

June 14, 2017

Treasury Issues Comprehensive Report on Depository System Regulatory Reforms

Trump Executive Order Required Fundamental Reassessment of Existing Rules; Treasury Submits the First of Four Reports Examining Existing Financial Regulatory Framework

SUMMARY

On June 12, 2017, the U.S. Department of the Treasury (“*Treasury*”) issued a Report (the “*Report*”)¹ recommending a number of comprehensive changes in the current regulatory system for United States depository institutions designed to create greater regulatory balance and promote economic opportunities. The Report is intended to “identify any laws, treaties, regulations, guidance, reporting and recordkeeping requirements and other [g]overnment policies that inhibit Federal regulation of the U.S. financial system in a manner consistent with [a set of] Core Principles” that were enunciated in President Trump’s Executive Order 13772 issued February 3, 2017 (the “*Executive Order*”).² The clear majority of the recommended changes in the Report could be accomplished by modifications to supervisory policy and regulations, although certain fundamental changes would require legislation.

The Report is the first of four reports to be issued by Treasury relating to financial regulatory reform. The remaining three reports will address: (i) capital markets (debt, equity, commodities and derivatives markets, central clearing and other operational functions); (ii) the asset management and insurance industries, and retail and institutional investment products and vehicles; and (iii) non-bank financial institutions, financial technology, and financial innovation.³ None of these reports will address comprehensive housing finance reform (or issues concerning the related government-sponsored entities), Title II Orderly Liquidation Authority or the Financial Stability Oversight Council’s (“*FSOC*”) designation of systemically important nonbank financial companies (and “financial market utilities”) for supervision by the Board of Governors of the Federal Reserve System (the “*Federal Reserve*”).⁴ Separate reports on the

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latter two matters will be issued by Treasury by October 20, 2017 pursuant to the Presidential Memoranda issued by President Trump on April 21, 2017.⁵

BACKGROUND

The Executive Order provides that “[i]t shall be the policy of this Administration to regulate the United States financial system in a manner consistent with” the following Core Principles (the “*Core Principles*”):

- Empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement and build individual wealth;
- Prevent taxpayer-funded bailouts;
- Foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
- Enable American companies to be competitive with foreign firms in domestic and foreign markets;
- Advance American interests in international financial regulatory negotiations and meetings;
- Make regulation efficient, effective and appropriately tailored; and
- Restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

The Executive Order further directed the Treasury Secretary to consult with the heads of FSOC-member agencies and to deliver a report to the President on:

- the extent to which existing law, treaties, regulations, guidance, reporting and recordkeeping requirements and other government policies promote the Core Principles;
- what actions have been taken, and are currently being taken, to promote the Core Principles; and
- what laws, treaties, regulations, guidance, reporting and recordkeeping requirements and other government policies inhibit Federal regulation of the United States financial system in a manner consistent with the Core Principles.

TREASURY REPORT’S FINDINGS AND RECOMMENDATIONS

Treasury intends the recommendations set forth in the Report to, among other things: (i) improve regulatory efficiency and effectiveness by eliminating fragmentation, overlap and duplication across regulatory agencies; (ii) reduce unnecessary regulatory complexity; (iii) tailor the application of regulation to firms’ size and complexity; and (iv) require greater regulatory cooperation and coordination among financial regulators.⁶ The Report includes numerous recommendations covering a variety of topics and notes that a “sensible rebalancing of regulatory principles is warranted in light of the significant improvement in the strength of the financial system.”⁷

Certain key recommendations are described below, and a complete list, organized by topic and noting the relevant Core Principle(s), is provided in [Appendix B](#) of the Report.

