SULLIVAN & CROMWELL LLP

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"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

SUMMARY

On February 18, 2014, the Board of Governors of the Federal Reserve System (the "*FRB*") approved a final rule (the "*Final Rule*") implementing certain of the "enhanced prudential standards" mandated by Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "*Dodd-Frank Act*" or "*Dodd-Frank*"). The Final Rule applies the enhanced prudential standards to (i) U.S. bank holding companies ("*U.S. BHCs*") with $50 billion (and in some cases, $10 billion) or more in total consolidated assets and (ii) foreign banking organizations ("*FBOs*") with (x) a U.S. banking presence, through branches, agencies or depository institution subsidiaries, and (y) depending on the standard, certain designated amounts of assets worldwide, in the United States or in U.S. non-branch assets. The Final Rule's provisions are the most significant, detailed and prescriptive for the largest U.S. BHCs and the FBOs with the largest U.S. presence — those with $50 billion or more in total consolidated assets and, in the case of FBOs, particularly (and with increasing stringency) for FBOs with combined U.S. assets of $50 billion or more or U.S. non-branch assets of $50 billion or more.

The Final Rule's provisions are considerably more noteworthy for FBOs than for U.S. BHCs. In the case of U.S. BHCs, a number of the enhanced prudential standards have previously been finalized and are (or will shortly be) in effect, in particular, the revised U.S. Basel III-based risk-based and leverage capital rules and the capital planning and company-run and supervisory stress testing requirements previously

implemented by the FRB. The Final Rule implements, as new requirements for U.S. BHCs, only Section 165's risk management requirements (including requirements, duties and qualifications for a risk management committee and chief risk officer), liquidity stress testing and buffer requirements, and the potential application of a 15-to-1 debt-to-equity limit for a U.S. BHC deemed by the Financial Stability Oversight Council (the "*FSOC*") to pose a grave risk to the financial stability of the U.S. Many, if not most, of these items have already been effectively implemented through supervisory guidance.

For FBOs, the Final Rule incorporates a fundamentally different approach to the regulation of their U.S. operations. Of most significance is the requirement that an FBO having U.S. non-branch assets of $50 billion or more (raised from the $10 billion threshold initially proposed) establish in the United States an intermediate holding company ("*IHC*") for its U.S. subsidiaries that must be organized under U.S. law and, with certain limited exceptions, will be subject to the full range of U.S. regulatory requirements applicable to U.S. BHCs of comparable size under Dodd-Frank Section 165 and/or otherwise, including leverage and risk-based capital standards, stress testing, risk management and certain liquidity requirements. In addition, all FBOs with at least $10 billion in worldwide consolidated assets will be subject to a layered and escalating set of capital, stress testing and liquidity and risk management requirements, depending on their respective amount of worldwide consolidated assets and U.S. assets. For example:

- FBOs with worldwide consolidated assets of $10 billion or more but less than $50 billion must be subject to a home-country capital adequacy stress testing regime that meets certain FRB-defined standards or else face asset maintenance requirements at its U.S. branch;
- Publicly traded FBOs with total consolidated assets of $10 billion or more and FBOs with total consolidated assets of $50 billion or more, whether or not publicly traded, are also required to maintain a committee of its global board of directors on a stand-alone basis or as part of its enterprise-wide risk committee that oversees risk management policies of its U.S. operations;
- FBOs with worldwide consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion must also (i) certify to the FRB that they are subject to and in compliance with risk-based and leverage capital requirements in their respective home jurisdictions that are substantially equivalent to those promulgated by the Basel Committee on Banking Supervision (the "*Basel Committee*") or face various restrictions on their U.S. operations if they are unable to do so and (ii) report to the FRB the results of internal liquidity stress tests for either their consolidated operations or the combined U.S. operations or else be subject to limits on the net amount owed by their non-U.S. offices to their U.S. offices; and
- FBOs with worldwide consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more that also are required to form an IHC must (i) maintain a U.S. risk committee either at the IHC board level or at the FBO parent board level to approve and oversee the risk management framework and policies of the combined U.S. operations, including as to liquidity risk, (ii) appoint a U.S. chief risk officer having certain defined qualifications, and (iii) be subject to various liquidity stress testing and buffer, contingency funding plan, and cash-flow projection requirements.

As discussed below, a more detailed summary of these escalating requirements and their levels of applicability is set forth in ***Annex B***.

Although the FRB postponed some of the most important implementation deadlines (as described below) for FBOs, the planning and implementation process, especially for FBOs with a larger non-banking presence in the U.S., will be a significant and complex undertaking and likely require a great deal of effort and management attention, even before the effectiveness of specific requirements. It will also be important for any FBO subject to the IHC requirement to recognize the potential tax implications that may arise in interposing an IHC into its organizational structure or otherwise reorganizing the FBO's organizational structure under an IHC.

The Final Rule does not include final rules establishing single counterparty credit limits ("*SCCL*") or the early remediation frameworks that would have been applied to U.S. BHCs and FBOs under the FRB's previous proposals. The FRB stated that these rules are still under development and will be addressed in future rulemakings. The Final Rule also does not address enhanced prudential standards for non-bank financial companies designated by the FSOC for supervision by the FRB. In the Preamble to the Final Rule (the "*Preamble*"), the FRB indicated that it will establish enhanced prudential standards for these entities at a later date by either rule or order.

The effective date of the Final Rule is June 1, 2014, although compliance with most of the new requirements will be phased in between 2015 and 2018.

SIGNIFICANT CHANGES AND OTHER NOTABLE PROVISIONS

The FRB issued for public comment two separate proposals to implement the Dodd-Frank Act's "enhanced prudential standards" for large U.S. BHCs and FBOs. On January 5, 2012, the FRB issued proposed rules to implement the provisions of Sections 165 and 166[1] of the Dodd-Frank Act for U.S. BHCs with total consolidated assets of $10 billion or more and for non-bank financial firms designated by the FSOC (the "*Proposed U.S. Rule*"). On December 28, 2012, the FRB issued a separate set of proposed rules to implement the provisions of Sections 165 and 166 for FBOs with total consolidated assets of $10 billion or more and foreign non-bank financial companies designated by the FSOC (the "*Proposed FBO Rule*" and, together with the Proposed U.S. Rule, the "*Proposals*").[2] The FRB received more than 100 public comments on the Proposed U.S. Rule and more than 60 public comments on the Proposed FBO Rule.

The most substantial changes made in the Final Rule, as compared to the Proposals, relate primarily to the treatment of FBOs, and the Final Rule defers implementation of certain parts of the Proposals as they relate to FBOs as well:

- ***Size Threshold for Forming an IHC.*** The Proposed FBO Rule would have required an FBO with global consolidated assets of $50 billion or more and combined U.S. non-branch assets of $10 billion or more to establish an IHC. The Preamble notes that many commenters argued that the proposed threshold was too low and that the U.S. operations of entities with $10 billion of U.S. non-branch assets do not present risks to U.S. financial stability. After taking these comments into consideration and reviewing the statutory considerations in Section 165, the FRB raised the threshold for imposition of the IHC requirement from $10 billion in U.S. non-branch assets to $50 billion. If this threshold is met, the creation of an IHC is required whether or not an FBO controls an insured depository institution subsidiary in the U.S.

- ***Implementation Deadlines Extended for FBOs.*** Under the Final Rule, the FRB postponed some of the key implementation deadlines, most notably:
  - The Proposed FBO Rule would have required an FBO that met the asset thresholds as of July 1, 2014 to establish an IHC by July 1, 2015 unless that deadline were extended by the FRB, and an FBO that crossed the asset thresholds after July 1, 2014 would have been required to establish an IHC within 12 months unless that deadline were accelerated or extended by the FRB. In response to comments requesting a longer transition period, the Final Rule extends the initial compliance date for FBOs that currently meet the asset threshold by one year to July 1, 2016. By July 1, 2016, an FBO must transfer to the IHC its entire "ownership interest" in any U.S. BHC subsidiary, any insured depository institution subsidiary, and U.S. subsidiaries holding at least 90% of the FBO's U.S. non-branch assets not owned by such U.S. BHC subsidiaries or insured depository institution subsidiaries. "Ownership interest," however, is not specifically defined in the Final Rule. An FBO must hold its ownership interests in all U.S. subsidiaries, other than so-called "2(h)(2) subsidiaries" and "DPC branch subsidiaries," through its IHC by July 1, 2017.
  - An FBO with U.S. non-branch assets of $50 billion or more as of June 30, 2014 must submit an implementation plan by January 1, 2015, outlining its proposed process for establishing an IHC. The Final Rule includes the possibility of limited case-by-case relief for ownership interests in U.S. subsidiaries that cannot be transferred to the IHC, including a timeline and description of all planned capital actions and strategies for capital accretion for the IHC to achieve the applicable risk-based and leverage capital requirements. The Final Rule includes the possibility of limited case-by-case relief for ownership interests in U.S. subsidiaries that cannot be transferred to the IHC, which may be conditioned on to-be-determined supervisory requirements and/or FBO commitments as to these subsidiaries.
  - Generally speaking, FBOs currently are not subject to leverage capital requirements in their home countries. To address concerns regarding compliance with leverage capital requirements proposed for IHCs, the Final Rule delays application of leverage capital requirements to IHCs until January 1, 2018, consistent with the FRB's approach to the timing of the effectiveness of the supplementary leverage ratio in the revised U.S. capital rules adopted in July 2013 and the Basel Committee's Basel III international leverage ratio implementation. However, each bank holding company or insured depository institution that is controlled by an FBO is otherwise required to comply with existing capital and capital planning requirements, and a bank holding company controlled by an FBO must comply with the enhanced prudential standards applicable to it because it is also a U.S. BHC beginning on January 1, 2015 and until the IHC becomes subject to the new parallel requirements applicable to IHCs.[3]
  - The Final Rule also generally delays the application to IHCs of the capital plan and Dodd-Frank Act company-run and supervisory stress test requirements. The first capital plan filing appears to be required to be made, according to the Preamble, in January 2017[4] and the first Dodd-Frank company-run stress test filing must be made, according to the Final Rule, in January 2018 and subject to the FRB's supervisory stress test thereafter. However, each existing subsidiary bank holding company and insured depository institution otherwise subject to the capital plan rule and stress test requirements and controlled by an FBO prior to October 1, 2017 must comply with the stress test requirements through September 30, 2017.
  - The FRB may accelerate the application of the leverage and stress test requirements to an IHC if it determines that an FBO has taken actions to evade the application of the Final Rule, for example, by transferring assets from an existing U.S. BHC to the IHC.

    - An FBO with U.S. non-branch assets that equal or exceed $50 billion after July 1, 2014 has two years to establish an IHC under the Final Rule, instead of the 12 months provided by the Proposed FBO Rule.

- ***Liquidity Buffer.*** The Proposed FBO Rule would have established a 30-day liquidity buffer requirement and required U.S. branches and agencies of FBOs to maintain the first 14 days of their 30-day liquidity buffer in the U.S. while permitting the U.S. branches and agencies to meet the remainder of this requirement at the parent consolidated level. The Final Rule, however, requires U.S. branches and agencies of FBOs to maintain a liquidity buffer only for days 1 through 14 of a 30-day stress scenario (which must be held in the U.S. as initially proposed). The Final Rule still requires the IHC to maintain its entire 30-day buffer in the U.S.

In addition, the Final Rule includes changes that are applicable to both U.S. BHCs and FBOs, provides for the establishment of separate enhanced prudential standards for non-bank financial companies designated by the FSOC to be developed by rule or order at a later date, and leaves several provisions applicable to U.S. BHCs and FBOs to be addressed by future rulemakings:

- ***Capital Requirements.*** The Final Rule references the previously adopted Basel III-based final capital rules, capital plan ("*CCAR*") and stress test requirements ("*DFAST*"), as meeting the Section 165 enhanced prudential requirements for U.S. BHCs.

- ***Liquidity Requirements.*** Overall, the Final Rule's liquidity stress testing and 30-day liquidity buffer provisions remain substantively more flexible than the proposed liquidity coverage ratio ("*LCR*") rules,[5] particularly with respect to the calculation of net cash outflows. However, the FRB did not expand (as some commenters requested) the scope of qualifying assets. The Final Rule's liquidity provisions (including stress testing) and contingency funding plan provisions are stated to be "complementary" to the LCR rules and are supposed to reflect institutions' specific risks (conceptually similar to the company-run stress tests and the supervisory stress testing exercise).

  Other important changes/clarifications to the liquidity requirements include:

    - The Preamble clarifies that a U.S. BHC may include Federal Home Loan Bank ("*FHLB*") advances in its contingency funding plan.
    - Assets used as hedges for other positions and those pledged to an FHLB can still count in the calculation of the liquidity buffer.
    - Highly liquid assets ("*HLA*") pledged to a company covered by the enhanced prudential standards as collateral can be used as HLA for the liquidity buffer (and not treated as encumbered) if the covered company is able to re-hypothecate the HLA.
    - Diversification requirements do not apply to U.S. Treasury and agency securities.
    - Assets that qualify as good "high quality liquid assets" for LCR purposes generally qualify for the liquidity buffer, but are still subject to other requirements of the Final Rule — for example, diversification and appropriateness of assets for the liquidity risk profile of the institution.
    - Failure to meet the 100% LCR requirement is a trigger for the contingency funding plan.
    - The Preamble to the Final Rule leaves open the question of how the LCR proposal, once finalized, will be applied to IHCs and how and whether it will be applied to U.S. branches.

- ***Risk Management and Risk Committee Requirements***. The Final Rule adopts most aspects of the Proposals with respect to risk management and risk committee requirements. However, in response to comments, the Final Rule makes revisions to certain elements of the Proposals involving the duties of boards of directors, risk committees and chief risk officers to more closely align them with the traditional oversight responsibilities of a board of directors and committees thereof as well as senior management. For example, the board of directors is now charged with approving liquidity risk tolerance as opposed to setting it.

- ***Non-bank Financial Companies Supervised by the FRB.*** The Proposals provided that the standards applicable to U.S. BHCs and FBOs would serve as the baseline for enhanced prudential standards applicable to U.S. and foreign non-bank financial companies designated by the FSOC. The Preamble acknowledges, however, that companies designated by the FSOC may have a range of businesses, structures, and activities, that the types of risks to financial stability posed by non-bank financial companies will likely vary, and that the enhanced prudential standards applicable to U.S. BHCs and FBOs may not be appropriate for all non-bank financial companies and, in particular, those predominantly involved in insurance activities. Accordingly, the FRB has opted to postpone the development and application of enhanced prudential standards for FSOC-designated non-bank financial companies. The FRB intends to separately issue an order or rule imposing standards tailored to each non-bank financial company or category of non-bank financial companies designated by the FSOC, taking into account the business model, capital structure and risk profile of the designated company or companies.[6]
- ***Single Counterparty Credit Limits.*** The Final Rule does not implement the single counterparty credit limits ("*SCCLs*") mandated by Section 165. According to the Preamble, the FRB is continuing its development of SCCLs for U.S. BHCs and FBOs based on the results of a previously conducted quantitative impact study and the Basel Committee's initiative to develop a regulatory framework governing large credit exposures that is intended to apply to all global banks.[7]
- ***Early Remediation Requirements.*** The Final Rule does not implement the proposed early remediation requirements of Section 166 of the Dodd-Frank Act. The FRB indicated that it is working on integrating the various remediation levels with the new Basel III-based U.S. final capital rules adopted in July 2013 and that it continues to review comments received on the Proposals with respect to early remediation requirements.
- ***Limits on Short-Term Debt.*** The Final Rule does not implement limits on short-term debt, although the FRB indicated that it is "continuing to study and evaluate the benefits to systemic stability from imposing limits on short-term debt."

