

Instruments to Satisfy Proposed Bank Capital and Long-Term Debt Requirements

November 29, 2023

The U.S. federal banking agencies (the “Agencies”)¹ have proposed several new rules in the wake of recent turmoil in the U.S. banking industry, which some in the Agencies regarded as a “warning that banks need to be more resilient” and need additional capital, “the foundation of that resilience,” as well as additional loss-absorbing long-term debt.² These proposals, if finalized, would affect the capital structure and capital raising activities of U.S. banking organizations with \$100 billion or more in assets and certain large foreign banking organizations with a U.S. presence (“Large Banks”).

On July 27, 2023, the Agencies issued for comment a proposal (the “Capital Proposal”) for the U.S. implementation of the so-called Basel III endgame. On the same day, the FRB issued a proposal (the “GSIB Surcharge Proposal”) related to the capital surcharge for the eight largest U.S. global systemically important bank holding companies (“GSIBs”) that also proposes changes to the FR Y-15 reporting form that determines the division of Large Banks into their respective regulatory categorizations for the purposes of tailored application of federal rules and regulations governing Large Banks.³ Finally, on August 29, 2023, the Agencies proposed revisions to the total loss absorbing capacity (“TLAC”) rule that would newly apply minimum long-term-debt requirements to certain Large Banks not previously covered by the existing TLAC rule (the “LTD NPR”).⁴

In this Debevoise In-Depth, we first provide background on the existing TLAC rule and the proposed expansion of minimum long-term debt requirements as proposed in the LTD NPR. We then consider the additional capital requirements that may be imposed

¹ This Debevoise In Depth uses “U.S. federal banking agencies” to mean the Federal Reserve Board (the “FRB”), the Federal Deposit Insurance Corporation (the “FDIC”) and the Office of The Comptroller of the Currency (the “OCC”).

² Michael S. Barr, Holistic Capital Review, Remarks at the Bipartisan Policy Center (July 10, 2023), available [here](#). Michael S. Barr, Why Bank Capital Matters, Remarks at the American Enterprise Institute (Dec. 1, 2022), available [here](#). See also Martin J. Gruenberg, Remarks on the Basel III Endgame at the Peterson Institute for International Economics (June 22, 2023), available [here](#).

³ For more detail about the Capital Proposal and the GSIB Surcharge Proposal, see our update [here](#). The press release and texts of the two proposed rules are available [here](#).

⁴ For more detail about the proposed revisions to the TLAC rule, see our update [here](#).

by the Capital Proposal and the GSIB Surcharge Proposal. Finally, we survey the types of instruments that banking organizations could utilize to satisfy these new requirements (along with some common instruments or instrument features that would not fulfill these requirements).

TLAC Rule and LTD NPR

Currently, under the FRB's 2017 final TLAC rule, TLAC requirements apply only to U.S. GSIB bank holding companies ("BHCs") and U.S. intermediate holding companies ("IHCs") of foreign GSIBs with \$50 billion or more in U.S. (non-branch) assets.

Pursuant to the existing TLAC rule, U.S. GSIBs must hold a minimum amount of external eligible long-term debt and a minimum amount of eligible long-term debt plus tier 1 capital (together comprising TLAC). External eligible long-term debt (or an "eligible debt security") is a debt security that:

- is paid in and issued by the covered holding company;
- is not (i) secured; (ii) guaranteed by the holding company or its subsidiaries; or (iii) subject to an arrangement that would enhance the instrument's seniority;
- has a maturity greater than one year;
- is governed by U.S. state or federal law;
- does not allow the holder to accelerate payment, except in certain limited circumstances;
- does not have a credit-sensitive feature;
- is not a structured note;⁵ and

⁵ A "structured note" is defined as a debt instrument that (i) has a principal amount, redemption amount or stated maturity that is subject to reduction based on the performance of any asset, entity, index or embedded derivative or similar embedded feature; (ii) has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets or entities; (iii) does not specify a minimum principal amount that becomes due upon acceleration or early termination; or (iv) is not classified as debt under GAAP; *provided, however*, an instrument is not a structured note solely because it is one or both of the following: (i) an instrument that is not denominated in U.S. dollars; or (ii) an instrument where interest payments are based on an interest rate index.