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- **Capital, Stress Tests and Liquidity.** It is important to note that although certain proposals, such as raising the asset threshold for application of enhanced prudential standards or establishing a “regulatory off-ramp” for bank holding companies (“BHCs”) and depository institutions, are included in the “Capital and Liquidity” section of the Report, their impact would likely go beyond capital and liquidity. The Report’s recommendations in this area include:
 - raising the \$50 billion asset threshold in Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“*Dodd-Frank*”) for application of enhanced prudential standards to BHCs to an unspecified higher amount, and applying the same asset threshold with respect to participation in the Federal Reserve’s Comprehensive Capital Analysis and Review (“*CCAR*”) process and for application of the Federal Reserve’s proposed rule implementing single counterparty credit limits;⁸
 - making the Federal Reserve stress-testing and *CCAR* frameworks subject to public notice and comment, in light of the fact that “[t]oday, *CCAR* is the binding capital regime for the majority of large banks”;⁹
 - changing the *CCAR* process to a two-year cycle, eliminating the qualitative assessment for “large and complex” firms so that their capital plans would not be subject to potential objection on qualitative grounds (effectively extending a recent change in this regard to smaller *CCAR* firms to apply to all *CCAR* firms),¹⁰ re-assessing certain existing supervisory assumptions (including that *CCAR* firms would continue to make planned capital distributions and grow their balance sheets and risk-weighted asset exposures in the severely adverse scenario);¹¹
 - considering whether to establish a “regulatory off-ramp” for BHCs and depository institutions maintaining a high level of capital, such as a 10% non-risk weighted leverage ratio, from “all capital and liquidity requirements and nearly all aspects of *Dodd-Frank*’s enhanced prudential standards,” which is consistent with analogous provisions of the Financial CHOICE Act of 2017 (the “*Financial CHOICE Act*”),¹² but would appear to differ from the Report’s focus on “risk-sensitive” capital standards;¹³
 - raising the asset threshold for company-run *Dodd-Frank Act Stress Test* (“*DFAST*”) requirements from \$10 billion to \$50 billion, eliminating the mid-year *DFAST* requirements and eliminating the supervisory adverse scenario;¹⁴
 - studying the competitive impact and recalibration of capital and liquidity standards imposed on U.S. Global Systemically Important Banks (“*G-SIBs*”), with a particular focus on the U.S. *G-SIB* surcharge, the minimum long-term debt requirements and “enhanced” supplementary leverage ratio buffer discussed below¹⁵—noting that despite frequent claims about the largest U.S. banks getting bigger, the percentage of U.S. depository assets held by the eight U.S. *G-SIBs* has declined from 58% to 50% since 2008;¹⁶
 - revising the calculation of the supplementary leverage ratio requirements, including deducting from the denominator cash on deposit with central banks, U.S. Treasury securities and initial margin for centrally cleared derivatives,¹⁷ and recalibrating the “enhanced” supplementary leverage ratio buffer applicable to U.S. *G-SIBs*;¹⁸
 - revisiting and recalibrating the U.S. *G-SIB* surcharge, including the incorporation of the short-term wholesale funding into surcharge calculations;¹⁹
 - reevaluating and recalibrating the minimum long-term debt requirements in the Federal Reserve’s rules on total loss absorbing capacity (“*TLAC*”) and other long-term debt requirements;²⁰
 - delaying implementation of the net stable funding ratio (“*NSFR*”) and the fundamental review of the trading book;²¹
 - for advanced approaches BHCs (*i.e.*, those with total assets of \$250 billion or more or on-balance sheet foreign exposure of \$10 billion or more), reducing reliance on the model-based “advanced approaches” for calculating risk-based capital requirements, and increasing the transparency of operational risk capital requirements;²²

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- reviewing the potential impact of the Financial Accounting Standards Board's revised standard for recognizing credit losses (referred to as the current expected credit loss or "CECL" standard) on banking organizations' capital levels and harmonizing the standard with regulators' supervisory efforts;²³ and
- revising the liquidity coverage ratio, including tailoring the scope of application so that the full requirements apply only to U.S. G-SIBs, with other advanced approaches BHCs subject to a less stringent standard, and adjusting the outflow assumptions to include greater reliance on historical experience.²⁴