The table attached to this memorandum as ***Annex A*** provides an overview of the key requirements of the Final Rule applicable to U.S. BHCs and highlights certain changes in these requirements from the Proposed U.S. Rule. The table attached to this memorandum as ***Annex B*** provides an overview of the key requirements of the Final Rule applicable to FBOs and highlights certain changes in these requirements from the Proposed FBO Rule.

OTHER OBSERVATIONS

At the open meeting at which the Final Rule was adopted, FRB Governor Dan Tarullo predicted that, "in the coming months," the FRB will consider final or proposed rules covering other elements of the FRB's "ongoing effort under Section 165 of the Dodd-Frank Act to put in place a set of prudential standards for large banking organizations that become progressively more stringent as the systemic importance of the regulated entity increases" — including, the imposition of risk-based capital surcharges for global systemically important banks ("*G-SIBS*"),[8] further possible revisions to the Basel III-based supplemental leverage ratio, required minimum levels of long-term debt, and implementation of Basel III-based quantitative liquidity standards — presumably the LCR and the companion Basel III net stable funding ratio proposal.

Also at the meeting, FRB staff stressed that, in crafting the requirements of the Final Rule applicable to FBOs, the FRB sought to strike a balance between the need to prevent or mitigate risks to the financial stability of the U.S. that could arise from the material financial distress or failure of large interconnected financial institutions, on the one hand, and the respect for longstanding principles of national treatment and competitive equality, and the potential costs of compliance, on the other hand. In particular, with respect to the leverage capital requirements, FRB staff maintained that, consistent with the principle of national treatment, the Final Rule generally imposes the same leverage capital requirements on IHCs as it does on U.S. BHCs. FRB staff also pointed out that several large U.S. BHCs with business models similar to the largest U.S. operations of FBOs (that is, large broker-dealers coupled with a relatively smaller U.S. depository institution) are already subject to the leverage capital requirements and have adapted their business models to those requirements without disrupting the U.S. financial markets. FRB staff also argued, however, that the longer transition period to comply with the leverage capital requirements would give FBOs additional time to bolster their capital positions and thereby minimize the overall impact of the leverage capital requirements on IHCs.

Finally, in response to questions raised during the open meeting by FRB Chair Janet Yellen and FRB Governor Sarah Bloom Raskin concerning the potential for regulatory arbitrage (specifically the potential for an FBO to move "risky" activities into a U.S. branch or agency), FRB staff indicated that they intend to monitor carefully how FBOs adapt their operations in response to the IHC requirement, including whether FBOs relocate activities from their U.S. subsidiaries into U.S. branches and agencies, and respond appropriately through supervisory and/or other means to such issues.

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ENDNOTES

1 Dodd-Frank Section 166 requires the FRB, in consultation with the FSOC and the Federal Deposit Insurance Corporation, to "prescribe regulations establishing requirements to provide for the early remediation of financial distress" of bank holding companies and designated non-bank companies encompassed by Section 165's requirements. Although the Proposals included early remediation provisions, the FRB indicated in the Preamble that it will finalize those provisions at a later date.

2 Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594 (Jan. 5, 2012). *See* our Client Memorandum, "Federal Reserve Issues Proposed Rules Implementing Enhanced Prudential Supervision Regime," dated December 22, 2011, available at http://www.sullcrom.com/files/Publication/9302aa5a-e29c-4b55-8020-28042c4aa822/Presentation/PublicationAttachment/d14671a2-7d80-4bef-bade-2966a2d2104a/SC_Publication_Systemically_Important_Financial_Companies_12-22-11.pdf.

Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Non-bank Financial Companies, 77 Fed. Reg. 77628 (December 28, 2012). *See* our Client Memorandum, "Regulation of U.S. Operations of Non-U.S. Banks," dated December 16, 2012, available at https://www.sullcrom.com/files/Publication/e12d4ab6-7303-4e2c-9bac-88f9cc5c0704/Presentation/PublicationAttachment/75e7266e-91bf-4919-aa89-e4f91a78572d/SC_Publication_Regulation_of_US_Operations_of_Non_US_Banks.pdf.

See our Client Memorandum, "Regulatory Capital Surcharge for Global Systemically Important Banks," dated July 26, 2011, available at http://www.sullcrom.com/files/Publication/d2074741-d55b-4c97-b42d-eb2da2520b50/Presentation/PublicationAttachment/35640a9d-58dc-4371-8466-ecfb6a6e8500/SC_Publication_Bank_Capital_Requirements_7-26-11.pdf.

3 In addition, if an FBO designates an existing U.S. bank holding company as its top-level IHC (as permitted by the Final Rules) instead of, for example, interposing a newly created IHC between the FBO and its U.S. subsidiaries, including the BHC, the provisions of Section 171 of the Dodd-Frank Act (the so called "Collins Amendment") would not appear to permit the delay of the generally applicable leverage capital requirements until 2018 for such BHC which would then become the IHC.

4 We note that although the Preamble literally states that an IHC "formed by July 1, 2016 will be required to submit its first capital plan in January 2017," there is some ambiguity as to whether the interaction between Section 252.153(e)(2)(ii) of the Final Rule and 12 C.F.R. § 225.8(b) (the FRB capital plan rule) would otherwise require the first IHC capital plan to be filed in January 2018 — at the same time as when the Dodd-Frank company-run and supervisory stress test requirements are effectively implemented for an IHC under the transition provisions of Section 252.153(e)(1)(ii)(C)(1) of the Final Rule.

5 Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (Oct. 24, 2013). *See* our Client Memorandum, "Federal Reserve Issues Basel III Liquidity Coverage Ratio Proposal for Large U.S. Banks," dated October 29, 2013, available at http://www.sullcrom.com/Basel-III-Liquidity-Framework-10-29-2013/.

6 The FRB noted, however, that such standards may be quite similar to the Final Rules for designated non-bank financial companies whose activities more closely resemble those of BHCs.

7 *See* Basel Committee, Supervisory framework for measuring and controlling large exposures, (March 2013), available at http://www.bis.org/publ/bcbs246.htm.

8 *See* our Client Memoranda, "Basel Committee Updates Framework for Assessing a Common Equity Surcharge on Global Systemically Important Banks," dated July 26, 2013, available at http://www.sullcrom.com/files/Publication/7f8be67a-0232-4204-8ad0-956d8038267c/Presentation/PublicationAttachment/35b56b97-9940-4f60-ad4b-96002e8d4b81/SC_Publication_Bank_Capital_Requirements.pdf; "Regulatory Capital Surcharge

for Global Systemically Important Banks," dated July 26, 2011, available at http://www.sullcrom.com/files/Publication/d2074741-d55b-4c97-b42d-eb2da2520b50/Presentation/PublicationAttachment/35640a9d-58dc-4371-8466-ecfb6a6e8500/SC_Publication_Bank_Capital_Requirements_7-26-11.pdf; "Basel Committee Issues Final Rule Regarding Common Equity Surcharge for Global Systemically Important Banks," dated November 10, 2011, available at http://www.sullcrom.com/files/upload/Banking-Capital-Requirements-11-10-11.pdf.

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"ENHANCED PRUDENTIAL STANDARDS" FOR LARGE U.S. BANK HOLDING COMPANIES

The following table provides an overview of key requirements of the Final Rule, including relevant commentary from the Preamble. The table also summarizes the corresponding requirements under the Proposed U.S. Rule and highlights key changes, if any, between the Proposed U.S. Rule and the Final Rule.

The Proposed U.S. Rule would have required U.S. BHCs with total consolidated assets of $10 billion or more to have a risk committee and perform annual stress tests and would have applied the full scope of its provisions to U.S. BHCs with total consolidated assets of $50 billion or more and non-bank financial companies the FSOC has designated for supervision by the FRB (together, "*Covered Companies*").The Final Rule's scope of application is the same as the Proposed U.S. Rule's except that, as noted in the memorandum, the Final Rule does not implement enhanced prudential standards for non-bank financial companies designated by the FSOC for supervision by the FRB.

Topic:	**Proposed U.S. Rule:**	**Final Rule:**
A. Enhanced Risk-Based and Leverage Capital Requirements, Capital Planning and Stress Testing for U.S. BHCs		
The capital plan rules (CCAR), stress test rules (DFAST), and bank capital rules are already in effect for U.S. BHCs. Under those rules, U.S. BHCs with $50 billion or more in total consolidated assets are required to file an annual capital plan with the FRB and perform semi-annual stress tests, and BHCs with $10 billion or more but less than $50 billion in total consolidated assets are required to perform annual (not semi-annual) stress tests, but are not required to file an annual capital plan. *For information on the CCAR, see our Client Memoranda, "Federal Reserve Issues Instructions and Guidance for the 2014 Comprehensive Capital Analysis and Review Program," dated November 6, 2013, available at http://www.sullcrom.com/files/Publication/450284f9-f4df-4871-bf2c-e8fe5e0b7f87/Presentation/PublicationAttachment/0dffd0c7-d399-432c-9786-91c0decd2085/SC_Publication_Bank_Capital_Plans_and_Stress_Tests.pdf and "Federal Reserve Issues Instructions and Guidance for the Comprehensive Capital Analysis and Review and Capital Plan Review Programs for 2013: Outline of Certain Key Aspects," dated November 11, 2012, available at: http://www.sullcrom.com/files/Publication/a8723c62-5db8-42cb-8a2a-09667d45b951/Presentation/PublicationAttachment/ae1d94f6-330e-473d-aed0-0d67b34be739/SC_Publication_Bank_Capital_Plans_and_Stress_Tests.pdf.* *For information on DFAST, see our Client Memorandum, "Federal Reserve Board Issues Final Rule Regarding Capital Plan and Formal Stress Test Requirements for Certain Large Bank Holding Companies," dated November 29, 2011, available at: http://www.sullcrom.com/files/upload/Bank-Capital-Plans-12-2011.pdf.* *For information on the bank capital rules, see our Client Memorandum, "Federal Reserve Approves Final Rules Addressing Basel III Implementation and, for All Banks, Substantial Revisions to Basel I-Based Rules," dated July 3, 2013, available at: http://www.sullcrom.com/files/Publication/88852b37-6557-4239-995c-916ac95c6cde/Presentation/PublicationAttachment/86de3e15-0168-4cdd-8442-46ae3fa9e39c/SC_Publication_Bank_Capital%20_Rules_Basel_III_7_3_13.pdf.*		
B. Liquidity Requirements for U.S. BHCs		
1. Entities Subject To Liquidity	Under the Proposed U.S. Rule, the enhanced liquidity	Under the Final Rule, the enhanced liquidity requirements apply to U.S. BHCs with total consolidated assets of $50

Topic:	Proposed U.S. Rule:	Final Rule:
Requirements:	requirements applied to all Covered Companies. The FRB did not expressly address whether the Basel III liquidity framework when implemented for U.S. banking organizations — that is, the liquidity coverage ratio, or "*LCR*", and net stable funding ratio, or "*NSFR*" — would apply to all U.S. banking organizations or only to larger banking organizations in the Proposed U.S. Rule other than by referring to a "subset" of Covered Companies, implicitly acknowledging that the scope of the Basel III liquidity framework's application was open. The FRB did not use this "subset" formulation when discussing the application of the Basel III capital rules.	billion or more. (§ 252.30, Preamble, p. 49). The FRB indicated in the Preamble that the Final Rule's liquidity requirements and the Basel III standards are "designed to complement one other." (Preamble, p. 52). In October 2013, the FRB and other U.S. banking agencies proposed rules implementing the LCR for advanced approaches U.S. BHCs and their depositor institution subsidiaries having $10 billion or more in total consolidated assets.[1] The NSFR remains under development by the Basel Committee. (Preamble, p. 84).
2. Liquidity Risk-Management Framework:		
Corporate Governance Provisions	The Proposed U.S. Rule included detailed provisions with respect to the responsibilities of the board of directors and its risk committee, as well as senior management.	The Final Rule also includes detailed provisions with respect to the responsibilities of the board of directors, its risk committee and senior management, but with modifications that recognize the oversight role of boards of directors and their committees as compared to the day-to-day management role of senior management by allocating to management some of the duties that the Proposed U.S. Rules imposed on the board of directors or risk committee. (§ 252.34).
Corporate Governance Provisions: Board of Directors	The Proposed U.S. Rule would have required the board of directors to: • establish the Covered Company's "liquidity risk tolerance" at least annually (defining "liquidity risk tolerance" as the "acceptable level of liquidity risk a [Covered Company] may assume in connection with its operating strategies," taking into account, among other factors, the Covered	The Final Rule requires the board of directors to: • approve, at least annually, "the acceptable level of liquidity risk that the U.S. BHC may assume in connection with its operating strategies," taking into account the U.S. BHC's capital structure, risk profile, complexity, activities, and size (§ 252.34(a)(i)); • receive and review, at least semi-annually, information

[1] For information concerning those proposed rules, see our Client Memorandum, "Basel III Liquidity Framework: Federal Reserve Issues Basel III Liquidity Coverage Ratio Proposal for Large U.S. Banks," dated October 29, 2013, available at https://www.sullcrom.com/files/Publication/ccea94bd-e101-420d-95a2-92ea2cebbc60/Presentation/PublicationAttachment/ac0da504-0c86-415e-a474-6a0e29a6f649/SC_Publication_Basel_III_Liquidity_Framework.pdf

Topic:	Proposed U.S. Rule:	Final Rule:
	Company's capital structure, risk profile, complexity, activities, size and other appropriate risk-related factors); • receive and review information provided by senior management at least semi-annually to determine whether the Covered Company is managed in accordance with the established liquidity risk tolerance; • oversee the Covered Company's liquidity risk-management processes and review and approve the liquidity risk-management strategies, policies, and procedures established by senior management; • review and approve the Covered Company's contingency funding plan at least annually and whenever the Covered Company materially revised the plan; and • to conduct more frequent reviews and approvals as market and idiosyncratic conditions warrant.	provided by senior management to determine whether the U.S. BHC is operating in accordance with its liquidity risk tolerance (§ 252.34(a)(ii)); and • approve and periodically review the liquidity risk-management strategies, policies and procedures established by senior management (§ 252.34(a)(2)). However, unlike the Proposed U.S. Rule, the Final Rule requires that senior management, rather than the board of directors, "establish" the U.S. BHC's risk tolerance and assigns responsibility for reviewing and approving the contingency funding plan to the risk committee. (§ 252.34(b), Preamble, p. 55).
Corporate Governance Provisions: Risk Committee	The Proposed U.S. Rule would have required the risk committee (or a designated sub-committee of the risk committee) to: • review and approve the liquidity costs, benefits and risks of each significant new business line and each significant new product before the Covered Company implemented the line or offered the product; • consider whether the liquidity risk of the new strategy or product under current conditions and under a liquidity stress was within the established liquidity risk tolerance; • at least annually, review approved significant business lines and products to determine whether each line or product had created any unanticipated liquidity risk, and to determine whether the liquidity risk of each line or product continued to be within the established liquidity risk tolerance; • at least quarterly, review key liquidity metrics, including cash-flow projections that used time periods in excess of 30 days, the liquidity stress test process and its results, the size and composition of the liquidity buffer, the specific	The liquidity risk-management duties assigned by the Final Rule to the risk committee are more limited than those assigned by the Proposed U.S. Rule. The only specific liquidity risk-management duty that the Final Rule assigns to the risk committee is responsibility for reviewing and approving the contingency funding plan and any material revisions to the contingency plan. (§ 252.34(b), Preamble, p. 57). Importantly, and as discussed further below in connection with senior management's responsibilities, the Final Rule requires senior management, rather than the risk committee, to review and approve new products and business lines. (§ 252.34(b)(3)). As noted above, the Final Rule requires that the board of directors as a whole approve liquidity risk, review management information on liquidity risk, and review and approve liquidity risk-management procedures.