- cannot be converted or exchanged for equity in covered holding company.

U.S. GSIBs also must abide by the “clean holding company requirements,” which restrict the types of liabilities and other instruments that can be held at a parent holding company, which might otherwise dilute the loss-absorbing capacity of TLAC. For example, the parent holding company is prohibited from issuing short-term debt or entering into qualified financial contracts with third parties.

Current Rulemaking Initiative

The LTD NPR would greatly expand the coverage of the existing TLAC rule by newly requiring many non-GSIB Large Banks to hold certain minimum levels of long-term debt.⁶ The LTD NPR builds on an advance notice of proposed rulemaking (“ANPR”) issued by the FRB and FDIC in October 2022, which initially proposed applying long-term debt requirements to banking organizations with \$250 billion or more in assets. The LTD NPR proposes to significantly reduce this threshold in response to the recent Large Bank failures in the spring, in line with the Agencies’ reaffirmed view that long-term debt enhances resolvability.

As described in more detail in the table in Appendix A, the LTD NPR would newly apply requirements to many Large Banks, specifically Category II, III and IV BHCs and savings and loan holding companies (“SLHCs”) along with Category II, III and IV IHCs of non-GSIB foreign banking organizations (together the “Covered Entities”). In addition, the LTD NPR would apply to insured Depository Institutions (“IDIs”) with \$100 billion or more in assets (including the IDI subsidiaries of U.S. IHCs of foreign GSIBs), along with their affiliated IDIs, other than IDI subsidiaries of U.S. GSIBs (“Covered IDIs”). The LTD NPR also would make certain revisions to the existing TLAC rule that would affect U.S. GSIBs and U.S. IHCs of foreign GSIBs.

A Covered Entity or Covered IDI would be required to maintain an outstanding eligible long-term debt amount no less than the greatest of: (i) 6% of risk-weighted assets (“RWA”); (ii) 2.5% of total leverage exposure if subject to the supplementary leverage ratio; and (iii) 3.5% of average total consolidated assets. The Agencies estimated that the aggregate shortfall in eligible external long-term debt currently outstanding would be approximately \$70 billion.⁷ For a Large Bank with an IDI over \$100 billion in assets, the top-tier holding company would be required to issue external long-term debt, and the IDI subsidiary (and any IDI affiliates) would be required to issue a matching amount of internal long-term debt to satisfy the new requirement.

⁶ *Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions*, 88 Fed. Reg. 64524 (Sept. 19, 2023).

⁷ 88 Fed. Reg. at 64552.

With respect to the criteria for an “eligible debt security,” the LTD NPR would largely incorporate the existing definition, but expand it to include a minimum denomination requirement of \$400,000 for new issuances, which may not be exchanged for smaller denominations. Just as under the current TLAC rule, structured notes would not qualify as eligible long-term debt.

The LTD NPR would be phased in over three years following adoption. Specifically, Covered Entities and Covered IDIs must meet 25% of the LTD requirements one year after the rule is effective, 50% after the second year and 100% after the third year. Entities that become subject to LTD requirements in the future would similarly be subject to a three-year phase in from the date of applicability. In addition, certain legacy externally issued LTD, including legacy external LTD issued by Covered IDIs that would otherwise be required to issue internal LTD, would be grandfathered as eligible LTD.

The LTD NPR is likely to raise funding costs for Large Banks in the long run, because long-term debt is generally more expensive than short-term funding. In their analysis of steady-state funding cost impact, the Agencies estimated that the eligible external long-term debt requirement would increase pre-tax annual steady-state funding costs by \$1.5 billion under the incremental shortfall approach to their economic impact analysis and approximately \$5.6 billion under the zero baseline approach to their economic impact analysis.⁸

For more information regarding the LTD NPR, please visit our [blog post](#) summarizing key takeaways.