In support of its recommendations regarding capital, stress-testing and liquidity, Treasury argues that Dodd-Frank has "proven to be insufficiently tailored to depository institutions based on the size and complexity of their business models," and criticizes in particular the use of "arbitrary asset thresholds."²⁵ Treasury is also concerned that regulatory burdens, in particular the asset thresholds for stress tests and enhanced prudential standards, are limiting regional and mid-sized banks' ability to compete with larger institutions.²⁶ The Report states that "[t]o the extent regulatory costs can be spread over a large number of customers, regulation can create a barrier to entry for smaller firms and confer competitive advantages on the largest institutions."²⁷

The Report further concludes that the "current capital and liquidity regime could be made less costly by reducing its excessive conservatism, opacity, and duplication"²⁸ and that "the continual ratcheting up of capital requirements is not a costless means of making the banking system safer."²⁹ Further, Treasury argues that the "U.S. banking system is significantly better capitalized today than it was prior to the financial crisis"³⁰—noting that the combined common equity risk-based capital ratio has increased from 5.5% to 12.2% and a similar result in high-quality liquid assets with the percentage increasing about five times their pre-crisis share to nearly 24%.³¹

- **Living Wills.** Treasury supports the ongoing requirement of living wills, but with certain material revisions:
 - Section 165(d) of Dodd-Frank should be amended to eliminate the Federal Deposit Insurance Corporation's ("FDIC") role in the resolution plan review process;³²
 - agencies should formally adopt a two-year cycle for resolution plan submissions;³³
 - the Federal Reserve should be required to complete its review and provide feedback on living wills within six months of their submission;³⁴
 - agencies should develop clear guidelines and assessment frameworks for living will submissions, which should be subject to transparent public notice and comment process;³⁵ and
 - Congress should increase the threshold for compliance with living will requirements from the current \$50 billion asset threshold to match the revised future threshold for application of enhanced prudential standards.³⁶

In support of the living will-related recommendations, Treasury notes that the "slow accretion of guidance for living wills without the benefit of public notice and comment has imposed an undue burden on participating institutions."³⁷ Treasury also notes that living wills should not serve as "supplemental capital and liquidity regulatory guidance requirements."³⁸

- **Volcker Rule.** The Report calls for "substantial amendment"³⁹ of the Volcker Rule (which prohibits "banking entities," including depository institutions and their affiliates, from engaging in proprietary trading and investing in or sponsoring "covered funds"), including:
 - exempting small banking entities (\$10 billion or less in assets) from the Volcker Rule entirely and exempting banking entities with over \$10 billion in assets that do not have "substantial trading activity" from the Rule's proprietary trading prohibition;⁴⁰
 - improving regulatory coordination among the five agencies responsible for overseeing implementation and enforcement of the Volcker Rule to ensure that their interpretive guidance and enforcement of the Volcker Rule are consistent and coordinated;⁴¹

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- eliminating the 60-day rebuttable presumption in the regulatory definition of “proprietary trading” and assessing whether to eliminate the fact-intensive, subjective “purpose test”;⁴²
- providing banking entities with increased flexibility to engage in market-making, including assessment by policymakers of whether the “reasonably expected near term demand” (“RENTD”) framework should be modified (such as by providing banking entities with an ability to opt out of the RENTD requirements if certain conditions are met), and allowing banking entities flexibility in adjusting their determinations of the reasonable amount of inventory;⁴³
- reducing the burden of hedging business risks by modifying the compliance program and documentation requirements, including removing the requirement to maintain ongoing calibration of a hedge over time;⁴⁴
- revising the existing compliance regime to apply the “enhanced” compliance program only to those banking entities with at least \$10 billion in trading assets and liabilities on a consolidated basis (as opposed to the current threshold of \$50 billion in total consolidated assets), in order to provide greater flexibility to banking entities to tailor their compliance programs to the banking entity’s particular activities and risk profile of the activity, and to eliminate any required metrics that are not necessary for effective supervision;⁴⁵
- modifying the covered fund restrictions by adopting a simple definition of “covered fund” that focuses on the characteristics of hedge funds and private equity funds with appropriate additional exemptions as needed (e.g., for funds that assist in the formation of venture and other capital that is critical to fund economic growth opportunities);⁴⁶
- reducing the complexity and undue compliance burden of the covered fund restrictions by incorporating the exemptions in Section 23A of the Federal Reserve Act into the “Super 23A” provisions of the Volcker Rule, extending the seeding period exemption to three years, providing flexibility regarding the name sharing prohibition, and providing an exemption from the definition of “banking entity” for foreign funds owned or controlled by a foreign affiliate of a U.S. bank or a foreign bank with U.S. operations;⁴⁷ and
- assessing whether sufficiently well-capitalized banks should be permitted to opt out of the Volcker Rule altogether (but remain subject to trader mandates and ongoing supervision and examination to reduce risks to the safety net).⁴⁸