Topic:	Proposed U.S. Rule:	Final Rule:
	limits on potential sources of liquidity risk and a review of the Covered Company's compliance with those limits, and liquidity risk-management information necessary to identify, measure, monitor and control liquidity risk and to comply with the new liquidity rules; • periodically review the independent validation of the liquidity stress tests; and • establish procedures governing the content of senior management reports on the liquidity risk profile of the Covered Company.	
Corporate Governance Provisions: Senior Management	The Proposed U.S. Rule would have required senior management to: • establish and implement liquidity risk-management strategies, policies and procedures and to oversee the development and implementation of liquidity risk measurement, monitoring and reporting systems, cash-flow projections, liquidity stress testing and associated buffers, specific limits, and the contingency funding plan; and • report regularly to the risk committee (or a designated sub-committee of the risk committee) on the liquidity risk profile of the Covered Company and provide other information, as necessary, to the board of directors or risk committee.	The Final Rule assigns to senior management responsibility for approving new products and business lines (assigned to the risk committee, as specified in the Proposed U.S. Rule) and refines the liquidity risk-related responsibilities of senior management. (§ 252.34(c), Preamble p. 58). Under the Final Rule, senior management is required to: • establish and implement liquidity risk-management strategies, policies, and procedures (§ 252.34(c)(1)(i)); • oversee development and implementation of liquidity risk measurement and reporting systems (§ 252.34(c)(1)(ii)); • determine at least quarterly whether the company is operating in accordance with such policies and procedures and whether it is in compliance with the liquidity and risk-management sections of the Final Rule (§ 252.34(c)(1)(iii), Preamble, p. 56-57); • report at least quarterly to the board of directors or the risk committee regarding the company's liquidity risk profile and liquidity risk tolerance (§ 252.34(c)(2)); • "approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product that could have a significant effect on the company's liquidity risk profile" (§ 252.34(c)(3)(i)); • annually review significant business lines and products for

Topic:	Proposed U.S. Rule:	Final Rule:
		liquidity risk and with respect to the company's liquidity risk tolerance (§ 252.34(c)(3)(ii)); • review the company's cash-flow projections at least quarterly (§ 252.34(c)(4)); • establish liquidity risk limits and review compliance at least quarterly (§ 252.34(c)(5)); • approve the liquidity stress testing practices, methodologies, and assumptions required by the Final Rule at least quarterly, and whenever the company materially revises its liquidity stress testing practices, methodologies or assumptions (§ 252.34(c)(6)(i)); • review the liquidity stress testing results at least quarterly (§ 252.34(c)(6)(ii)); • review the independent review of the liquidity stress tests periodically (§ 252.34(c)(6)(iii)); and • approve the size and composition of the liquidity buffer at least quarterly (§ 252.34(c)(6)(iv)). The FRB clarified in the Preamble that a "significant" business line or product is one that could have a significant effect on the company's liquidity risk profile. (Preamble, p. 56). The Preamble notes that a U.S. BHC may assign the responsibilities assigned to senior management to its chief risk officer, as this officer would be considered a member of the senior management. (Preamble, p. 59).
Corporate Governance Provisions: Independent Review	The Proposed U.S. Rule would have required each Covered Company to establish and maintain a review function to evaluate its liquidity risk-management that was independent of management functions that execute funding (that is, independent of the treasury function). The Proposed U.S. Rule specified, in its provisions dealing with liquidity stress testing, that the stress process and assumptions must be "validated" and the "validation function" were required to be "independent" of functions that develop or design liquidity stress testing and of management functions that execute	In addition to the provisions relating to the independent review function, which the Final Rule adopts substantially as proposed, liquidity stress test processes and assumptions are subject to independent review under the Final Rule, as opposed to being required to be independently validated. (§ 252.34(d), Preamble, p. 60). The Preamble also clarifies that the independent review function is <u>not</u> required to be independent of the liquidity risk-management function. (Preamble, p. 60).

Topic:	Proposed U.S. Rule:	Final Rule:
	funding.	
Cash-flow Projections	The Proposed U.S. Rule would have required Covered Companies to produce comprehensive projections of short-term and long-term cash flows arising from assets, liabilities and off-balance sheet exposures over "short-term and long-term periods that are appropriate to the Covered Company's capital structure, risk profile, complexity, activities, size, and other risk related factors." The Proposed U.S. Rule also would have required Covered Companies to identify and quantify discrete and cumulative cash-flow mismatches. Unlike the Basel III liquidity framework (with the LCR's 30-day time horizon and the NSFR's one-year time horizon), the Proposed U.S. Rule would have accorded the Covered Company some discretion in establishing appropriate periods.	The Final Rule largely adopts the cash-flow projections requirements under the proposed framework for managing liquidity risk. (§ 252.34(e)). The Final Rule makes clear that cash-flow projections must provide sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the U.S. BHC, including, where appropriate, analyses by business line, currency, or legal entity, and must be performed, at a minimum, over short and long-term time horizons. (§ 252.34(e)(2), Preamble, p. 62). The Preamble also clarifies that "while the Final Rule does not require cash-flow projections over time horizons longer than one year, it may be appropriate for companies to produce cash-flow projections for longer time periods, for instance to account for long-term debt maturities, if circumstances warrant." (Preamble, p. 62).
Liquidity Stress Testing	The Proposed U.S. Rule would have required Covered Companies to regularly stress test cash-flow projections, and to use those stress tests in determining the size of their liquidity buffers. • The stress tests would have been required to be conducted at least monthly, as well as on an "ad hoc" basis to address unexpected circumstances. • The stress tests would have been required to incorporate a range of stress scenarios, taking into consideration, among other things, market stress, idiosyncratic stress and combinations of the two, and address potential actions of other market participants experiencing liquidity stress. • The time horizons, at a minimum, would have been required to include an overnight time horizon, a 30-day time horizon, a 90-day time horizon and a one-year time horizon. • This stress testing would have been required to	The Final Rule largely adopts the proposed framework for liquidity stress testing requirements, including the requirement for monthly stress tests that include an overnight and 30-day, 90-day and one-year planning horizons. (§ 252.35). However, the Final Rule and Preamble incorporate several important changes and clarifications as compared to the Proposed U.S. Rule. • The Final Rule excludes cash and securities issued by the U.S., a U.S. government agency, or a U.S. government-sponsored enterprise ("*GSE*") from the requirement that Covered Companies keep diversified sources of funding throughout each stress test planning horizon. (§ 252.35(a)(5), Preamble, p. 73). • The Final Rule clarifies that a line of credit may qualify as a cash-flow source for purposes of a stress test with a planning horizon that exceeds 30 days, but not for purposes of a stress test with a planning horizon of 30 days or less. (§ 252.35(a)(5)(iii), Preamble, p. 74).

Topic:	Proposed U.S. Rule:	Final Rule:
	incorporate the following assumptions: • for the first 30 days of a liquidity stress scenario, only highly liquid assets that are unencumbered could have been used as a cash-flow source to offset projected funding needs; • for periods beyond the first 30 days, highly liquid assets that are unencumbered and other "appropriate funding sources" could have been used as cash-flow sources; • if an asset were used as a cash-flow source, the fair value of the asset would have been required to "be discounted to reflect any credit risk and market volatility of the asset;" and • assets used as funding sources would have been required to be "sufficiently diversified."	• The Preamble also notes that while "net cash outflows may include some cash inflows, [ ] these should be generally limited to contractual maturities within the 30 days." (Preamble, p. 74). • As mentioned above, the Final Rule, unlike the Proposed U.S. Rule, does not require independent validation of the stress process and assumptions. Instead, the Final Rule requires that a U.S. BHC appropriately incorporate conservative assumptions in developing its stress test scenarios and the other elements of the stress test process and that these assumptions take into consideration the U.S. BHC's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. These assumptions must be approved by the chief risk officer and be subject to independent review. (§ 252.35(a)(7)(ii), Preamble, p. 74).
Liquidity Buffer	The Proposed U.S. Rule would have required Covered Companies to maintain a liquidity buffer of "highly liquid assets" that are "unencumbered." The liquidity buffer would have been required to be sufficient to meet projected net cash outflows and the projected loss or impairment of existing funding sources for 30 days over a range of liquidity stress scenarios. For purposes of the liquidity buffer: • The term "highly liquid assets" was defined to mean cash, securities issued or guaranteed by the U.S. government, a U.S. government agency or a U.S. GSE, or any other asset that the Covered Company demonstrates to the satisfaction of the FRB has low credit and market risk, is traded in an active secondary two-way market that has observable prices and meets other standards and is of a type that investors historically purchased in periods of financial market distress during which market liquidity is impaired. • The term "unencumbered" was defined broadly to mean that the asset is not pledged in any respect, subject to	The Final Rule largely adopts the liquidity buffer requirements under the proposed framework for managing liquidity risk. (§ 252.35(b)). The definition of "highly liquid assets" remains the same under the Final Rule as under the Proposed U.S. Rule. The FRB rejected commenters' request that the scope of highly liquid assets be broadened and that a mechanic be created for identifying additional types of highly liquid assets without the need for a company-by-company "demonstration to the satisfaction" of the FRB that the asset satisfies the specified liquidity standards. The Preamble notes that "assets that are high-quality liquid assets under the proposed U.S. LCR (which include equities included in the S&P 500 index or comparable indices and investment grade corporate bonds) would be liquid under most scenarios," subject to the requirement that the U.S. BHC make the required demonstration to the FRB. (§ 252.35(b)(3)(i), Preamble, p. 77). The Preamble also mentions that "in some cases, sovereign debt issued by foreign countries will meet the criteria for highly liquid assets." (Preamble, p. 77).

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	legal or contractual restrictions on liquidation or transfer, or designated as a hedge in a trading position.	The Preamble further clarifies that a U.S. BHC "is required to assign appropriate haircuts to all highly liquid assets, including assets that qualify as high-quality liquid assets under the proposed U.S. LCR." (§ 252.35(b)(3)(iii), Preamble, p. 77). The Final Rule incorporates two important changes to the definition of "unencumbered" as compared to the Proposed U.S. Rule. First, it allows assets used as a hedge position to meet the definition, as long as they meet the definition's other criteria. Second, it specifies that assets pledged to a central bank or a U.S. GSE (if not securing outstanding credit) may also be considered unencumbered under the Final Rule. (§ 252.35(b)(3)(ii), Preamble, p. 80). However, the FRB also confirmed that in most cases, excess margin of assets pledged to clearing counterparties and assets subject to bankers' liens will continue to be treated as "encumbered." (Preamble, p. 80). The Preamble also clarifies that "if firms are able to re-hypothecate collateral they hold that has been pledged to them to secure a loan (but have not done so), they may count that collateral as a highly liquid asset with appropriate haircuts." (Preamble, p. 78). The Final Rule clarifies that the requirement that most assets included in the liquidity buffer be diversified does not apply to U.S. treasuries, U.S. agency securities and U.S. GSE securities. (§ 252.35(b)(3)(iv), Preamble, p. 81-82).
Contingency Funding Plan	The Proposed U.S. Rule would have required each Covered Company to "establish and maintain a contingency funding plan that sets out the Covered Company's strategies for addressing liquidity needs during liquidity stress events." The contingency funding plan would have been required to: • include a quantitative assessment incorporating information generated by the stress testing described above; • include an event management process that sets out the Covered Company's procedures for managing liquidity	The Final Rule largely adopts the proposed framework for the contingency funding plan requirements. (§ 252.34(f)). The Preamble clarifies that while the FRB "does not expect every aspect of the contingency funding plan to be modified at set intervals," the contingency funding plan "must be updated whenever changes to market and idiosyncratic conditions would have a material impact on the plan." (Preamble, p. 65). The Preamble notes that implementation of a contingency funding plan should include periodic liquidation of assets, including portions of the U.S. BHC's liquidity buffer, although testing does not necessarily require booking of transactions

Topic:	Proposed U.S. Rule:	Final Rule:
	during identified liquidity stress events; • include procedures for monitoring emerging liquidity stress events; and • provide for periodic testing of the components of the contingency funding plan to assess its reliability during liquidity stress events. The Proposed U.S. Rule also would have required the contingency funding plan to be updated annually or more often if necessary.	for each contingency funding option. (Preamble, pp. 65-66). The Preamble clarifies that lines of credit may be included as sources of funds in contingency funding plans; however, U.S. BHCs should consider the characteristics of such funding and how counterparties may behave in times of stress. (Preamble, p. 66). The Preamble also states that contingency funding plans that incorporate borrowing from the discount window should specify how that funding would be replaced with more permanent funding, as well as the proposed time line for taking those actions. (Preamble, pp. 66-67). The Final Rule modifies the event-management process requirement to provide that a U.S. BHC must identify the circumstances in which it will implement its contingency funding plan. These circumstances include a failure to meet any minimum liquidity requirement established by the FRB, which may include a final version of the proposed U.S. LCR, if adopted by the FRB. (§ 252.34(f)(2)(i)(C), Preamble, p. 67).
Specific Limits	The Proposed U.S. Rule would have required each Covered Company to establish or maintain limits on potential sources of liquidity risk, including (i) concentrations of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers, (ii) the amount of specified liabilities maturing within various time horizons, and (iii) off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events. The Proposed U.S. Rule did not set forth numeric standards for these items but, instead, would have required that the limits "must reflect the Covered Company's capital structure, risk profile, complexity, activities, size, other appropriate risk-related factors, and established liquidity risk tolerance."	The Final Rule substantially follows the Proposed U.S. Rule's requirements with respect to liquidity risk limits with minor wording changes (e.g., in the Final Rule the U.S. BHC must "monitor sources of liquidity risk and establish limits on liquidity risk" (§ 252.34(g)); in the Proposed U.S. Rule each Covered Company "must establish and maintain limits on potential sources of liquidity risk."
Monitoring	The Proposed U.S. Rule would have required a Covered Company to monitor liquidity risk related to collateral positions, liquidity risks across the enterprise, and intraday	The Final Rule substantially follows the Proposed U.S. Rule's monitoring requirements. (§ 252.34(h)).