Capital Proposal

As noted above, the Agencies recently proposed changes to the capital rules that, if adopted, would likely have the effect of requiring Large Banks to issue more capital instruments.

Components of Capital Requirements

Capital requirements are expressed as ratios with a measure of capital in the numerator and a measure of assets in the denominator. One principal form of existing and proposed capital requirement uses RWA as the denominator. RWAs generally are determined based on balance sheet assets and certain off-balance sheet items, in each case adjusted for perceived risk.

⁸ 88 Fed. Reg. at 64552-53.

A bank's total capital comprises three core components: (1) common equity tier 1, the most loss-absorbing form of capital, which generally includes, for example, qualifying common stock (and associated surplus) and retained earnings; (2) additional tier 1 capital, which generally includes unsecured and paid-in capital instruments that are subordinated to depositors with no maturity or planned incentives to redeem; and (3) tier 2 capital, which generally includes unsecured and paid-in capital instruments that are subordinated to depositors with a minimum maturity of five years.

Impact of the Capital Proposal

The Capital Proposal is primarily focused on revising the calculation of RWAs (the denominator). The Agencies expect the Capital Proposal to increase RWA by 20% relative to currently binding measures of RWA across holding companies subject to the proposal, but because capital requirements are ratios, a higher denominator means companies need a high numerator (capital) to meet the minimum ratios. As a result and due to certain other changes, the Agencies anticipate that the proposal would significantly increase required capital across affected firms, including that it would increase common equity tier 1 capital requirements, including minimums and buffers, by 16%. This would amount to a 19% increase for holding companies subject to Category I or II capital standards, a 6% increase for Category III and IV domestic holding companies, and a 14% increase for Category III and IV intermediate holding companies of foreign banking organizations.

For U.S. GSIBs, the RWA increases under the Capital Proposal would also increase average TLAC requirements by 15.2% and increase the average long-term debt requirement by 2%. The FRB also noted that the RWA changes under the Capital Proposal could increase the TLAC and LTD requirements for the U.S. intermediate holding companies of some non-U.S. GSIBs.

In the Capital Proposal the Agencies acknowledge that, although most large banking organizations may have enough capital to meet the proposed requirements, the Capital Proposal would likely increase the equity capital funding maintained by these banking organizations.

Impact of the GSIB Surcharge Proposal

Separately, not considering the impact of the Capital Proposal, the FRB estimates that the combined effect of the changes proposed in the GSIB Surcharge Proposal would represent an approximately \$13 billion aggregate increase in the risk-based capital

requirements of the U.S. GSIBs.⁹ Further, due to the increase in RWA under the Capital Proposal, the dollar amounts of the capital surcharge changes under the GSIB Surcharge Proposal would be proportionally larger.

Capital and LTD Instruments

Banks have a range of financing options available to satisfy these proposed capital and long-term debt requirements. In the following chart, and without regard to any proposed grandfathering for existing instruments, we identify various types of instruments that could be used to meet the forthcoming requirements, if finalized in their proposed form, including those instruments that would qualify as tier 1 or tier 2 capital and debt instruments that would satisfy the definition of an external eligible debt security in the LTD NPR. We also note certain instruments or features of otherwise qualifying instruments commonly issued by banks that would not qualify as tier 1 or tier 2 capital.

Certain instruments have some optionality in design. In such cases, the chart lists the category of instrument (e.g. Preferred Stock) and then describes some of the different options available (e.g. cumulative versus non-cumulative preferred) assuming an instrument otherwise would qualify for the relevant capital or TLAC/LTD treatment.

