirements, of which:		
15. Outflow related to derivative exposures and other collateral requirements.		
16. Outflow related to credit and liquidity facilities including unconsolidated structured transactions and mortgage commitments.		
17. Other contractual funding obligation outflow.		
18. Other contingent funding obligations outflow.		
19. TOTAL CASH OUTFLOW.		
CASH INFLOW AMOUNTS		
20. Secured lending and asset exchange cash inflow.		
21. Retail cash inflow.		
22. Unsecured wholesale cash inflow.		
23. Other cash inflows, of which:		
24. Net derivative cash inflow.		
25. Securities cash inflow.		
26. Broker-dealer segregated account inflow.		
27. Other cash inflow.		
28. TOTAL CASH INFLOW.		

TABLE 1 TO § 249.91(A)-DISCLOSURE TEMPLATE

Average amount¹		
29. HQLA AMOUNT.		
30. TOTAL NET CASH OUTFLOW AMOUNT EXCLUDING THE MATURITY MISMATCH ADD-ON.		
31. MATURITY MISMATCH ADD-ON.		
32. TOTAL NET CASH OUTFLOW AMOUNT.		
33. LIQUIDITY COVERAGE RATIO(%).		

¹ The amounts reported in this column may not equal the calculation of those amounts using component amounts reported in rows 1-28 due to technical factors such as the application of the level 2 liquid asset caps, the total inflow cap, and for depository institution holding companies subject to subpart G of this part, the application of the modification to total net cash outflows.