The Report notes that the Volcker Rule “has far overshoot the mark [and that] [t]he rule has spawned an extraordinarily complex and burdensome compliance regime” and “hindered both [necessary] market-making functions . . . and hedging.”⁴⁹ The recommended exemption for smaller banking institutions is consistent with the concern, expressed throughout the Report, that “excessive regulation” can create barriers to entry for small institutions, thereby conferring competitive advantages on larger institutions and exacerbating “too-big-to-fail” and financial stability concerns.⁵⁰ Lastly, acting on the recommendation to address “banking entity” issues for foreign funds is important to address flaws in the technical application of this aspect of the Volcker Rule.

- **Regulatory Structure and Coordination.** The Report notes that “[a] more efficient system of financial regulation is a critical pillar of policies to stimulate economic growth” and hence it is “critical that Congress and the regulatory agencies undertake a holistic analysis of the cumulative impact of the regulatory environment.”⁵¹ Generally, Treasury recommends that Congress should take action to “reduce regulatory fragmentation, overlap and duplication”⁵² in the U.S. regulatory structure, which could include consolidating regulators.⁵³ Other recommendations for improving regulatory structure include:
 - Congress should expand FSOC’s authority to play a larger role in the coordination and direction of regulatory and supervisory policies, which may include its having the authority to appoint a “lead regulator” on certain issues with respect to which multiple agencies have conflicting or overlapping jurisdiction;⁵⁴

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- enhanced coordination of supervision and examination activities, including possibly having only one regulator leading enforcement against a firm relating to a “single incident or set of facts”;⁵⁵ and
- improved interagency coordination on cybersecurity matters, including harmonizing regulations across agencies with authority and using a common lexicon, and “harmoniz[ing] interpretations and implementation of specific rules and guidance.”⁵⁶

The recommendation to expand FSOC’s authority is inconsistent with the approach taken by the Financial CHOICE Act, which would eliminate the FSOC completely.

- **Community Financial Institutions.** The Report refers to community banks as a “critical backbone” of communities.⁵⁷ It specifically cites significant decline in the number of community banks and credit unions and concludes that the regulatory burdens imposed on these institutions is a contributing factor.⁵⁸ The Report proposes the following to reduce the regulatory burden on such institutions:
 - exempting community banks from the U.S. Basel III risk-based capital rules because doing so would “tailor capital regulations to better reflect the risk profile of community banks”;⁵⁹
 - raising the asset threshold of the Federal Reserve’s Small Bank Holding Company and Savings and Loan Holding Company Policy Statement to \$2 billion (from the current \$1 billion) to provide relief from certain acquisition debt constraints more acutely felt by small institutions;⁶⁰
 - increasing the scope of application for stress testing of credit unions to \$50 billion in assets (from the current \$10 billion threshold) and eliminating the National Credit Union Administration’s risk-based capital requirements for credit unions that satisfy a 10% simple leverage (net worth) test;⁶¹
 - simplifying regulatory reporting for smaller banks by removing data fields inapplicable to community banks and their business model from Call Report forms;⁶² and
 - increasing the asset threshold for small banks eligible for an 18-month examination cycle to more than \$1 billion.⁶³