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
1.	Common Stock	A class of stock that represents the most subordinated equity ownership in a corporation.	Common stock would qualify as common equity tier 1 capital for purposes of the capital rule.	Common stock would qualify as a component of the minimum TLAC requirement, though it would not qualify to be included in the entity's long-term debt amount.
2.	Preferred Stock	Generally, an equity interest with a liquidation or dividend preference above the common stock, though can also refer generally	Preferred stock can qualify as either additional tier 1 capital or tier 2 capital (or neither), depending on the factors below.	Preferred stock would qualify as a component of the minimum TLAC requirement only if it also qualifies as tier 1 capital. It will not qualify to be included in

⁹ GSIB Surcharge Proposal at 45, available [here](#).

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		to stock other than common stock.		the entity's long-term debt amount.
a.	Callable (by the issuer)	The issuer of the preferred stock can redeem the stock at any time or under specific circumstances (e.g. as a result of certain regulatory events).	<p>Otherwise-qualifying preferred stock with a feature permitting redemption at the option of the issuer may qualify as tier 1 capital only if the redemption is subject to prior approval of the Federal Reserve. Features that require, or create significant incentives for the issuer to redeem the instrument for cash or cash equivalents will render the preferred stock ineligible for inclusion in tier 1 or tier 2 capital.</p> <p>Otherwise-qualifying preferred stock that is not redeemable will qualify as tier 1 capital.</p>	<p>The preferred stock will qualify as a component of the minimum TLAC requirement if it qualifies for tier 1 capital (<i>see cell directly to the left</i>).</p> <p>Otherwise-qualifying preferred stock that is not redeemable will qualify as a component of the minimum TLAC requirement.</p>
b.	Cumulative	If dividends are not issued for a particular period, the preferred stockholder's dividend preference accumulates such that when the company next declares dividends, they receive the amount they would have received had dividends been declared	Cumulative preferred stock will qualify as tier 2 capital, but otherwise-qualifying preferred stock that is non-cumulative will qualify as tier 1 capital.	Cumulative preferred stock will not qualify as a component of the minimum TLAC requirement, but otherwise-qualifying preferred stock that is non-cumulative will so qualify.

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		continuously in previous periods.		
c.	Perpetual	The preferred stock does not have a maturity date.	Otherwise-qualifying preferred stock that is perpetual will qualify as tier 1 capital, but non-perpetual preferred stock will qualify as tier 2 capital.	Otherwise-qualifying preferred stock that is perpetual will qualify as a component of the minimum TLAC requirement, but non-perpetual preferred stock will not so qualify.
d.	Fixed rate	The dividend rate is a set percentage.	Otherwise-qualifying preferred stock with a fixed rate will qualify as tier 1 capital.	Otherwise-qualifying preferred stock with a fixed rate will qualify as a component of the minimum TLAC requirement.
e.	Floating rate	The dividend rate is a variable percentage, typically pegged to fluctuations in another measure (e.g., the Secured Overnight Financing Rate).	Otherwise-qualifying preferred stock with a floating rate will qualify as tier 1 capital unless the rate is tied to the financial condition of the borrower, in which case it will not qualify as tier 1 or tier 2 capital.	Otherwise-qualifying preferred stock with a floating rate will qualify as a component of the minimum TLAC requirement unless the rate is tied to the financial condition of the borrower.
f.	Fixed-to-floating rate	The preference rate begins at a fixed rate but eventually switches to a floating rate.	<i>See 2e directly above.</i>	<i>See 2e directly above.</i>
3.	Senior Notes	Bonds that take preference over other debts in the event that the company declares	Senior debt cannot qualify as tier 1 or tier 2 capital.	Senior notes will qualify as part of an entity's long-term debt amount if it satisfies the

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		bankruptcy and is forced into liquidation.		definition of “eligible debt security” as laid out in the “TLAC Rule and LTD NPR” section above.
a.	Fixed rate	The interest rate is a set percentage.		Otherwise qualifying senior notes with a fixed rate will qualify as part of an entity’s long-term debt amount.
b.	Floating rate	The rate is a variable percentage, typically pegged to fluctuations in another measure (e.g. the Secured Overnight Financing Rate).		Otherwise-qualifying senior notes with a floating rate will qualify as part of an entity’s long-term debt amount, unless the note would be treated as a structured note as defined in the TLAC rule or would be seen to have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the issuer’s credit quality. If the interest payments are based on an interest rate index, the note should qualify.
c.	Fixed-to-Floating rate	The rate begins at a fixed rate but eventually switches to a floating rate.		<i>See 3b directly above.</i>