Topic:	Proposed U.S. Rule:	Final Rule:
	liquidity positions.	
3. Compliance Timeline:	An existing Covered Company would have been subject to the liquidity requirements beginning on the first day of the fifth quarter following the effective date of the Final Rule. A company that became a Covered Company later would have been subject to the liquidity requirements on the first day of the fifth quarter following the date on which it became a Covered Company.	U.S. BHCs with total consolidated assets of $50 billion or more on June 30, 2014 will be subject to the liquidity requirements as of January 1, 2015. (§ 252.31(c)). A U.S. BHC that crosses the asset threshold after June 30, 2014 will be subject to the liquidity requirements beginning on the first day of the fifth quarter following the date on which it crossed the asset threshold. (§ 252.31(a)). If a U.S. BHC with $50 billion or more in assets is controlled by an FBO, it would be subject to the domestic bank holding company liquidity requirements until June 30, 2016, after which the IHC established or designated by the FBO must comply with the liquidity requirements of FBOs. (§ 252.31(e)).
C. Risk Management		
1. Applicability of the Risk Committee Requirements:	The Proposed Rule would have required Covered Companies and publicly traded U.S. BHCs with total consolidated assets of $10 billion or more to maintain an enterprise-wide risk committee, comprised of members of its board of directors, that "oversees the risk management practices of such company's worldwide operations."	The Final Rule requires U.S. BHCs with total consolidated assets of $50 billion or more and publicly traded U.S. BHCs with total consolidated assets of $10 billion or more to "maintain a risk committee that approves and periodically reviews the risk-management policies of [the BHC's] global operations and oversees the operation of [the BHC's] global risk-management framework." (§ 252.22(a), § 252.33(a)(1)).
2. Responsibilities of the Risk Committee:	The Proposed Rule would have required the risk committee to document, review, and approve the enterprise-wide risk-management practices of the Covered Company; specifically, to oversee the operation of an appropriate enterprise-wide risk-management framework commensurate with the Covered Company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.	The Final Rule requires the risk committee to approve and periodically review the global risk-management "policies" of the company, rather than its risk-management "practices." The FRB believes that the change is more closely aligned with the board of directors' oversight role over risk management. (§ 252.22(a), § 252.33(a)(1), Preamble, p. 32). The Final Rule maintains the proposed requirement that the risk committee "oversee" global risk management. (§ 252.22(a), § 252.33(a)(1)).
3. Requirements for the Risk-Management	Under the Proposed U.S. Rule, the risk committee would have been required to "oversee" the Covered Company's risk-management framework and that framework would have had	The Final Rule does not require that the risk-management framework include specific risk limitations for each business line of the U.S. BHC. (§ 252.22(b), § 252.33(a)(2), Preamble,

Topic:	Proposed U.S. Rule:	Final Rule:
Framework:	to include on an enterprise-wide basis: • risk limitations appropriate to each business line of the Covered Company; • appropriate policies and procedures relating to risk-management governance, risk-management practices, and risk control infrastructure; • processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks; • monitoring of compliance with the Covered Company's risk limit structure and policies and procedures relating to risk-management governance, practices, and risk controls; • effective and timely implementation of corrective actions to address risk-management deficiencies; • specification of authority and independence of management and employees to carry out risk-management responsibilities; and • integration of risk management and control objectives in management goals and compensation structure.	p. 32). Other than as described above, the Final Rule adopts the other elements of the risk-management framework generally as proposed and, like the Proposed U.S. Rule, specifies that the risk committee "oversees the operation of the . . . framework." (§ 252.22(b), § 252.33(a)(2), Preamble, p. 33).
4. Minimum Member Requirements of a Risk Committee:	Under the Proposed U.S. Rule, an enterprise-wide risk committee would have had to: • be chaired by an independent director; and • have at least one member with "risk-management expertise" that is commensurate with the company's capital structure, risk profile, complexity, activities, size and other appropriate risk-related factors.	The Final Rule keeps the requirement of the Proposed U.S. Rule to have one independent director that chairs the risk committee, but, like the Proposed U.S. Rule, gives U.S. BHCs discretion to determine the appropriate proportion of independent directors on the risk committee based on its size, scope and complexity, provided that it meets the minimum requirement of one independent director. (§ 252.22(d)(2), § 252.33(a)(4)(ii), Preamble, pp. 35-36). The Final Rule also keeps the requirement of having at least one member with "risk-management expertise" as proposed, but revises the definition of "risk-management expertise", discussed further below. (§ 252.22(d)(1), § 252.33(a)(4)(i), Preamble, pp. 37-38).
5. Definition of "Risk-	The Proposed Rule would have defined "risk-management	The Final Rule loosens the standard for "risk-management

Topic:	Proposed U.S. Rule:	Final Rule:
Management Expertise":	expertise" as: • an understanding of risk-management principles and practices with respect to U.S. BHCs or depository institutions, and the ability to assess the general application of such principles and practices; and • experience developing and applying risk-management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations or, if applicable, non-bank financial companies.	expertise." • For publicly traded U.S. BHCs with total consolidated assets of $10 billion or more, but less than $50 billion, at least one member of the risk committee must have "experience in identifying, assessing, and managing risk exposures of large, complex firms." The Preamble clarifies that risk-management experience in a non-banking or nonfinancial field may suffice. (§ 252.22(d)(1), Preamble, pp. 37-28). • For U.S. BHCs with total consolidated assets of $50 billion or more, at least one member of the risk committee must have "experience in identifying, assessing, and managing risk exposures of large, complex *financial* firms" (emphasis added). "Financial firms" could include a bank, a securities broker-dealer, or an insurance company, provided that the experience is relevant to the particular risks facing the U.S. BHC. (§ 252.33(a)(4)(i), Preamble, pp. 37-38).
6. Corporate Governance Requirements of a Risk Committee:	Under the Proposed U.S. Rule, an enterprise-wide risk committee would have been required to: • have a formal, written charter, approved by the Covered Company's board of directors; and • meet regularly and as needed, and fully document and maintain records of such proceedings, including risk-management decisions.	The Final Rule adopts the formal, written charter requirement as well as the requirement to fully document and maintain records of its proceedings, including risk-management decisions, as proposed. (§ 252.22(c), § 252.33(a)(3), Preamble, p. 39). The Final Rule provides more specificity to the "meet regularly and as needed" requirement under the Proposed U.S. Rule and requires instead that the risk committee meet at least quarterly and otherwise as needed. (§ 252.22(c)(1), § 252.33(a)(3)(v), Preamble, p. 39).
7. Additional Requirements for U.S. BHCs with Total Consolidated Assets of $50 Billion or More:	The Proposed Rule would have subjected the risk committee of Covered Companies to the following additional requirements: • not be housed within another committee or be part of a joint committee; • report directly to the board of directors; • appoint a chief risk officer; and	The Final Rule retains the requirement for a separate risk committee, and clarifies that the risk committee must be "an independent committee . . . that has, as its sole and exclusive function, responsibility for the risk-management policies of the [U.S. BHC]'s global operations and oversight of the operation of the [U.S. BHC]'s global risk-management framework" and must not be part of a joint committee. (§ 252.33(a)(3)(ii), Preamble, pp. 42-43). The Final Rule also clarifies that the "regular reports" to be

Topic:	Proposed U.S. Rule:	Final Rule:
	• receive and review regular reports from the chief risk officer.	submitted by the chief risk officer to the risk committee for review must be provided "on not less than a quarterly basis." (§ 252.33(a)(3)(iv), Preamble, p. 43). The risk committee of U.S. BHCs with total consolidated assets of $50 billion or more is also subject to the liquidity risk-management requirements as discussed above. (§ 252.33(a)(1)).
8. Requirements and Responsibilities of a Chief Risk Officer:	Under the Proposed U.S. Rule, a chief risk officer would have been required to: • have risk-management expertise that is commensurate with the Covered Company's capital structure, risk profile, complexity, activities, size, and other risk-related factors that are appropriate; • be appropriately compensated and provided appropriate incentive to provide an objective assessment of the risks taken by the company; • report directly to the risk committee and the chief executive officer; and • have direct oversight over the establishment of risk limits and monitoring compliance with such limits; implementation and ongoing compliance with appropriate policies and procedures relating to risk management, governance, practices, and risk controls; developing and implementing appropriate processes and systems for identifying and reporting risks, including emerging risks; managing risk exposures and risk controls; monitoring and testing risk controls; reporting risk-management issues and emerging risks; and ensuring that risk-management issues are effectively resolved in a timely manner.	The Final Rule makes the following changes to the Proposed U.S. Rule: • *Risk-management expertise*: Similar to the risk committee requirements, the Final Rule revises the "risk-management expertise" requirement to focus on an individual's "experience in identifying, assessing, and managing exposures of large, complex *financia*l firms" (emphasis added). The Preamble notes that such experience must be relevant to the particular risks facing the U.S. BHC and commensurate with the U.S. BHC's structure, risk profile, complexity, activities, and size. (§ 252.33(b)(1), Preamble, p. 45). • *Oversight responsibilities*: The Final Rule does not include the proposed requirement that the chief risk officer have "direct" oversight over the enumerated responsibilities or perform the functions that carry out those responsibilities. The FRB points out in the Preamble that the chief risk officer may execute his or her responsibilities by working with, or through, others in the organization. (§ 252.33(b)(2), Preamble, pp. 46-47). • *Reporting and compensation requirements*: The Final Rule retains the reporting requirements as proposed and adopts the substance of the compensation requirements as proposed. (§ 252.33(b)(3), Preamble, pp. 47-49).
9. Compliance Timeline:	Covered Companies and publicly traded U.S. BHCs with total consolidated assets of $10 billion or more would have had to comply with these requirements on the first day of the fifth quarter following the effective date.	A U.S. BHC that, as of June 30, 2014, has total consolidated assets of $10 billion and is publicly traded must comply with the requirements beginning on July 1, 2015. (§ 252.21(c)). Otherwise, the U.S. BHC must comply with the requirements on the first day of the ninth quarter following the later of the

Topic:	Proposed U.S. Rule:	Final Rule:
		date on which it crosses the asset threshold and becomes publicly traded. (§ 252.21(a)). A U.S. BHC that, as of June 30, 2014, has total consolidated assets of $50 billion or more must comply with the requirements beginning on January 1, 2015. (§ 252.31(c)). Otherwise, the U.S. BHC must comply with the requirements on the first day of the fifth quarter following the date on which it crosses the asset threshold. (§ 252.31(a)).
D. Debt-to-Equity Limits for U.S. BHCs		
U.S. BHCs with total consolidated assets of $50 billion or more would have been/will be subject to the following rules:		
1. Entities Subject to the Debt-to-Equity Ratio Requirement:	The Dodd-Frank Act provides that the FRB must require Covered Companies to maintain a specified debt-to-equity ratio upon a determination by the FSOC that (i) the Covered Company poses a grave threat to the financial stability of the U.S. and (ii) the imposition of a debt-to-equity ratio requirement is necessary to mitigate the risk that such Covered Company poses to the financial stability of the U.S.	The Final Rule adopts the debt-to-equity ratio requirement as proposed with respect to U.S. BHCs with total consolidated assets of $50 billion or more. (§ 252.220, Preamble, p. 11 and 23).
2. Debt-to-Equity Ratio:	The Dodd-Frank Act provides that a Covered Company subject to the debt-to-equity ratio requirement must maintain a debt-to equity ratio of no more than 15-to-1.	The Final Rule adopts the debt-to-equity ratio as proposed with respect to U.S. BHCs with total consolidated assets of $50 billion or more. (§ 252.220(b), Preamble, p. 11).
3. Definitions of “Debt” and “Equity”:	The Proposed U.S. Rule provided that the terms “debt” and “equity” for purposes of the debt-to-equity ratio mean “total liabilities” and “total equity capital,” respectively, as reported: • in the case of a U.S. BHC, on the FRB’s Form FR Y-9C (Consolidated Financial Statements for U.S. BHCs); and • in the case of a non-bank financial company supervised by the FRB, in a report of financial condition required to be filed with the FRB pursuant to Section 161(a) of the Dodd-Frank Act.	The Final Rule adopts the definition of “debt” and “equity” as proposed with respect to U.S. BHCs with total consolidated assets of $50 billion or more. (§ 252.220(a)(2), Preamble, p. 11).

Topic:	Proposed U.S. Rule:	Final Rule:
4. Compliance Timeline:	The Proposed U.S. Rule would have required the Covered Company to come into compliance with the debt-to-equity ratio requirements within 180 days after receipt of written notice from the FSOC that it had made the necessary determinations regarding application of the ratio to the Covered Company.	The Final Rule adopts the debt-to-equity ratio requirement compliance period as proposed with respect to U.S. BHCs with total consolidated assets of $50 billion or more. (§ 252.220(b), Preamble, p. 11).
5. Actions Necessary to Comply with the Debt-to-Equity Ratio Requirement:	Although the Proposed U.S. Rule did not establish a specific set of actions that must be taken by a Covered Company to achieve compliance with the debt-to-equity ratio requirement, the notice to the Proposed U.S. Rule indicated that the FRB expected the identified Covered Company to come into compliance in a manner consistent with the Covered Company's "safe and sound operation and preservation of financial stability." The notice to the Proposed U.S. Rule provided as examples of actions to be taken "a good faith effort to increase equity capital through limits on distributions, share offerings or other capital raising efforts prior to liquidating margined assets."	Like the Proposed U.S. Rule, the Final Rule does not establish a specific set of actions to be taken by a U.S. BHC subject to the debt-to-equity ratio requirement in order to comply with the requirement. The Preamble provides the same examples as the Proposed U.S. Rule. (Preamble, p. 88).
6. Extension of Time Period for Compliance:	The Proposed U.S. Rule would have allowed a Covered Company subject to the debt-to-equity ratio requirement to request up to two extension periods of 90 days each to come into compliance with this requirement upon a showing that the Covered Company had made good faith efforts to comply with the requirement and that each extension is in the public interest.	The Final Rule adopts the same extension of time allowed for compliance. (§ 252.220(c)).
7. Termination of the Debt-to-Equity Ratio Requirement:	Under the Proposed U.S. Rule, a Covered Company subject to the debt-to-equity ratio requirement would no longer have been subject to the requirement as of the date it received notice of a determination by the FSOC that it no longer posed a grave threat to the financial stability of the U.S. and that the imposition of a debt-to-equity requirement was no longer necessary.	Like the Proposed U.S. Rule, under the Final Rule, a U.S. BHC subject to the debt-to-equity ratio requirement would no longer be subject to the requirement as of the date it receives notice of a determination by the FSOC that it no longer poses a grave threat to the financial stability of the U.S. and that the imposition of a debt-to-equity requirement is no longer necessary. (§ 252.220(d)).