The Report underscores how the increase in regulatory requirements after the financial crisis has put “a substantial burden on [the] financial and human capital” of community banks and credit unions and placed larger institutions at a competitive advantage due to their ability to easily absorb regulatory costs.⁶⁴ Treasury concludes that tailoring capital rules to match small banks’ risk profile and providing exemptions from burdensome regulations would promote the expansion of the community banking and credit sector and allow community banks to increase their role as essential providers of credit to small- and mid-sized businesses.⁶⁵ In addition, Treasury acknowledges the FDIC’s recent efforts to encourage de novo charters.⁶⁶

- **Community Reinvestment Act (“CRA”).** Treasury refers to the CRA as a “statute[] of critical importance to the banking sector”⁶⁷ and suggests:
 - that the CRA framework be revised to, among other things, improve how banks’ CRA investments are measured and change the way CRA geographic assessments areas are defined;⁶⁸ and
 - reviewing the CRA with an aim to modernize it, among other things, which will include soliciting input from consumer advocates and other stakeholders, and notes that “[a]ligning the regulatory oversight of CRA activities with a heightened focus on community investments is a high priority for the Secretary.”⁶⁹

Importantly, Treasury recognizes the significant impact an adverse CRA rating can have on an institution’s ability to expand and grow, noting the extended period of time that can elapse between CRA examinations, and between examinations and delivery of final ratings.⁷⁰ Treasury also recognizes that the CRA assessment, examination process and rating system is antiquated and does not reflect the ways in which banks currently do business.⁷¹

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- **Regulatory Engagement Model.** In an effort to increase regulatory accountability and transparency in accordance with the Core Principles, the Report recommends that:
 - regulators undertake an interagency reassessment of the collective requirements imposed on the boards of directors of banking organizations—noting that boards provide critical oversight to firms but that the responsibilities between boards and management have become blurred;⁷²
 - regulators reevaluate the volume and nature of matters requiring attention, matters requiring immediate attention and consent orders in a coordinated manner to examine overlap and establish consistent interagency compliance standards;⁷³ and
 - financial regulatory agencies perform and make available for public comment a cost-benefit analysis with respect to at least all economically significant regulations (i.e., actions with an estimated annual economic impact of \$100 million or more) that is consistent with Office of Management and Budget’s (“OMB”) rigorous guidance on cost-benefit analyses,⁷⁴ which Treasury believes will force financial regulatory agencies to adopt uniform methods to analyze costs and consider the potential trade-offs and unintended consequences of new regulations;⁷⁵

In support of its proposals regarding regulatory engagement, Treasury underscores how “some rebalancing of the volume of regulatory actions based on materiality and the nature of required remediation may be warranted”⁷⁶ after finding that “[m]any banking organizations report multiyear delays in even receiving a plan to clear regulatory actions, which clouds their business activities during such delays.”⁷⁷

- **Foreign Banking Organizations (“FBOs”).** Treasury notes that “depositories operated by [FBOs] play a meaningful role in the U.S. banking system,” in part by providing business loans, infrastructure finance and capital market services.⁷⁸ The Report recommends that FBO regulatory requirements should be “reevaluated so that FBOs are not unduly constrained” in providing these services.⁷⁹ For instance, Treasury recommends that:
 - application of enhanced prudential standards and living will requirements to FBOs should be based on their U.S. risk profile, using the same revised threshold used for the application of enhanced prudential standards to U.S. BHCs, rather than an FBO’s global consolidated assets, which has sometimes resulted in burdensome requirements for FBOs with a small U.S. presence;⁸⁰
 - thresholds for intermediate holding companies (“IHCs”) of FBOs to comply with CCAR be raised from the current \$50 billion asset threshold to match the revised threshold for enhanced prudential standards and that other IHC regulatory standards, such as resolution planning and liquidity, be recalibrated to take into account home country regulations;⁸¹ and
 - the Federal Reserve should revisit its internal TLAC requirement for IHCs to take into account the foreign parent’s ability to provide capital and liquidity to the IHC.⁸²
- **Changes to the CFPB.** The Report is highly critical of the Consumer Financial Protection Bureau (the “CFPB”). Most important, Treasury recommends that Congress repeal the CFPB’s supervisory authority on the grounds that it is “duplicative and unnecessary.”⁸³ Other CFPB-related proposals include:
 - making the CFPB Director removable at-will by the President or, as an alternative, creating an independent multi-member commission to lead the agency,⁸⁴
 - subjecting the CFPB to OMB apportionment and annual congressional appropriations,⁸⁵
 - ensuring that regulated entities have certainty regarding CFPB interpretations (by rules, guidance or no-action letters) before they are subjected to enforcement actions in light of what Treasury considers to be the CFPB’s “excessive reliance on enforcement actions, rather than rules and guidance to regulate conduct”—in particular, Treasury recommends that the CFPB adopt regulations interpreting the Unfair, Deceptive, or Abusive Acts and Practices standard,⁸⁶