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
d.	Secured	The notes are secured by some form of collateral.		Secured notes will not qualify as part of an entity's long-term debt amount, but otherwise qualifying notes that are unsecured will so qualify.
e.	Callable or Redeemable	The issuer can call/redeem the notes prior to maturity.		Otherwise qualifying senior notes will qualify as part of an entity's long-term debt amount whether or not they are callable or redeemable. ¹⁰
f.	Puttable or Acceleratable	The holder of the notes has the right to request or require payment of the amount of principal (either currently, upon a certain date or upon a certain event).		Otherwise qualifying senior notes that are puttable or acceleratable will not qualify as part of an entity's long-term debt amount, except for a right exercisable on one or more specified dates, in the event of insolvency, or upon a payment default that continues for 30 days. ¹¹
g.	Minimum Denomination Less than \$400,000	Debt with a minimum principal denomination of less than \$400,000 or that may be exchanged by the issuer for notes		Under the current rule, otherwise qualifying senior notes will qualify without regard to denomination.

¹⁰ However, the entity must receive FRB approval if, immediately after a redemption, it would not meet its minimum TLAC or external long-term debt requirement, as applicable.

¹¹ The specified date on which acceleration may occur would in effect become the new maturity date.

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		of smaller denominations.		Under the LTD NPR, LTD must have a minimum principal denomination of \$400,000 and must not be exchangeable by the issuer for notes of smaller denominations to qualify. ¹²
4.	Subordinated Notes	Bonds that are subordinate to other debts in the event that the company declares bankruptcy and is forced into liquidation.	Subordinated notes may qualify as tier 2 capital, depending on the factors below.	Subordinated notes will qualify as part of an entity’s long-term debt amount if they satisfy the definition of “eligible debt security” as laid out in the “TLAC Rule and LTD NPR” section above.
a.	Fixed rate	The interest rate is a set percentage.	A fixed rate will not disqualify a subordinated note from qualifying as tier 2 capital.	Otherwise qualifying subordinated notes with a fixed rate will qualify as part of an entity’s long-term debt amount.
b.	Floating rate	The rate is a variable percentage, typically pegged to fluctuations in another measure (e.g. the Secured Overnight Financing Rate).	In general, a floating rate will not disqualify a subordinated note from qualifying as tier 2 capital unless the rate is tied to the financial condition of the borrower.	Otherwise-qualifying subordinated notes with a floating rate will qualify as part of an entity’s long-term debt amount, unless the note would be treated as a structured note as defined in the TLAC rule or would be seen to have a credit-sensitive

¹² LTD NPR Proposed 12 CFR 252.61, definition of “Eligible debt security” (1)(ix).

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
				feature, such as an interest rate that is reset periodically based in whole or in part on the issuer's credit quality. If the interest payments are based on an interest rate index, the note should qualify.
c.	Fixed-to-Floating rate	The rate begins at a fixed rate but eventually switches to a floating rate.	<i>See 4b directly above.</i>	<i>See 4b directly above.</i>
d.	Secured	The notes are secured by some form of collateral.	Secured subordinated debt does not qualify as tier 2 capital, but otherwise qualifying unsecured subordinated debt will so qualify.	Secured notes will not qualify as part of an entity's long-term debt amount, but otherwise qualifying notes that are unsecured will so qualify.
e.	Callable or Redeemable	The issuer can call/redeem the notes prior to maturity.	Redeemability will not disqualify a subordinated note from qualifying as tier 2 capital, but in general, a federal banking regulator should be consulted prior to redeeming qualifying subordinated debt.	Otherwise qualifying subordinated notes will qualify as part of an entity's long-term debt amount whether or not they are callable or redeemable. ¹³
f.	Puttable or acceleratable	The holder of the notes has the right to request or require payment of the amount of principal	Otherwise qualifying subordinated notes that are puttable or acceleratable will not	Otherwise qualifying subordinated notes that are puttable or acceleratable will not

¹³ However, the entity must receive FRB approval if, immediately after a redemption, it would not meet its minimum TLAC or long-term debt requirement, as applicable.