Topic:	Proposed U.S. Rule:	Final Rule:
E. Single Counterparty Credit Limits		
The Final Rule does not implement the single counterparty credit limits ("SCCLs") mandated by Section 165 of the Dodd-Frank Act. According to the Preamble, the FRB continues its development of SCCLs for U.S. BHCs and FBOs based on the results of a quantitative impact study conducted last summer and the Basel Committee's initiative to develop a regulatory framework governing large credit exposures that would apply to all global banks. *For a discussion of the proposed SCCL rules, see our Client Memorandum, "Federal Reserve Issues Proposed Rules Implementing Enhanced Prudential Supervision Regime," dated December 22, 2011, available at http://www.sullcrom.com/files/Publication/9302aa5a-e29c-4b55-8020-28042c4aa822/Presentation/PublicationAttachment/d14671a2-7d80-4bef-bade-2966a2d2104a/SC_Publication_Systemically_Important_Financial_Companies_12-22-11.pdf.*		
F. Early Remediation		
The Final Rule does not implement proposed early remediation requirements of Section 166 of the Dodd-Frank Act. The FRB indicated that it is working on integrating the various remediation levels with the new Basel III-based U.S. final capital rules adopted in July 2013 and that it continues to review comments received on the Proposals with respect to early remediation requirements. *For a discussion of the proposed early remediation rules, see our Client Memorandum, "Federal Reserve Issues Proposed Rules Implementing Enhanced Prudential Supervision Regime," dated December 22, 2011, available at http://www.sullcrom.com/files/Publication/9302aa5a-e29c-4b55-8020-28042c4aa822/Presentation/PublicationAttachment/d14671a2-7d80-4bef-bade-2966a2d2104a/SC_Publication_Systemically_Important_Financial_Companies_12-22-11.pdf.*		

"ENHANCED PRUDENTIAL STANDARDS" FOR FOREIGN BANKING ORGANIZATIONS

The following table provides an overview of key requirements of the Final Rule, including relevant commentary from the Preamble accompanying the Final Rule. The table also summarizes the corresponding requirements under the Proposed FBO Rule and highlights key changes, if any, between the Proposed FBO Rule and the Final Rule.

Topic:	**Proposed FBO Rule:**	**Final Rule:**
A. Intermediate Holding Company Requirements		
	FBOs with total global consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of $10 billion or more would have had to form an IHC:	*FBOs with total global consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of $50 billion or more will have to form an IHC:*
1. Applicability of the IHC Requirement:	The requirement would have applied to FBOs with total global consolidated assets of $50 billion or more and combined U.S. assets (excluding U.S. branch and agency assets) of $10 billion or more, regardless of whether the FBO controlled a U.S. depository institution.	The Final Rule increases the threshold for the U.S. asset requirement from $10 billion to $50 billion of U.S. non-branch assets. (§ 252.150, Preamble, p. 18). It also clarifies that an FBO may designate an existing entity as its IHC, provided that that entity is the top-tier entity in the U.S. (§ 252.153(a), Preamble, p. 137).
2. Compliance Timeline:	An FBO that met the relevant asset threshold would have been required to establish an IHC on July 1, 2015. An FBO that crossed the asset threshold after July 1, 2014 would have been required to establish an IHC 12 months after it crossed the asset threshold.	The Final Rule extends the initial compliance date for establishing an IHC by one year to July 1, 2016. The Final Rule clarifies that the FBO and IHC must be in compliance with the enhanced prudential standards (other than the leverage ratio and the stress-testing requirements, which have separate effectiveness dates, described below) on that date. (§ 252.152(c); Preamble, p. 19). The Final Rule provides additional transition time for the transfer of certain assets to the IHC to complete the structural reorganization. By July 1, 2016, an FBO must transfer its entire ownership interest in any U.S. BHC subsidiary, any insured depository institution subsidiary, and U.S. subsidiaries holding at least 90% of the FBO's U.S. non-branch assets to the IHC. An FBO must hold its ownership interest in all U.S. subsidiaries, other than DPC branch subsidiaries and 2(h)(2) subsidiaries, through its IHC by July 1, 2017. (§ 252.152(c)(2)(i), § 252.152(c)(2)(ii), Preamble, p. 119). In addition, the Final Rule extends the compliance period for

Topic:	Proposed FBO Rule:	Final Rule:
		an FBO that crosses the asset threshold after July 1, 2015 to two years, unless that time is accelerated by the FRB in writing. (§ 252.152(a)(2), Preamble, p. 20). Under the Final Rule, the FRB retains blanket authority to extend or move forward any deadlines or any compliance date as it deems appropriate. (§ 252.3(b)).
3. Ownership Interests to be Held in the IHC:	An FBO that established an IHC would have been required to hold its "ownership interest" in any "subsidiary" (as that term is defined in the Bank Holding Company Act of 1956 (the "*BHC Act*"), with its application of the BHC Act's broad definition of "control") organized under the U.S. law, other than a subsidiary held under Section 2(h)(2) of the BHC Act, through the IHC. An FBO also would have been required to transfer to the IHC any controlling interests in U.S. companies acquired pursuant to the FBO's merchant banking authority. An FBO would <u>not</u> have been required to transfer any assets associated with a U.S. branch or agency to the IHC.	The Final Rule maintains essentially the same definition of subsidiary, but adds an exception from the requirement to hold U.S. subsidiaries through the IHC for "DPC branch subsidiaries," defined as "subsidiaries of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency." (§ 252.150, Preamble, p. 131). As before, an FBO need not transfer a subsidiary held under Section 2(h)(2) of the BHC Act to the IHC. Consistent with the Proposed FBO Rule, the Final Rule generally does not require an FBO to transfer assets held through a U.S. branch or agency to the IHC. However, the Preamble clarifies that subsidiaries of branches and agencies, other than DPC branch subsidiaries and 2(h)(2) subsidiaries, are required to be transferred to the IHC. (Preamble, p. 138). The Final Rule, as the Proposed FBO Rule, does not provide a definition of what constitutes an "ownership interest" that must be transferred to the IHC. In the Final Rule, the FRB generally declines to provide for blanket relief as to any particular categories of or asset thresholds for U.S. subsidiaries to be required to be placed in the IHC. Instead, the FRB reserves the authority to address these issues on a case-by-case basis upon application by the FBO. (§ 252.153(c), Preamble, pp. 134-135).
4. Alternative Organizational Structures of the IHC:	The Proposed FBO Rule would have allowed the FRB to permit an FBO to establish multiple IHCs or to use an alternative organizational structure to hold its U.S. operations under certain circumstances.	The Final Rule allows for the same and provides additional guidance regarding the circumstances under which the FRB may permit alternate or multiple IHC structures. In determining whether to permit an alternate structure, the Final Rule provides that the FRB may consider whether applicable home

Topic:	Proposed FBO Rule:	Final Rule:
		country law would prevent the FBO from controlling its U.S. subsidiaries through a single IHC, or where the activities, scope of operations, or structure of the FBO's subsidiaries in the U.S. warrant consideration of alternative structures, such as where an FBO controls multiple lower-tier FBOs that have separate U.S. operations. If the FRB permits an FBO to form two or more IHCs, these IHCs will be subject to the same requirements as other IHCs even if the asset threshold is not met. (§ 252.153(c), Preamble, p. 133). The FRB also retains "discretion during the transition period to address particular and idiosyncratic issues that may arise in connection with [an FBO]'s reorganization" on a case-by-case basis. (Preamble, p. 137).
5. Corporate Form of the IHC:	The Proposed FBO Rule would have required the IHC to be organized under the laws of the United States, any state, or the District of Columbia, but did not specify the legal form the IHC must take (for example, corporation versus limited liability company). The IHC also was <u>not</u> required to be wholly-owned. Thus, an IHC could have had minority investors.	The Final Rule retains the flexibility for the IHC to choose its preferred form of organization, provided that the IHC is organized under the laws of the United States, any of the fifty states thereof, or the District of Columbia. (§ 252.153(a)(2)(i), Preamble, p. 136).
6. Board of Directors/Managers Requirement for the IHC:	Under the risk-management requirements described in further detail below, the IHC would have been required to have a board of directors or equivalent thereto.	Irrespective of its organizational form, the IHC must be governed by a board of directors or managers with the equivalent powers and duties as that of a corporation chartered under the laws of the several states. (§ 252.153(a)(2)(ii)).
7. IHC's Obligation to Serve as a Source of Strength for its Subsidiaries:	The Proposed FBO Rule did not address source of strength obligations of the IHC.	The Preamble clarifies that the Final Rule does not require an IHC to serve as a source of strength for its subsidiaries that are not insured depository institutions (for example, broker-dealers) and makes clear that the Final Rule does not affect any other source of strength obligations that may apply to the IHC to the extent it were otherwise also a bank holding company. (Preamble, p. 141).
8. IHC Implementation Plan:	The Proposed FBO Rule did not contain a specific IHC implementation plan requirement.	The Final Rule requires an FBO with U.S. non-branch assets of $50 billion or more as of June 30, 2014 to submit an implementation plan to the FRB by January 1, 2015, outlining its proposed process for establishing an IHC. (§ 252.153(d),

Topic:	Proposed FBO Rule:	Final Rule:
		Preamble, p. 270). The implementation plan must contain: • a list of the FBO's U.S. subsidiaries and detailed information relating to U.S. subsidiaries either that the FBO is not required to hold through its IHC (that is, Section 2(h)(2) companies or DPC branch subsidiaries) or for which the FBO intends to seek an exemption from the IHC requirement; • a projected timeline for the transfer by the FBO of its ownership interest in U.S. subsidiaries to the IHC; • a timeline of all planned capital actions or strategies for capital accumulation that will facilitate the IHC's compliance with the risk-based and leverage capital requirements; • quarterly *pro forma* financial statements for the IHC covering the period from January 1, 2015 to January 1, 2018; and • a description of the risk-management and liquidity stress testing practices of the FBO, and how the FBO intends to come into compliance with the relevant requirements of the Final Rule. In the Preamble, the FRB acknowledges that an FBO that is above the $50 billion in U.S. assets threshold on June 30, 2014 may try to reduce its U.S. non-branch assets before January 1, 2015. In that case, the implementation plan must contain a description of the FBO's plan for reducing its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, consistent with safety and soundness. (§ 252.153(d)(3), Preamble, p. 140). The Preamble notes that an FBO is not required to file routine updates to its implementation plan; however, the FBO should notify the FRB if it anticipates that it will deviate materially from the plan. (Preamble, pp. 139-140).
9. Cessation of the IHC Requirements:	The FBO would have no longer been subject to the requirements of establishing an IHC if its total assets as reported on its FR Y–7Q were less than $50 billion for each of	The Final Rule clarifies that an FBO may dissolve the IHC if its U.S. non-branch assets fall below the $50 billion threshold for four consecutive quarters. (§ 252.152(d)(2)).

Topic:	Proposed FBO Rule:	Final Rule:
	the four most recent consecutive calendar quarters.	
10. Other Considerations:	The FRB indicated in the notice to the Proposed FBO Rule that it planned to monitor how FBOs adapted to the requirement of establishing an IHC—specifically whether, in response to the IHC requirement, FBOs sought to shift significant assets to a U.S. branch or agency network.	In response to questions raised during the FRB open meeting by FRB Chair Janet Yellen and FRB Governor Sarah Bloom Raskin concerning the potential for regulatory arbitrage (specifically the potential for an FBO to move "risky" activities into a U.S. branch or agency), FRB staff indicated that they intend to monitor carefully how FBOs adapt their operations in response to the IHC requirement, including whether FBOs relocate activities from U.S. subsidiaries to their U.S. branches and agencies, and take appropriate supervisory or other action if such activities are deemed to be evasionary. The FRB may accelerate the timeline for the application of the leverage ratio and stress test requirements if it determines that the FBO has taken actions to evade the application of the Final Rule. (§ 252.153(e)(ii)(B)(2), § 252.153(e)(ii)(C)(2), Preamble, p. 146).
B. Risk-Based Capital Requirements and Leverage Limits		
An FBO with total global consolidated assets of $50 billion (whether or not it holds $50 billion in U.S. assets) would have been/will be subject to the following risk-based capital requirements and leverage limits:		
1. Capital Certification Requirement:	A covered FBO would have been required to certify to the FRB that it met capital requirements at the consolidated level consistent with the Basel Committee framework.	The Final Rule adopts the capital certification requirement largely as proposed.
Demonstrating Compliance	An FBO could demonstrate such compliance either by certifying that it met the capital requirements of its home country regulator (including the types of instruments that satisfy requirements for common equity tier 1, additional tier 1, and tier 2 capital and for calculating its risk-weighted assets), provided that the home country's standards were deemed consistent with the Basel framework or the FBO could demonstrate to the FRB's satisfaction that its home country's standards met standards consistent with the Basel framework.	The Preamble clarifies that the FRB will consider materiality when assessing consistency with the Basel standards, including whether the home country regulator timely implements any standards made part of the Basel capital framework, as well as "analysis regarding the comparability of capital standards, such as the Basel Committee's peer review process." (Preamble, p. 169).
Additional Disclosure	FBOs also would have been required to report to the FRB their consolidated risk-based capital ratios and component	Not included in the Final Rule, except that FBOs must provide reports relating to their compliance with the Basel capital

Topic:	Proposed FBO Rule:	Final Rule:
	capital ratios, risk-weighted assets and total assets.	adequacy standards. The Preamble indicates that the FRB will propose these rules separately as an amendment to the FR Y-7Q. (§ 252.143(b), § 252.154(b), Preamble, pp. 168-69).
Minimum Leverage Ratio	FBOs would not have been subject to the existing minimum leverage ratio for U.S. BHCs, although once the international leverage ratio set forth in Basel III is implemented internationally (expected in 2018), FBOs would then have had to certify that they complied with the international leverage ratio.	The Final Rule did not modify these provisions.
Non-compliance	If an FBO could not certify that it met these capital standards, the FRB could impose conditions or restrictions on the FBO's U.S. activities.	The Final Rule maintains these enforcement mechanisms. (§ 252.143(c), 252.154(c), Preamble, pp. 169-70).
2. Compliance Timeline:	FBOs with total consolidated assets of $50 billion or more as of July 1, 2014 would have been required to comply with the certification requirements on July 1, 2015 (unless extended by the FRB). FBOs that crossed the $50 billion total asset threshold after July 1, 2014 would have been required to comply with applicable standards beginning 12 months after crossing the threshold (unless extended by the FRB).	FBOs with total consolidated assets of $50 billion or more as of June 30, 2015 must comply with the certification requirements on July 1, 2016. (§ 252.142(c), § 252.152(c)). An FBO that crosses the $50 billion total asset threshold after June 30, 2015 must comply with applicable standards beginning on the first day of the ninth quarter following its crossing of the asset threshold. (§ 252.142(a), § 252.152(a)).
An IHC would have been/will be subject to the following additional requirements:		
3. Risk-Based Capital Requirements and Leverage Limits Applicable to IHCs:	The IHC would have been subject to the same risk-based capital requirements and leverage limits applicable to U.S. BHCs of comparable size, irrespective of whether the IHC controlled a depository institution.	The Final Rule also applies to the IHC the same risk-based capital requirements and leverage limits applicable to U.S. BHCs of comparable size, irrespective of whether the IHC controls a depository institution, subject to important exceptions: • IHCs will not be required to comply with the generally applicable leverage requirement until January 1, 2018. (§ 252.153(e)(1)(ii)(B)(1), Preamble, p. 162). • Even if the IHC otherwise meets the requisite size thresholds ($250 billion in consolidated assets or $10 billion in foreign exposures) as U.S. BHCs that are "advanced approaches" banking organizations, the IHC