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- recommending that rather than choosing an administrative setting for enforcement actions, the CFPB bring suit in federal court, which would provide participants with greater procedural protections;⁸⁷ and
- making the underlying data in the CFPB's complaint database non-public.⁸⁸
- **Residential Mortgage Lending.** Treasury's recommendations in this area are intended to enhance the viability of private sector lending, which Treasury argues will increase consumer choice and the availability of mortgage credit. The Report is critical of government-supported mortgage lending and notes its recommendations will avoid "in-perpetuity subsidies in government-related programs that make private lenders uncompetitive."⁸⁹ The Report sets forth recommendations in three categories: mortgage loan origination, mortgage loan servicing and private sector secondary market activities, and include:
 - suggesting that the CFPB reassess the ability-to-repay ("ATR") and qualified mortgage ("QM") rule, which was intended to ensure that lenders make loans to borrowers who have the ability to repay and define loans that are considered presumptively "safe" so that all market participants are subject to the same transparent set of requirements⁹⁰—noting that although the ATR/QM rule was not aimed at "eliminat[ing] markets for loans that did not meet the QM standards, the reality is that the vast majority of lenders remain unwilling to make loans that do not meet those standards, eliminating access to mortgages for many creditworthy borrowers";⁹¹
 - proposing that the CFPB place a moratorium on additional mortgage servicing rules while the industry updates its operations to comply with existing regulations;⁹²
 - advocating that Congress repeal or substantially revise the 5% residential mortgage risk retention requirement for securitizers and enhance investor protections for private label mortgage-backed securities as a way to revitalize a responsible market;⁹³ and
 - recommending that the CFPB clarify assignee liability for investors related to certain errors in the origination process.⁹⁴
- **Leveraged Lending.** As a result of the ambiguity in the regulatory definition of "leveraged lending" and the lack of clear penalties for noncompliance, Treasury recommends that the Federal Reserve, the FDIC and the Office of the Comptroller of the Currency re-issue their 2013 supervisory guidance for public comment.⁹⁵ The Report also specifically encouraged banks to incorporate a "clear but robust set of metrics when underwriting a leveraged loan" rather than relying solely on the 6x leverage ratio discussed in the 2013 guidance.⁹⁶
- **Small Business Lending.** The Report notes that small business lending poses certain challenges to lenders that may not be remedied by changes to existing regulation, and the "banking agencies should be mindful of th[e] reality" that small business lending is riskier than lending to larger institutions.⁹⁷ As discussed above, the Report outlines several ways in which Congress and regulators can alleviate the regulatory burden on community financial institutions, which Treasury believes would in turn allow these entities to better serve small businesses in their area.⁹⁸ Further Treasury proposals to enhance aid to small businesses include:
 - easing burdens that impact access to property-collateralized credit;⁹⁹
 - recalibrating regulatory leverage ratio requirements to facilitate lending;¹⁰⁰ and
 - repealing the provisions of Section 1071 of Dodd-Frank pertaining to small business loan data collection to ensure that costly information-gathering on the part of the lender does not reduce access to small business borrowers.¹⁰¹

CONCLUSION

Overall, Treasury's recommendations underscore the need for the United States to maintain "a leadership position in the vitality of its financial markets."¹⁰² With regard to preserving a robust regulatory system, in