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		(either currently, upon a certain date or upon a certain event).	qualify as tier 2 capital unless the date on which the subordinated notes would become puttable or acceleratable is more than five years away from the issuance date. Further, a puttable or acceleratable note will not be disqualified if it is only puttable or acceleratable upon insolvency.	qualify as part of an entity’s long-term debt amount, except for a right exercisable on one or more specified dates, in the event of insolvency, or upon a payment default that continues for 30 days. ¹⁴
	g. Minimum Denomination Less than \$400,000	Debt with a minimum principal denomination of less than \$400,000 or that may be exchanged by the issuer for notes of smaller denominations.	Minimum denominations will not disqualify a subordinated note from qualifying as tier 2 capital.	Under the current rule, otherwise qualifying subordinated notes will qualify without regard to denomination. Under the LTD NPR, LTD must have a minimum principal denomination of \$400,000 and must not be exchangeable by the issuer for notes of smaller denominations to qualify. ¹⁵
5.	Convertible Notes	The notes are convertible into common stock (typically after a specified amount of time or after a designated event).	Convertible debt may qualify as tier 2 capital, if subordinated.	These notes do not satisfy the definition of “eligible debt security” as laid out in the “TLAC Rule and LTD NPR” section above and will not qualify as part of an

¹⁴ The specified date on which acceleration may occur would in effect become the new maturity date.

¹⁵ LTD NPR Proposed 12 CFR 252.61, definition of “Eligible debt security” (1)(ix).

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
a.	Convertible Senior Notes	Take preference over other debts in the event that the company declares bankruptcy and is forced into liquidation.	Senior debt cannot qualify as tier 1 or tier 2 capital.	entity's long-term debt amount.
b.	Convertible Subordinated Notes	Are subordinate to other debts in the event that the company declares bankruptcy and is forced into liquidation.	Otherwise qualifying subordinated notes that are convertible will qualify as tier 2 capital.	
c.	Mandatorily Convertible Debt	Subordinated debt that contains provisions committing the issuing organization to repay the principal from the proceeds of future equity issues.	Mandatorily convertible debt can qualify as tier 2 capital without a minimum maturity requirement (though it would be subject to a maximum maturity requirement of 12 years). ¹⁶	
6.	Commercial Paper	Unsecured, short term debt, typically with maturity between 1 and 270 days.	Commercial paper cannot qualify as tier 1 or tier 2 capital.	Commercial paper cannot qualify as a component of the minimum TLAC or LTD requirement because it is short-term.
7.	Repurchase Agreements	An agreement by one party to sell an asset, typically a security, to another party provided the other party purchases such asset at a later time. Because the repurchase price is	Repurchase agreements cannot qualify as tier 1 or tier 2 capital.	Repurchase agreements cannot qualify as a component of the minimum TLAC or LTD requirement.

¹⁶ 12 CFR 250.166(c).

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		usually higher than the initial purchase price, this functions similarly to a loan.		
8.	Securitized debt obligations	Securities that represent an interest in a pool of debt obligations that serve as collateral for the securities.	Securitized debt obligations cannot qualify as tier 1 or tier 2 capital.	Securitized debt obligations cannot qualify as a component of the minimum TLAC or LTD requirement.
9.	Structured Notes	A debt security with ongoing payments based on the pay-off structure of a derivative. ¹⁷	Structured notes can qualify as tier 2 capital provided they are subordinated notes and satisfy the requirements for subordinated notes to be considered capital.	Structured notes cannot qualify as a component of the minimum TLAC and LTD requirement.
10.	Exchange-Traded Notes	A debt security with ongoing payments based on the returns of an index of securities.	Exchange-traded notes can qualify as tier 2 capital provided they are subordinated notes and satisfy the requirements for subordinated notes to be considered capital.	Exchange-traded notes cannot qualify as a component of the minimum TLAC or LTD requirement because they would be considered structured notes.
11.	Options and Warrants	Instruments that can be exercised to buy or sell a security at a predetermined price on	Options and warrants cannot qualify as tier 1 or tier 2 capital.	Options and warrants cannot qualify as a component of the