Topic:	Proposed FBO Rule:	Final Rule:
		would not be required to implement the advanced internal models based approach to determining its risk-weighted assets unless it choose to do so. (§ 252.153(e)(2)(i), Preamble, pp. 156-57). IHCs will nonetheless still be subject to the other requirements that apply to advanced approaches banking organizations, including the countercyclical capital buffer and the supplementary Basel III-based leverage ratio.[2] In addition, the Final Rule clarifies that a U.S. subsidiary bank holding company or insured depository institution held by an FBO prior to the formation of the IHC must continue to comply with the leverage capital requirements applied to that bank holding company or insured depository institution until December 31, 2017. (§ 252.153(e)(1)(ii)(B) and (C), Preamble pp. 145-46).
4. Capital Plan Rule:	Any IHC with total consolidated assets of $50 billion or more would have been subject to the CCAR, which generally requires covered companies to submit annual capital plans, with their related stress test requirements, including maintaining minimum capital ratios under stressed conditions, to the FRB and to generally obtain regulatory approval before making capital distributions, which include dividends and purchases of capital securities and instruments.[3]	As in the Proposed Rule, IHCs with more than $50 billion in assets are subject to the CCAR. (§ 252.153(e)(2)(ii), Preamble, pp. 166-67).
5. Timing of Required Capital Plan Submissions:	An IHC that crossed the $50 billion asset threshold as of July 1, 2015 would have been required to submit to the FRB its first capital plan on January 5, 2016 and annually thereafter (unless extended by the FRB). An IHC that crossed the $50 billion asset threshold later would have been required to comply beginning in October of the	An IHC formed by July 1, 2016 will appear to be required to submit, according to the Preamble, its first capital plan in January 2017 for the nine quarter planning horizon from October 1, 2016 to December 31, 2018. (§ 252.153(e)(1)(ii), 12 C.F.R. § 225.8(b), Preamble, p. 167). As noted, although the Preamble literally states that an IHC "formed by July 1, 2016 will be required to submit its first

[2] For information concerning those capital rules, see our Client memorandum, "Bank Capital Rules: Federal Reserve Approves Final Rules Addressing Basel III Implementation and, for All Banks, Substantial Revisions to Basel I-Based Rules, available at http://www.sullcrom.com/files/Publication/88852b37-6557-4239-995c-916ac95c6cde/Presentation/PublicationAttachment/86de3e15-0168-4cdd-8442-46ae3fa9e39c/SC_Publication_Bank_Capital%20_Rules_Basel_III_7_3_13.pdf

[3] For more information, see our Client memoranda cited in endnote 2 of the memorandum and Section A of Annex A.

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	calendar year after the year in which it crossed the threshold.	capital plan in January 2017," there is some ambiguity as to whether the interaction between Section 252.153(e)(2)(ii) of the Final Rule and 12 C.F.R. § 225.8(b) (the FRB capital plan rule) would otherwise require the first IHC capital plan to be filed in January 2018 — at the same time as when the Dodd-Frank company-run and supervisory stress test requirements are effectively implemented for an IHC under the transition provisions of Section 252.153(e)(1)(ii)(C)(1) of the Final Rule. An IHC formed after July 1, 2016 will be subject to the CCAR and DFAST beginning with the stress test cycle in the year following the year in which it becomes subject to the rule, and under that rule would be required to submit its first capital plan by January of the following year. (§ 252.153(e)(1)(i), 12 C.F.R. § 225.8(b)).
C. Liquidity Requirements		
FBOs with $50 billion or more in total assets and combined U.S. assets of less than $50 billion would have been/will be subject to the following reporting requirements:		
1. Reporting Requirements:	An FBO with $50 billion or more in total assets and combined U.S. assets of less than $50 billion would have been required to report to the FRB annually on the results of a global or U.S. liquidity stress test or be forced into a net due-to funding position, or a net due-from funding position, with non-U.S. affiliated entities equal to no more than 25% of the third-party liabilities of its combined U.S. operations, on a daily basis.	The Final Rule maintains the requirement to annually report liquidity stress test results as well as the consequences for being unable to do so. (§ 252.145, Preamble, pp. 232-33).
2. Compliance Timeline:	FBOs with total consolidated assets of $50 billion or more as of July 1, 2014 would have been required to comply with the applicable liquidity requirements on July 1, 2015 (unless extended by the FRB). FBOs that crossed the $50 billion total consolidated asset threshold after July 1, 2014 would have been required to comply with applicable standards beginning 12 months after crossing the threshold (unless extended by the FRB).	FBOs with total consolidated assets of $50 billion or more as of June 30, 2015 must comply with the reporting requirements on July 1, 2016. (§ 252.142(c)). An FBO that crosses the $50 billion total consolidated asset threshold after June 30, 2015 must comply with the reporting requirements beginning on the first day of the ninth quarter after its crossing of the asset threshold. (§ 252.142(a)).

Topic:	Proposed FBO Rule:	Final Rule:
FBOs with $50 billion or more in total assets and combined U.S. assets of $50 billion or more would have been/will be subject to the following liquidity-related requirements:		
3. Entities Subject to the Enhanced Liquidity Requirements:	Enhanced liquidity standards would have applied to the U.S. operations of covered FBOs. Some of those standards were applied separately to the FBO's U.S. branches and agencies considered separately (the "*U.S. Branch/Agency Network*"), some to its IHC, and some to both the Branch/Agency Network and the IHC on a combined basis (the "*Combined U.S. Operations*").	The Final Rule maintains the application of enhanced liquidity standards to the U.S. Branch/Agency Network, the IHC, and the Combined U.S. Operations. (§ 252.153(e)(4), § 252.156-157, Preamble, pp. 232-33).
4. Liquidity Standards Applicable to an FBO's Combined U.S. Operations:	The principal standards that would have applied to the Combined U.S. Operations of a covered FBO were the requirements for a U.S. risk committee and a U.S. chief risk officer, an independent review function, cash-flow projections and a contingency funding plan.	The Final Rule largely adopts the proposed framework for managing liquidity risk, with some modifications as described below. (§ 252.156).
U.S. Risk Committee	The U.S. risk committee would have been required to review and approve the liquidity risk tolerance for the FBO's Combined U.S. Operations at least annually. "Liquidity risk tolerance" was defined as the acceptable level of liquidity risk the FBO may assume in connection with its operating strategies for its Combined U.S. Operations.	The Final Rule provides that, a U.S. risk committee or its designated subcommittee must: • review and approve the liquidity risk tolerance for the FBO's Combined U.S. operations at least annually (§ 252.156(a)(1)(i)); • review information provided by senior management of the Combined U.S. Operations regarding liquidity risk and liquidity risk tolerance (§ 252.156(a)(1)(ii)); and • review and approve the contingency funding plan at least annually. (§ 252.156(a)(1)(iii), Preamble, pp. 197-98). The definition of "liquidity risk tolerance" is the same as that in the Proposed FBO Rule. (§ 252.156(a)(1)(i)).
U.S. Chief Risk Officer	The U.S. chief risk officer would have been required to review and approve the liquidity costs, benefits and risks of each significant new business line engaged in by the Combined U.S. Operations and each significant new product offered, managed or sold through the Combined U.S. Operations before the FBO implements the line or product. The U.S. chief risk officer would also have been required to	The Final Rule largely adopts the requirements in the Proposed FBO Rule, except that (i) the Final Rule specifies that the U.S. chief risk officer must approve each new business line and new product, and (ii) the U.S. chief risk officer does not have any responsibilities with respect to the contingency funding plan under the Final Rule. As mentioned above, the Final Rule places responsibility for reviewing the contingency funding plan with the U.S. risk committee or its

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	review and approve the contingency funding plan.	designated subcommittee. (§ 252.156(b), Preamble, pp. 197-98).
Independent Review Function	A covered FBO would also have been required to establish and maintain an independent review function to evaluate the liquidity risk management of its Combined U.S. Operations. The review function would have been required to be independent of management functions that execute funding (the treasury function). The review function would have been required to review and evaluate the adequacy and effectiveness of the U.S. operations' liquidity risk-management processes regularly (but no less frequently than annually). The review function also would have been required to assess whether the U.S. operations' liquidity risk management complied with applicable laws and sound business practices, and to report statutory and regulatory noncompliance and other material liquidity risk-management issues to the U.S. risk committee and the enterprise-wide risk committee (or designated sub-committee) in writing for corrective action.	The Final Rule implements the same requirement of an independent review function to evaluate liquidity risk management. (§ 252.156(c), Preamble, pp. 198-99).
Cash-flow Projections	A covered FBO would have been required to produce comprehensive cash-flow projections for its Combined U.S. Operations that, among other things, took into account cash flows arising from assets, liabilities and off-balance-sheet exposures over "short-term and long-term periods that are appropriate to the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the company and its combined U.S. operations." FBOs would also have been required to identify and quantify discrete and cumulative cash-flow mismatches. A covered FBO would not have been required to report the global cash flows of the FBO.	The Final Rule maintains the requirement that covered FBOs produce comprehensive cash-flow projections for Combined U.S. Operations. (§ 252.156(d), Preamble, p. 200). The Preamble states that the FRB may separately seek comment on regulatory reporting requirements or information collections regarding an FBO's global U.S. dollar flow activities. (Preamble, p. 201).
Contingency Funding Plan	A covered FBO would have been required to establish a contingency funding plan to identify liquidity sources in liquidity crisis events and ensure continued operation. Additionally, such FBOs would have been required to	The Final Rule largely adopts the proposed framework for the contingency funding plan requirements. (§ 252.156(e)). The Preamble clarifies that lines of credit may be included as

Topic:	Proposed FBO Rule:	Final Rule:
	establish limits on sources of liquidity risks — such as concentrations of funding by investment type, single counterparty, and secured and un-secured funding — and would have been required to establish a monitoring system to track liquidity risk in collateral positions, legal entities, currencies, business lines and intraday liquidity.	sources of funds in contingency funding plans; however, FBOs should consider the characteristics of such funding and how counterparties may behave in times of stress. (Preamble, p. 202). The FRB also expects that parent support may be included in the contingency funding plan, but the FBO must consider limitations on those funds, including the probability of simultaneous stress. (§ 252.156(e), Preamble, p. 202). The Final Rule also clarifies that circumstances in which an FBO will implement its contingency funding plan must include a failure to meet any minimum liquidity requirement established by the FRB for the FBO's U.S. operations. (§ 252.156(e)(2)(i)(C), Preamble, p. 203).
Liquidity Risk Limits	A covered FBO would have been required to establish and maintain limits on potential sources of liquidity risks and to monitor its compliance.	The Final Rule substantially follows the Proposed FBO Rule's requirements with respect to liquidity risk limits with some wording changes (for example, in the Final Rule the FBO must "monitor sources of liquidity risk and establish limits on liquidity risk" (§ 252.156(f)), where in the Proposed FBO Rule the FBO "must establish and maintain limits on potential sources of liquidity risk."
Liquidity Risk Monitoring	A covered FBO would have been required to monitor liquidity risk related to collateral positions of U.S. operations, liquidity risks across U.S. operations, and intraday liquidity positions for its Combined U.S. Operations.	The Final Rule substantially follows the Proposed FBO Rule's monitoring requirements. (§ 252.156(g), Preamble, p. 205).
5. Liquidity Stress Test Requirement:	A covered FBO would have been required to conduct, at least monthly, stress tests of cash-flow projections separately for its U.S. Branch/Agency Network and its IHC and to use those stress tests in determining the size of the liquidity buffers for its U.S. Branch/Agency Network and its IHC. The FBO parent of an IHC would also have been required to make available the results of the home-country liquidity stress testing for FRB review.	The Final Rule clarifies that liquidity stress testing must be conducted for each of (1) the Combined U.S. Operations, (2) the IHC, if any, and (3) the U.S. Branch/Agency Network. (§ 252.157(a)(1), Preamble, p. 208-09). Results of liquidity stress tests must be made available to the FRB in a timely manner, rather than within 14 days as required by the Proposed FBO Rule. (§ 252.157(a)(1),(b), Preamble, p. 210-11). The Final Rule maintains the reporting requirement on the results of the FBO parent's home-country liquidity stress

Topic:	Proposed FBO Rule:	Final Rule:
		testing. (§ 252.157(b), Preamble, p. 207).
Required Scenarios to Consider	The stress tests would have been required to incorporate a range of stress scenarios, taking into consideration, among other things, market stress, idiosyncratic stress and combinations of the two, and address potential actions of other market participants experiencing liquidity stress.	The Final Rule maintains the range of required scenarios in the Proposed FBO Rule. (§ 252.157(a)(3), Preamble, p. 208). The Preamble notes that the final rule contemplates FBOs creating firm-specific stress scenarios, and the FRB therefore expects "the stress scenarios to incorporate historical and hypothetical scenarios to assess the effect on liquidity of various events and circumstances, including variations thereof." (§ 252.157(a)(6), Preamble, p. 208).
Time Horizons	The time horizons, at a minimum, would have been required to include an overnight time horizon, and time horizons of 30 days, 90 days and one year.	The Final Rule maintains the minimum requirement of including overnight and 30-day, 90-day, and one-year time horizons. (§ 252.157(a)(4)).
Standards	The stress test would have been required to incorporate the following standards: • for the first 30 days of a liquidity stress scenario, only highly liquid assets that were unencumbered could be used as a cash-flow source to offset projected funding needs; • for periods beyond the first 30 days, highly liquid assets that were unencumbered and other "appropriate funding sources" could be used as cash-flow sources; • if an asset were used as a cash-flow source, the fair market value of the asset would have been required to "be discounted to reflect any credit risk and market volatility of the asset"; and • assets used as funding sources would have been required to be diversified by collateral, counterparty, or borrowing capacity, or other factors associated with the liquidity risk of the assets.	The Final Rule maintains most of the standards included in the Proposed FBO Rule. (§ 252.157). In the Preamble, the FRB clarified that in stress tests with time horizons longer than 30 days, internal inflows can be considered to offset both internal and external outflows. (Preamble, p. 207). The Final Rule and the Preamble also clarify that for stress tests beyond 30 days, an FBO may include lines of credit as cash-flow sources but should fully consider the constraints associated with those lines of credit. (§ 252.157(a)(5)(iii), Preamble, p. 207).
6. Liquidity Buffer Requirement:	A covered FBO would have been required to maintain a liquidity buffer for its U.S. Branch/Agency Network and a separate liquidity buffer for its IHC. Each liquidity buffer would have been required to consist of highly liquid assets that were	The Final Rule implements the Proposed FBO Rule, with one substantive change – a U.S. Branch/Agency Network must only maintain a liquidity buffer for days 1-14 of a 30-day stress scenario (which must be held in the U.S. as initially proposed).