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particular, the Report notes that key elements of the financial regulatory framework that should be retained through any reform include: (i) explicit, appropriately risk-sensitive capital standards; (ii) supervised stress-testing appropriately tailored based on banking organizations' complexity; (iii) explicit, measurable and transparent liquidity requirements; (iv) actionable living wills for the largest systemically-important banks; and (v) enhanced prudential standards, based on the size and complexity of financial institutions.¹⁰³

It remains to be seen, however, what regulatory and legislative changes Treasury proposes in its next three reports with regard to capital markets, asset management, insurance and financial products, among other topics. Treasury will issue the remaining reports over the coming months and we expect that these forthcoming recommendations will closely track the Core Principles and be similarly critical of post-financial crisis reforms adopted in these areas.

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ENDNOTES

- 1 U.S. Department of the Treasury, *A Financial System that Creates Economic Opportunities: Banks and Credit Unions* (June 12, 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf>.
- 2 Report at 3. For further information, see our Client Memorandum, *President Trump Takes Initial Steps Aimed at Reshaping Financial Industry Regulation: Executive Order Requires Fundamental Reassessment of Existing Rules; Labor Department to Reexamine its "Fiduciary Rule,"* dated February 4, 2017, available at <https://www.sullcrom.com/president-trump-takes-initial-steps-aimed-at-reshaping-financial-regulation>.
- 3 Report at 4.
- 4 *Id.*
- 5 *Id.* See also Presidential Memorandum for the Secretary of the Treasury: Orderly Liquidation Authority (Apr. 21, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury-0>; Presidential Memorandum for the Secretary of the Treasury: Financial Stability Oversight Council (Apr. 21, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury>.
- 6 Report at 10.
- 7 *Id.* at 6.
- 8 *Id.* at 52.
- 9 *Id.* at 48 and 53.
- 10 On January 30, 2017, the Federal Reserve adopted a final rule that excluded the capital plans of "large and noncomplex" CCAR firms from the qualitative assessment in CCAR. For additional information, see our Client Memorandum, *Banking Organization Capital Plan and Stress Tests: Federal Reserve Finalizes Elimination of the Qualitative CCAR Assessment for Smaller Firms, Reduction in the De Minimis Exception for Additional Capital Distributions, and Other Notable Revisions to Its Capital Plan and Stress Testing Rules*, dated February 1, 2017, available at <https://sullcrom.com/banking-organization-capital-plans-and-stress-tests-02-01-2017>.
- 11 Report at 53-54.
- 12 For further information about the Financial CHOICE Act, see our Client Memorandum, *Financial CHOICE Act of 2017*, dated June 9, 2017, available at <https://www.sullcrom.com/financial-choice-act-of-2017-house-passes-financial-regulatory-reform-legislation>.
- 13 *Id.* at 10 and 124.
- 14 *Id.* at 52.
- 15 *Id.* at 16 and 56.
- 16 *Id.* at 5.
- 17 The report does not address whether the calculation of the denominator for the U.S. Tier 1 leverage ratio should also be revised to reflect these exclusions.
- 18 Report at 54, 56 and 142.
- 19 *Id.* at 56.
- 20 *Id.* at 16 and 56. On December 15, 2016, the Federal Reserve adopted final rules implementing TLAC and long-term debt requirements. For additional information, see our Client Memorandum, *Loss Absorbency Requirements: Federal Reserve Adopts Final TLAC and Related Requirements*

ENDNOTES (CONTINUED)