¹⁷ Under Regulation YY, a structured note is “a debt instrument that: (1) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature; (2) Has an embedded derivative or other similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities; (3) Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or (4) Is not classified as debt under GAAP, provided that an instrument is not a structured note solely because it is one or both of the following: (i) A non-dollar-denominated instrument, or (ii) An instrument whose interest payments are based on an interest rate index.” 12 CFR 252.161.

	Instrument	Description	Capital Treatment	TLAC/LTD Treatment
		or before the specified expiration date.		minimum TLAC or LTD requirement.

Please do not hesitate to contact us with any questions.



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APPENDIX A

PARENT HOLDING COMPANY		LTD REQUIREMENT FOR PARENT HOLDING COMPANY	LTD REQUIREMENT FOR IDI > \$100 BILLION (Covered IDI) (and any IDI affiliated with a Covered IDI)
Covered Entities	Category II, III or IV – BHC or SLHC (“Covered HC”)	A Covered HC would be required to issue eligible external LTD and LTD issued to an affiliate would not qualify.	An IDI subsidiary of a Covered HC would be required to issue eligible internal LTD to its parent or other upstream entity that consolidates the IDI.
	Category II, III or IV – U.S. IHC of a non-GSIB FBO (“Covered IHC”)	A resolution covered IHC [⊗] would be permitted to issue either eligible internal LTD to its foreign parent or a wholly owned subsidiary of the foreign parent with a contractual conversion trigger <u>or</u> eligible external LTD to a non-affiliated third party.	An IDI subsidiary of a Covered IHC would be required to issue eligible internal LTD to the Covered IHC or to a subsidiary of the covered IHC that consolidates the IDI.
		A non-resolution covered IHC [⊗] would be required to issue eligible internal LTD to its foreign parent or a wholly owned subsidiary of the foreign parent with a contractual conversion trigger.	
U.S. GSIB	A U.S. GSIB is subject to existing TLAC and LTD requirements.	An IDI subsidiary of a U.S. GSIB is not currently subject to LTD requirements and would not be subject to the proposed LTD requirement.	
Foreign GSIB’s U.S. IHC	A foreign GSIB is subject to existing TLAC and LTD requirements.	An IDI subsidiary of a foreign GSIB’s U.S. IHC would be required to issue eligible internal LTD to its parent or other upstream entity that consolidates the IDI.	
Parent is not a Covered Entity, not a U.S. GSIB, and not a foreign GSIB	N/A	For an IDI whose parent is not a Covered Entity, not a U.S. GSIB, and not a foreign GSIB, the IDI would be permitted to issue either eligible internal <u>or</u> eligible external LTD .	
Parent controls but does not consolidate the IDI	N/A	For an IDI whose parent controls but does not consolidate the IDI, the IDI would be permitted to issue either eligible internal <u>or</u> eligible external LTD .	
IDI has no parent entity	N/A	An IDI with no parent would be required to issue eligible external LTD and LTD issued to an affiliate would not qualify.	

* If the top-tier FBO certifies that its planned resolution strategy involves the Covered IHC or the Covered IHC’s subsidiaries entering into resolution, receivership, insolvency or other similar proceeding in the United States, then the Covered IHC is a “resolution covered IHC.”

+ If the top-tier FBO certifies that its planned resolution strategy does not involve the covered IHC or the IHC’s subsidiaries entering into resolution, receivership, insolvency or other similar proceeding in the United States, then the covered IHC is a “non-resolution covered IHC.”