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	unencumbered and that were sufficient to meet the net stressed cash-flow need over a 30-day stress horizon.	(§ 252.157(c), Preamble, p. 211). The Preamble clarifies that a liquidity buffer maintained in the U.S. should be reflected on the balance sheet of the IHC or the U.S. Branch/Agency Network. (Preamble, p. 223). In the Preamble, the FRB also notes that it expects that an FBO "will consider the results of its stress tests to determine the appropriate time period for which to hold a liquidity buffer." (Preamble, p. 214).
Calculation of Net Stressed Cash-Flow Need	IHCs would have been required to calculate the liquidity buffer based on both net internal stressed cash flow and net external stressed cash-flow needs. Importantly, an IHC would have been required to hold all of the assets comprising its liquidity buffer in the U.S.. To the extent such assets consisted of cash, the cash could not be held in an account located at a U.S. branch or agency of the affiliated foreign bank or other affiliate. U.S. Branch/Agency Networks would also have been required to calculate their liquidity buffers based on both net internal stressed cash flow and net external stressed cash-flow needs for the first 14 days of the stress horizon. The assets comprising the liquidity buffer for this time period would have been required to be kept in the U.S., of which cash assets could not be held in an account located at the IHC or other affiliate. For days 15 through 30 of the stress test horizon, a U.S. Branch/Agency Network would have been required to calculate its separate liquidity buffer based on the net external cash-flow need. In addition, for days 15 through 30, the U.S. Branch/Agency Network was permitted to maintain its liquidity buffer outside the U.S. at the head office of the foreign bank.	The Final Rule maintains the same requirements as the Proposed FBO Rule for (i) IHCs, and (ii) the U.S. Branch/Agency Network for the first 14 days of the stress horizon. The Preamble provides examples of the calculation process. (§§ 252.157(c)(2)-(3), Preamble, p. 216-19). As mentioned above, the U.S. Branch/Agency Network is not required to hold a liquidity buffer for days 15 through 30 of the stress test horizon.
Treatment of Intra-Company Cash Flow	The methodology allowed intra-company cash-flow sources of U.S. Branch/Agency Networks to count toward the liquidity buffer only to the extent that the term of the cash-flow source was the same or shorter than the term of the intra-company cash-flow need.	The Final Rule carries forward the Proposed FBO Rule's limitation by not allowing internal inflows to offset external cash-flow needs of an FBO. (§§ 252.157(c)(2)(iii)-(iv),(c)(3)(iii)-(iv), Preamble, p. 219). FBOs may count intra-company inflows to meet internal stressed cash-flow needs only to the extent that the term of an

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		internal cash-flow source is the same as, or shorter than, the term of the internal cash-flow need. (§§ 252.157(c)(2)(iv), (c)(3)(iv), Preamble, p. 220).
Definition of "Highly Liquid Assets"	The term "highly liquid assets" was defined to mean cash, securities issued or guaranteed by the U.S. government, a U.S. government agency or a U.S. GSE, or any other asset that the FBO demonstrated to the satisfaction of the FRB had low credit risk and low market risk, was traded in an active secondary two-way market that had observable prices and met other standards, and was of a type that investors historically purchased in periods of financial market distress during which market liquidity was impaired.	The Final Rule maintains this definition. (§ 252.157(c)(7)(i)). The Preamble clarifies that cash held in deposits at other banks is a loan and therefore an inflow, not an asset that may be counted in the buffer. (Preamble, p. 223). The Preamble states that, consistent with the domestic Final Rule, the FRB anticipates that high-quality liquid assets under the proposed U.S. LCR will qualify as highly liquid assets for purposes of the buffer. (Preamble, p. 229)
Definition of "Unencumbered"	The term "unencumbered" was defined broadly to mean that the asset is not pledged in any respect, subject to legal or contractual restrictions on liquidation or transfer, or designated as a hedge in a trading position.	The definition of "unencumbered" under the Final Rule allows assets used as a hedge position to meet the definition as long as they meet the definition's other criteria. Assets pledged to a central bank or a U.S. GSE (if not securing outstanding credit) may also be considered unencumbered. (Preamble, p. 229, § 252.157(c)(7)(ii)).
7. Compliance Timeline:	FBOs with total combined U.S. assets of $50 billion or more as of July 1, 2014 would have been required to comply with the applicable liquidity requirements on July 1, 2015 (unless extended by the FRB). FBOs that crossed the $50 billion combined U.S. asset threshold after July 1, 2014 would have been required to comply with applicable standards beginning 12 months after crossing the threshold (unless extended by the FRB).	FBOs with total combined U.S. assets of $50 billion or more as of June 30, 2015 must comply with the applicable liquidity requirements on July 1, 2016. (§ 252.152(c)). An FBO that crosses the $50 billion combined U.S. asset threshold after July 1, 2014 must comply with applicable standards beginning on the first day of the ninth quarter after its crossing of the asset threshold. (§ 252.152(a)). The Preamble notes that the FRB intends through future separate rulemakings to implement the quantitative liquidity standards included in Basel III for the U.S. operations of some or all FBOs with $50 billion or more in combined U.S. assets. (Preamble, pp. 193-94).
8. Further Restrictions on Short-Term Debt:	The FRB noted in the preamble to the Proposed FBO Rule that Dodd-Frank contemplated a limit on short-term debt and requested comment as to whether these limits should be established in addition to or instead of the Basel principles for	The Preamble states that the FRB will continue to evaluate whether short-term debt limits would be appropriate in light of the developing liquidity regulatory and supervisory framework, and may seek comment on a proposal in the future.

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	liquidity risk management.	(Preamble, p. 233).
D. Risk Management		
Publicly traded FBOs with total global consolidated assets of $10 billion or more and less than $50 billion and FBOs with total global consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion would have been/will be subject to the following requirements:		
1. Certification of the U.S. Risk Committee:	The Proposed FBO Rule would have required covered FBOs to annually certify to the FRB on Form FR Y-7 that they maintained a U.S. risk committee of its board of directors or equivalent home-country governance structure that: • oversees the risk-management practices of their Combined U.S. Operations; and • has at least one member with risk-management expertise that is commensurate with the capital structure, risk profile, complexity, activities and size of their Combined U.S. Operations.	The Final Rule has made the following clarifications to these requirements: • covered FBOs must annually certify that they have a U.S. risk committee that oversees the risk-management "policies," not "practices," of their Combined U.S. Operations; and • the standard of "risk-management expertise" has been lowered to require "experience in identifying, assessing, and managing risk exposures of large, complex firms"; experience in nonbanking or nonfinancial fields may suffice. (§ 252.132(a), § 252.144(a), Preamble, pp. 176-178).
2. Placement of the U.S. Risk Committee:	Under the Proposed FBO Rule, an FBO with total U.S. consolidated assets of $10 billion or more but less than $50 billion and with total global consolidated assets of $50 billion or more would have been permitted to maintain its U.S. risk committee either as a committee of its global board of directors or as a committee of the board of directors of the IHC. An FBO's enterprise-wide risk committee could serve as the U.S. risk committee.	An FBO with total U.S. consolidated assets of $10 billion or more but less than $50 billion and with total global consolidated assets of $50 billion or more is permitted to maintain its U.S. risk committee as a committee of its global board of directors, on a standalone basis, or as part of its global risk committee. (§ 252.132(a), § 252.144(a)).
3. Consequences of Noncompliance:	If an FBO failed to satisfy the risk management or risk committee requirements, the FRB would have been able to impose conditions or restrictions relating to the activities or business operations of the Combined U.S. Operations of the FBO.	Under the Final Rule, if an FBO fails to satisfy the risk management or risk committee requirements, the FRB may impose requirements, conditions, or restrictions relating to the activities or business operations of the Combined U.S. Operations of the FBO. (§ 252.132(d), § 252.144(d)). The Final Rule now allows an FBO with total U.S. consolidated assets of $10 billion or more but less than $50 billion and with total global consolidated assets of $50 billion or more to request, within 14 days of receipt of a

Topic:	Proposed FBO Rule:	Final Rule:
		noncompliance notification from the FRB, that the FRB reconsider the requirement, condition, or restriction, to which the FRB will respond in writing. (§ 252.132(d), § 252.144(d)).
4. Compliance Timeline:	Covered entities would have had to comply with these requirements by July 1, 2015 if the relevant asset threshold were met as of July 1, 2014. If the threshold were crossed after July 1, 2014, covered entities would have had to comply with these requirements beginning 12 months after the threshold was crossed.	FBOs that meet the relevant asset threshold as of June 30, 2015 must comply with the requirements beginning on July 1, 2016. Otherwise, FBOs must comply with the requirements beginning on the first day of the ninth quarter following the date on which it meets the relevant asset threshold. (§ 252.131(a), § 252.131(c), § 252.142(a), § 252.142(c)).
FBOs with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more would have been/will be subject to the following additional requirements:		
5. Risk Committee Requirement:	The Proposed Rule would have required covered FBOs to establish a U.S. risk committee to oversee the risk-management practices of the their Combined U.S. Operations, with the placement of that committee as discussed below.	The Final Rule requires covered FBOs to establish a U.S. risk committee for their Combined U.S. Operations, subject to the placement requirement discussed below. (§ 252.155(a)(1)). If the FBO is required to establish an IHC but the U.S. risk committee is not placed at the IHC, the IHC must have its own risk committee to oversee the risks of its operations. (§ 252.153(e)(3)(1), Preamble, p. 136).
6. Placement of U.S. Risk Committee:	Generally, an FBO would have been permitted to maintain its U.S. risk committee either as a committee of its global board of directors (or equivalent thereof) or as a committee of the board of directors of the IHC. If the U.S. risk committee were a committee of the global board of directors, it might have been organized on a standalone basis or as part of the enterprise-wide risk committee (or equivalent thereof). An FBO with combined U.S. assets of $50 billion or more that conducted its operations in the U.S. solely through an IHC would have been required to maintain its U.S. risk committee at its IHC.	The Final Rule retains the requirement under the Proposed Rule that an FBO that conducts its operations solely through an IHC must maintain its U.S. risk committee as a committee of the IHC's board of directors. (§ 252.155(a)(3)(i)). The Final Rule clarifies that for an FBO that conducts its operations through U.S. branches or agencies (in addition to its IHC), the risk committee required pursuant to the risk management subchapter can exist as a joint committee with the risk committee of the IHC required as part of the Final Rule (see Section A above). (§ 252.155(a)(3)(ii)).
7. Certification Requirements for the Risk Committee:	Same as for publicly traded FBOs with total global consolidated assets of $10 billion or more and less than $50 billion and FBOs with total global consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion.	The Final Rule contains no certification requirements for FBOs with total consolidated assets of $50 billion or more and combined U.S. assets $50 billion or more because the FRB expects to gain sufficient information through the supervisory process to evaluate compliance. (Preamble, p. 180).

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8. Additional Requirements for the U.S. Risk Committee of FBOs with Combined U.S. Assets of $50 Billion or More:	The Proposed FBO Rule would have required the U.S. risk committee of an FBO with combined U.S. assets of $50 billion or more to: • review and approve the risk-management practices of the Combined U.S. Operations of the FBO; • oversee the operation of an appropriate risk-management framework for the FBO's Combined U.S. Operations that is commensurate with the capital structure, risk profile, complexity, activities and size of the FBO's Combined U.S. Operations and consistent with the FBO's enterprise-wide risk-management policies; and • meet at least quarterly and otherwise as needed, and fully document and maintain records of its proceedings. The Proposed FBO Rule would also have required a U.S. risk committee of an FBO with combined U.S. assets of $50 billion or more to have at least one independent member who was not, and during the previous three years was not, an officer or employee of the FBO (or its affiliates), or an immediate family member of a person who was, or had been an executive officer of the FBO (or its affiliates) during the previous three years.	The Final Rule adopts the Proposed FBO Rule's additional requirements, with the following clarifications: • the Final Rule requires that FBOs with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to review and approve the risk-management "policies," rather than the "practices," of their Combined U.S. Operations; and • the Final Rule further requires that the risk committee have at least one member having "experience in identifying, assessing, and managing risk exposures of large, complex *financial* firms" (emphasis added). (§ 252.155(a)(1), § 252.155(a)(5), Preamble, pp. 180-183).
9. Requirements for the Risk-Management Framework:	Under the Proposed FBO Rule, the risk committee would have been required to "oversee" the risk-management framework for the FBO's Combined U.S. Operations and that framework would have had to include on a Combined U.S. Operations basis: • policies and procedures relating to risk-management governance, risk-management practices, and risk control infrastructure; • processes and systems for identifying and reporting risks and risk-management deficiencies, including emerging risks; • processes and systems for monitoring compliance with the policies and procedures relating to risk-management governance, practices, and risk controls;	The Final Rule adopts the requirements for the risk-management framework generally as proposed. Under the Final Rule, the FBO's risk-management framework must include on a Combined U.S. Operations basis: • policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure; and • processes and systems for implementing and monitoring compliance with such policies and procedures, including: • processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

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	• processes designed to ensure effective and timely implementation of corrective actions to address risk-management deficiencies; • specification of authority and independence of management and employees to carry out risk-management responsibilities; and • integration of risk management and control objectives in management goals and compensation structure.	• processes and systems for establishing managerial and employee responsibility for risk management; • processes and systems for ensuring the independence of the risk-management function; and • processes and systems to integrate risk management and associated controls with management goals and the compensation structure. (§ 252.155(a)(2)).
10. Applicability of the U.S. Chief Risk Officer Requirement:	Under the Proposed FBO Rule, the IHC of an FBO with combined U.S. assets of $50 billion or more would have been required to appoint a U.S. chief risk officer to oversee and implement the risk-management framework of the FBO's Combined U.S. Operations.	An FBO with combined U.S. assets of $50 billion or more or its IHC must appoint a U.S. chief risk officer. (§ 252.155(b)(1)).
11. General Requirements for the U.S. Chief Risk Officer:	The Proposed FBO Rule would have required the U.S. chief risk officer to: • have risk-management expertise that is commensurate with the capital structure, risk profile, complexity, activities and size of the FBO's Combined U.S. Operations; • be employed by the U.S. branch, U.S. agency, IHC or another U.S. subsidiary; • receive appropriate compensation and other incentives to provide an objective assessment of the risks taken by the Combined U.S. Operations of the FBO; and • report directly to the (1) U.S. risk committee and (2) global chief risk officer (or equivalent management official) of the FBO responsible for overseeing, on an enterprise-wide basis, the implementation of and compliance with policies and procedures relating to risk-management governance, practices and risk controls of the FBO.	The Final Rule adopted the Proposed FBO Rule requirements for the U.S. chief risk officer with the following changes: • the Final Rule lowers the standard for "risk-management expertise" to require "experience in identifying, assessing, and managing risk exposures of large, complex *financial* firms" (emphasis added); and • the Final Rule retains the requirement that the U.S. chief risk officer be employed by a U.S. entity and clarifies that the U.S. chief risk officer must also be located at a U.S. entity. (§ 252.155(b), Preamble, p. 188).
12. Responsibilities of the U.S. Chief Risk Officer:	The Proposed FBO Rule would have required that the U.S. chief risk officer be directly responsible for: • measuring, aggregating and monitoring risks undertaken	The Final Rule adopted the Proposed FBO Rule requirements for the U.S. chief risk officer, except the Final Rule requires the U.S. chief risk officer to "oversee" the execution of the enumerated responsibilities, rather than to be "directly