- for U.S. G-SIBs and U.S. Intermediate Holding Company Subsidiaries of Non-U.S. G-SIBs, dated December 16, 2016, available at <https://sullcrom.com/loss-absorbency-requirements-12-16-16>.
- 21 *Id.* at 53.
- 22 *Id.* at 53-54.
- 23 *Id.* at 53. For further information about the CECL Standard, see our Client Memorandum, *Client Alert: FASB Expected Credit Loss Methodology*, dated June 23, 2016, available at <https://www.sullcrom.com/client-alert-fasb-expected-credit-loss-methodology>.
- 24 *Id.* at 52 and 54. Currently, the full version of the liquidity coverage ratio applies to U.S. G-SIBs and other advanced approaches BHCs, and other BHCs with total assets of \$50 billion or more are subject to a less stringent standard. See 12 C.F.R. §§ 249.1 and 249.60.
- 25 Report at 6 and 9.
- 26 *Id.* at 9.
- 27 *Id.* at 10.
- 28 *Id.* at 49.
- 29 *Id.*
- 30 *Id.* at 37.
- 31 *Id.*
- 32 *Id.* at 68.
- 33 *Id.* at 67-68. In a 2011 joint rulemaking, agencies adopted an annual cycle for resolution plan submissions but have since granted numerous extensions. *Id.* at 67.
- 34 *Id.* at 68.
- 35 *Id.*
- 36 *Id.* at 67.
- 37 *Id.*
- 38 *Id.*
- 39 *Id.* at 8.
- 40 *Id.* at 72-73. For purposes of determining whether a banking organization has substantial trading activity, Treasury recommends adopting the thresholds used by the Federal Reserve, OCC and FDIC under the market risk capital rules—potentially with adjustments to exclude assets like loans and U.S. Treasury securities that are exempt from the Volcker Rule’s proprietary trading restrictions—which the Report notes would have the benefit of using the same thresholds to determine application of the proprietary trading restrictions and avoid subjecting banking organizations to an additional calculation requirement to determine whether they fall within the Volcker Rule’s scope. *Id.*
- 41 *Id.* at 73-74.
- 42 *Id.* at 74-75.
- 43 *Id.* at 75-76. In particular, Treasury recommends that for illiquid securities, banking entities should have greater leeway to anticipate changes in markets; for over-the-counter derivatives, regulators should focus more on ensuring that banking entities appropriately hedge the positions they maintain; banking entities that have not yet established a market-making presence in a particular asset class should have more discretion to meet the RENTD condition; banking entities

ENDNOTES (CONTINUED)

- should be able to enter into block trades even if they involve a trading volume outside of historical averages. *Id.* at 75.
- 44 *Id.* at 76.
- 45 *Id.* at 76-77.
- 46 *Id.* at 77.
- 47 *Id.* at 77-78.
- 48 *Id.* at 78.
- 49 *Id.* at 71-72.
- 50 *Id.* at 9.
- 51 *Id.* at 6 and 9.
- 52 *Id.* at 123.
- 53 *Id.* at 11.
- 54 *Id.*
- 55 *Id.*
- 56 *Id.* at 31.
- 57 *Id.* at 56.
- 58 *Id.*
- 59 *Id.* at 58.
- 60 *Id.* at 59.
- 61 *Id.*
- 62 *Id.* at 60.
- 63 *Id.*
- 64 *Id.* at 9.
- 65 *Id.* at 58.
- 66 *Id.* at 60.
- 67 *Id.* at 9.
- 68 *Id.* at 64-65.
- 69 *Id.*
- 70 *Id.* at 64.
- 71 *Id.* at 64-65.
- 72 *Id.* at 61-62.
- 73 *Id.* at 65.
- 74 *Id.* at 62-63.
- 75 *Id.*
- 76 *Id.* at 17.
- 77 *Id.* at 65.

ENDNOTES (CONTINUED)

- 78 *Id.* at 5.
- 79 *Id.* at 68.
- 80 *Id.* at 69-70.
- 81 *Id.* at 71.
- 82 *Id.*
- 83 *Id.* at 92.
- 84 *Id.* at 89.
- 85 *Id.*
- 86 *Id.* at 82-83.
- 87 *Id.* at 90.
- 88 *Id.* at 91.
- 89 *Id.* at 93.
- 90 *Id.* at 94.
- 91 *Id.*
- 92 *Id.* at 101.
- 93 *Id.*
- 94 *Id.*
- 95 *Id.* at 105.
- 96 *Id.*
- 97 *Id.* at 107.
- 98 *Id.* at 106.
- 99 *Id.* at 107.
- 100 *Id.* at 108.
- 101 *Id.*
- 102 *Id.* at 7.
- 103 *Id.* at 10.

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