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	by the FBO's Combined U.S. Operations; • regularly providing information to the U.S. risk committee, global chief risk officer and FRB supervisory staff regarding the nature of and changes to material risks undertaken by the FBO's Combined U.S. Operations, including risk-management deficiencies and emerging risks, and how such risks relate to the global operations of the FBO; • meeting regularly and as needed with FRB supervisory staff to assess compliance with the FBO's risk-management responsibilities; • implementing and maintaining ongoing compliance with appropriate policies and procedures relating to risk-management governance and practices; • developing appropriate processes and systems for identifying and reporting risks and risk-management deficiencies; • managing risk exposures and risk controls within the parameters of the risk control framework of the Combined U.S. Operations; • monitoring and testing the risk controls of the Combined U.S. Operations; and • ensuring that risk-management deficiencies with respect to the Combined U.S. Operations are resolved in a timely manner.	responsible" for them. (§ 252.155(b)(2), Preamble, p. 186).
13. Consequences of Noncompliance:	If an FBO failed to satisfy the risk management or risk committee requirements, the FRB would have been able to impose conditions or restrictions relating to the activities or business operations of the Combined U.S. Operations of the FBO.	If an FBO does not satisfy the risk management or risk committee requirements, the FRB may impose requirements, conditions, or restrictions relating to the activities or business operations of its Combined U.S. Operations. (§ 252.155(d)).
E. Stress Test Requirements		

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IHCs would have been/will be subject to the following requirements:		
1. Stress Test Requirements:	IHCs with consolidated assets of $10 billion or more but less than $50 billion would have been subject to the annual company-run stress test requirements set forth in subpart H of the Regulation YY (77 Fed. Reg. 62396 (Oct. 12, 2012)). IHCs with total consolidated assets of $50 billion or more would have been subject to the annual supervisory and mid-cycle company-run stress test requirements set forth in subparts F and G of Regulation YY. As described above, such IHCs would also have been subject to the stress test requirements of the FRB's capital plan rule (12 C.F.R. § 225.8) and CCAR as implemented on an annual basis through the FRB's CCAR program.	IHCs must comply with the supervisory stress test, annual company-run stress test, and mid-cycle company-run stress test requirements set forth in subparts E and F of the Final Rule, which are the previously adopted rules on supervisory and company-run stress test requirements for Covered Companies, adopted on October 12, 2012. Such IHCs would also be subject to the stress test requirements of the FRB's capital plan rule and CCAR as implemented on an annual basis through the FRB's CCAR program. (§ 252.44, § 252.54, § 252.55, Preamble, pp. 26-28). Requirements for IHCs with consolidated assets of $10 billion or more but less than $50 billion are no longer applicable (see Section A above).
2. Compliance Timeline:	IHCs with total consolidated assets of $50 billion or more, or of $10 billion or more but less than $50 billion, as of July 1, 2015, would have been required to comply with the stress test requirements beginning with the stress test cycle that commenced on October 1, 2015. IHCs that met the relevant asset threshold after July 1, 2015 would have been required to comply with the requirements beginning in October of the calendar year after the year in which the threshold was crossed.	An IHC required to be established by July 1, 2016 must comply with the stress test requirements beginning on October 1, 2017 (meaning, file its first submission with the FRB in January 2018 for the planning horizon of October 2017 through December 2019), provided that each subsidiary bank holding company and insured depository institution controlled by the FBO immediately prior to the establishment or designation of the IHC, and each bank holding company and insured depository institution acquired by the FBO after establishment of the IHC, must comply with the stress test requirements in subparts B, E, or F of the Final Rule, as applicable, until September 30, 2017. (§ 252.153(e)(1)(ii)(C)). An IHC's first FR Y-14A report to the FRB is expected to be due in January 2016. (Preamble, p. 242). The FRB may accelerate the application of the stress test requirements to an IHC if it determines that an FBO has taken actions to evade the application of the Final Rule. (§ 252.153(e)(1)(ii)(B)(2)). Requirements for IHCs with consolidated assets of $10 billion or more but less than $50 billion are no longer applicable (see Section A above).

Topic:	Proposed FBO Rule:	Final Rule:
FBOs with combined U.S. assets of $50 billion or more would have been/will be subject to the following requirements in addition to the IHC requirements:		
3. Home-Country Stress Test Requirement:	Under the Proposed FBO Rule, an FBO with combined U.S. assets of $50 billion or more would have been required to meet the following conditions or else be subject to U.S. subsidiary stress tests, asset-maintenance and liquidity-buffer requirements: • be subject to and satisfy an annual home country consolidated (that is, involving the FBO's worldwide operations and not just the U.S.) capital stress test regime either conducted or evaluated by the relevant regulator and which has board-of-directors and management-related stress test governance and controls requirements; • report a summary of its stress testing activities and results to the FRB by January 5 of each year; and • demonstrate to the FRB that it has adequate capital to withstand stressed conditions if, on a net basis, its U.S. Branch/Agency Network provides funding to its non-U.S. offices and non-U.S. affiliates.	The Final Rule adopts the Proposed FBO Rule requirements, except it has removed the requirement that FBOs with U.S. branches/agencies in a net "due from" position demonstrate to the FRB that they have adequate capital to withstand stressed conditions. (§ 252.158(b), Preamble, pp. 246-247).
4. U.S. Subsidiary Stress Tests, Asset-Maintenance and Liquidity-Buffer Requirements:	The Proposed FBO Rule would have required an FBO that did not meet the above conditions to: • maintain within its U.S. Branch/Agency Network eligible assets equal to 108% of third-party liabilities of such branches and agencies; • conduct an annual stress test of its U.S. subsidiaries not organized under an IHC to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and • maintain a liquidity buffer or be subject to intragroup funding requirements, if imposed by the FRB upon 30-day advance notice.	The Final Rule adopts the Proposed FBO Rule requirements, except that the Final Rule clarifies that an enterprise-wide stress test approved by the FRB would meet the second requirement that FBOs conduct annual stress tests of their U.S. subsidiaries. (§ 252.158(d)).
5. Compliance Timeline:	FBOs with combined U.S. assets of $50 billion or more as of July 1, 2014 would have been required to comply with the applicable requirements beginning in October 2015.	FBOs with combined U.S. assets of $50 billion or more as of June 30, 2015 must comply with the requirements beginning on July 1, 2016. (§ 252.152(c)).

Topic:	Proposed FBO Rule:	Final Rule:
	FBOs that met the asset threshold after July 1, 2014 would have been required to comply with the applicable requirements beginning in October of the calendar year after the year in which the threshold was crossed.	Such an FBO's first FR Y-14A report summarizing its home-country stress test results to the FRB is expected to be due in January 2016. (Preamble, p. 242). FBOs that meet the asset threshold after June 30, 2015 must comply with the requirements beginning on the first day of the ninth quarter following the date on which the asset threshold is crossed. (§ 252.152(a)(1)).
FBOs with total consolidated assets of $10 billion or more but less than $50 billion and foreign savings and loan holding companies with total consolidated assets of $10 billion or more would have been/will be subject to the following requirements:		
6. Home-Country Stress Test Requirement:	Under the Proposed FBO Rule, covered FBOs would have been required to meet the following conditions or else be subject to U.S. subsidiary stress tests and asset-maintenance and liquidity-buffer requirements: • be subject to and satisfy an annual home country consolidated (that is, involving the FBOs' worldwide operations and not just the U.S.) capital stress test regime either conducted or evaluated by the relevant regulator and which has board-of-directors and management-related stress test governance and controls requirements.	The Final Rule adopts the Proposed Rule requirement. Under the Final Rule, FBOs with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must: • be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor conducted or evaluated by the relevant regulator and which has board-of-directors and management-related stress test governance and controls requirements; and • conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests. (§ 252.122(a), § 252.146(b)).
7. U.S. Subsidiary Stress Tests, Asset-Maintenance and Liquidity-Buffer Requirements:	The Proposed FBO Rule would have required an FBO that did not meet the above condition to: • maintain within its U.S. Branch/Agency Network eligible assets equal to 105% of third-party liabilities of such branches and agencies; and • conduct an annual stress test of its U.S. subsidiaries not organized under an IHC to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions and report the results of such stress test to the FRB.	The Final Rule adopted the Proposed FBO Rule requirements, except that the Final Rule clarifies that an enterprise-wide stress test approved by the FRB would meet the second requirement that FBOs conduct annual stress tests of their U.S. subsidiaries. (§ 252.122(b), § 252.146(c)).

Topic:	Proposed FBO Rule:	Final Rule:
8. Compliance Timeline:	Covered FBOs with less than $50 billion in combined U.S. assets as of July 1, 2014, would have been required to comply with the applicable requirements beginning in October 2015. FBOs that met the relevant asset threshold after July 1, 2014 would have been required to comply with the applicable requirements beginning in October of the calendar year after the year in which the threshold was crossed.	FBOs that meet the asset threshold as of June 30, 2015 must comply with the requirements beginning on July 1, 2016. (§ 252.121(a)(3), § 252.142(c)). FBOs that meet the asset threshold after June 30, 2015 must comply with the requirements beginning on the first day of the ninth quarter following the date on which the asset threshold is crossed. (§ 252.121(a)(1), § 252.142(a))
F. Debt-to-Equity Limits for Certain Covered Companies		
FBOs with total consolidated assets of $50 billion or more would have been/will be subject to the following rules:		
1. FBOs Subject to the Debt-to-Equity Ratio Requirements:	The Dodd-Frank Act provides that the FRB must require an FBO with $50 billion or more in total consolidated assets to maintain a specified debt-to-equity ratio upon a determination by the FSOC that the FBO poses a “grave threat” to the financial stability of the U.S. and that the imposition of a debt-to-equity ratio requirement is necessary to mitigate the risk to U.S. financial stability posed by such company.	The Final Rule maintains the debt-to-equity requirements on FBOs with $50 billion or more in total consolidated assets, which as in the Proposed FBO Rule apply upon an FSOC determination that the FBO poses a “grave threat” to U.S. financial stability and that imposing the requirement is necessary to mitigate that risk. (§ 252.221(b)).
2. Debt-to-Equity Ratio Requirements:	The Dodd-Frank Act provides that a covered FBO must maintain a debt-to equity ratio of no more than 15-to-1. Additionally, the Proposed FBO Rule would have implemented a 108% asset maintenance requirement on the FBO’s U.S. Branch/Agency Network (if applicable).	The Final Rule adopts the 15-1 debt to equity ratio and the 108% asset maintenance requirement as proposed. (§ 252.221(b)(1) and (2)).
3. Definitions of “Debt” and “Equity”:	The terms “debt” and “equity” for purposes of the ratio were defined to mean “total liabilities” and “total equity capital” as reported by an IHC or U.S. subsidiary on the FR Y-9C, or other reporting form prescribed by the FRB.	The Final Rule maintains the same definitions for “debt” and “equity” as in the Proposed FBO Rule. (§ 252.221(a)(1)).
4. FBO Entities Included in the Calculation:	The 15-to-1 debt-to-equity requirement would have applied to the FBO’s IHC and any U.S. subsidiary not organized under the IHC (except for any subsidiary held under Section 2(h)(2) of the BHC Act).	The Final Rule excludes DPC branch subsidiaries, in addition to subsidiaries held under Section 2(h)(2) of the BHC Act, from the debt-to-equity ratio calculation. (§ 252.221(b)(1)).
5. Compliance Timeline:	A covered FBO would have been required to implement the debt-to-equity ratio requirement within 180 days of a	The Final Rule maintains the same 180-day compliance period as proposed. (§ 252.221(b)).

Topic:	Proposed FBO Rule:	Final Rule:
	determination by the FSOC that a the FBO posed a "grave threat" to the financial stability of the U.S. and that a debt-to-equity ratio requirement is necessary to mitigate the risk to U.S. financial stability posed by that FBO.	
6. Actions Necessary to Comply with the Debt-to-Equity Ratio Requirement:	Although the Proposed FBO Rule did not set forth a specific set of actions that an FBO could take in order to comply with the debt-to-equity ratio requirement, the notice to the Proposed FBO Rule stated that the FRB would expect an FBO to come into compliance with the debt-to-equity ratio "in a manner that is consistent with the [FBO's] safe and sound operation and preservation of financial stability." For instance, the FRB would expect an FBO to make a good faith effort to come into compliance with the debt-to-equity ratio requirement by increasing equity capital through limits on distributions, share offerings or other capital-raising efforts before selling margined assets.	Like the Proposed FBO Rule, the Final Rule does not establish a specific set of actions to be taken by an FBO subject to the debt-to-equity ratio requirement in order to comply with the requirement. The Preamble provides the same examples as the Proposed U.S. Rule. (Preamble, p. 88).
7. Extension of Time Period for Compliance:	An FBO subject to the debt-to-equity ratio requirement would have been required to request up to two extension periods of 90 days each to come into compliance with the requirement upon a showing that the FBO had made good faith efforts to comply with the requirement and that each extension was in the public interest.	The Final Rule adopts the same extension of time allowed for compliance. (§ 252.221(c)).
8. Termination of the Debt-to-Equity Ratio Requirement:	The debt-to-equity ratio requirement would have no longer applied to an FBO as of the date the FSOC determined that such FBO no longer posed a grave threat to the financial stability of the U.S. and that the imposition of a debt-to-equity ratio requirement was no longer necessary.	Like the Proposed FBO Rule, under the Final Rule, an FBO subject to the debt-to-equity ratio requirement would no longer be subject to the requirement as of the date it receives notice of a determination by the FSOC that it no longer poses a grave threat to the financial stability of the U.S. and that the imposition of a debt-to-equity requirement is no longer necessary. (§ 252.221(d)).

Topic:	Proposed FBO Rule:	Final Rule:
G. Single Counterparty-Credit Limits		
The Final Rule does not implement the single counterparty credit limits ("SCCLs") mandated by Section 165 of the Dodd-Frank Act. According to the Preamble, the FRB is continuing its development of SCCLs for FBOs based on the results of a previously conducted quantitative impact study and the Basel Committee's initiative to develop a regulatory framework governing large credit exposures that is intended to apply to all global banks. *For a discussion of the proposed SCCL rules, see our Client Memorandum, "Regulation of U.S. Operations of Non-U.S. Banks," dated December 16, 2012, available at https://www.sullcrom.com/files/Publication/e12d4ab6-7303-4e2c-9bac-88f9cc5c0704/Presentation/PublicationAttachment/75e7266e-91bf-4919-aa89-e4f91a78572d/SC_Publication_Regulation_of_US_Operations_of_Non_US_Banks.pdf.*		
H. Early Remediation		
The Final Rule does not implement proposed early remediation requirements of Section 166 of the Dodd-Frank Act. The FRB indicated that it is working on integrating the various remediation levels with the new Basel III-based U.S. final capital rules adopted in July 2013 and that it continues to review comments received on the Proposals with respect to early remediation requirements. *For a discussion of the proposed early remediation rules, see our Client Memorandum, "Regulation of U.S. Operations of Non-U.S. Banks," dated December 16, 2012, available at https://www.sullcrom.com/files/Publication/e12d4ab6-7303-4e2c-9bac-88f9cc5c0704/Presentation/PublicationAttachment/75e7266e-91bf-4919-aa89-e4f91a78572d/SC_Publication_Regulation_of_US_Operations_of_Non_US_Banks.pdf.*		