Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1425]

RIN 7100–AD 77

Capital Plans

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulation Y to require large bank holding companies to submit capital plans to the Federal Reserve on an annual basis and to require such bank holding companies to provide prior notice to the Federal Reserve under certain circumstances before making a capital distribution.

DATES: Comments must be received by August 5, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1425 and RIN No. 7100 AD 77, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Benjamin W. McDonough, Counsel, (202) 452–2036, April C. Snyder, Counsel, (202) 452–3099, or Christine E. Graham, Attorney, (202) 452–3005, Legal Division; Timothy P. Clark, Senior Advisor, (202) 452–5264, Michael Foley, Senior Associate Director, (202) 452–6420, or Thomas R. Boemio, Manager, (202) 452–2982, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

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I. Background

The Board is proposing amendments to Regulation Y (12 CFR part 225) to require large bank holding companies to submit capital plans to the Federal Reserve on an annual basis and to require such bank holding companies to provide prior notice to the Federal Reserve under certain circumstances before making a capital distribution (the proposal or proposed rule).[1] During the years leading up to the recent financial crisis, many bank holding companies made significant distributions of capital, in the form of stock repurchases and dividends, without due consideration of the effects that a prolonged economic downturn could have on their capital adequacy and ability to continue to operate and remain credit intermediaries during times of economic and financial stress. The proposal is intended to address such practices, building upon the Federal Reserve's existing supervisory expectation that large bank holding companies have robust systems and processes that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy.[2]

The Federal Reserve has long held the view that bank holding companies generally should operate with capital positions well above the minimum regulatory capital ratios, with the amount of capital held commensurate with the bank holding company's risk profile.[3] Bank holding companies should have internal processes for assessing their capital adequacy that reflect a full understanding of their risks and ensure that they hold capital corresponding to those risks to maintain overall capital adequacy.[4] Bank holding companies that are subject to the Board's advanced approaches risk-based capital requirements must satisfy specific requirements relating to their internal capital adequacy processes in order to use the advanced approaches to calculate their minimum risk-based capital requirements.[5] Under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Board is required to impose enhanced prudential standards on large bank holding companies, including stress testing requirements; enhanced capital, liquidity, and risk management requirements; and a requirement to

[1] The proposed amendments to Regulation Y would be codified at 12 CFR 225.8. As discussed in section V of this preamble, the proposal would also make conforming changes to section 225.4(b) of Regulation Y (12 CFR 225.4(b)).

[2] *See* SR letter 09–4 (Revised March 27, 2009), *available at http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm; see also* Revised Temporary Addendum to SR letter 09–4 (November 17, 2010) (SR 09–04), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20101117b1.pdf.*

[3] *See* 12 CFR part 225, Appendix A; *see also* SR letter 99–18 (July 1, 1999), *available at http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.*

[4] *See* SR letter 09–4 (Revised March 27, 2009), *available at http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm.*

[5] *See* 12 CFR part 225, Appendix G, section 22(a); *see also, Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework,* 73 FR 44620 (July 31, 2008).

establish a risk committee.[6] While the proposal is not mandated by the Dodd-Frank Act, the Board believes that it is appropriate to hold large bank holding companies to an elevated capital planning standard because of the elevated risk posed to the financial system by large bank holding companies and the importance of capital in mitigating these risks.

As part of their fiduciary responsibilities to a bank holding company, the board of directors and senior management bear the primary responsibility for developing, implementing, and monitoring a bank holding company's capital planning strategies and internal capital adequacy processes. The proposal does not diminish that responsibility. Rather, the proposal is intended to (i) Establish minimum supervisory standards for such strategies and processes for certain large bank holding companies; (ii) describe how boards of directors and senior management of these bank holding companies should communicate the strategies and processes, including any material changes thereto, to the Federal Reserve; and (iii) provide the Federal Reserve with an opportunity to review bank holding companies' capital distributions under certain circumstances. The proposal is designed to be flexible enough to accommodate bank holding companies of varying degrees of complexity and to adjust to changing conditions over time.

The proposal is also consistent with the Federal Reserve's recent supervisory practice of requiring capital plans from large, complex bank holding companies. In 2009, the Board conducted the Supervisory Capital Assessment Program (SCAP), a ''stress test'' of 19 large, domestic bank holding companies. The SCAP was focused on identifying whether large bank holding companies had capital sufficient to weather a more-adverse-than-anticipated economic environment while maintaining their capacity to lend. The Federal Reserve required firms identified as having capital shortfalls to raise specific dollar amounts of capital within six months of the release of the SCAP results. The Department of the Treasury established a government backstop available to firms unable to raise the required capital from private markets.[7]

In 2011, the Federal Reserve continued its supervisory evaluation of the resiliency and capital adequacy processes of the same 19 bank holding companies through the Comprehensive Capital Analysis and Review (CCAR). CCAR involved the Federal Reserve's forward-looking evaluation of the internal capital planning processes of the bank holding companies and their anticipated capital actions in 2011, such as increasing dividend payments or repurchasing or redeeming stock.[8] In CCAR, the Federal Reserve evaluated whether these bank holding companies had satisfactory processes for identifying capital needs and held adequate capital to maintain ready access to funding, continue operations and meet their obligations to creditors and counterparties, and continue to serve as credit intermediaries, even under stressful conditions.

As noted above, the Dodd-Frank Act imposes enhanced prudential standards, including stress testing requirements, on large bank holding companies.[9] As the Board implements the Dodd-Frank Act, bank holding companies would be required to incorporate any related requirements into their capital planning strategies and internal capital adequacy processes, including the results of stress tests required by the Dodd-Frank Act.

The Dodd-Frank Act also requires the Board to impose early remediation requirements on large bank holding companies under which a large bank holding company experiencing financial distress must take specific remedial actions in order to minimize the probability that the company will become insolvent and minimize the potential harm of such insolvency to the United States.[10] These early remediation requirements must impose limitations on capital distributions in the initial stages of financial decline and increase in stringency as the financial condition of the company declines.[11] Depending on a bank holding company's financial condition, early remediation requirements imposed under the Dodd-Frank Act may result in additional limitations on a company's capital distributions than the prior notice requirements that would be imposed by the proposed rule.[12]

II. Scope

The proposed rule would apply to every top-tier bank holding company domiciled in the United States that has $50 billion or more in total consolidated assets (large U.S. bank holding companies).[13] This amount would be measured as the average over the previous two calendar quarters, as reflected on the bank holding company's consolidated financial statement for bank holding companies (FR Y–9C). Consistent with the phase-in period for the imposition of minimum risk-based and leverage capital requirements established in section 171 of the Dodd-Frank Act, until July 21, 2015, the proposed rule would not apply to any bank holding company subsidiary of a foreign banking organization that has relied on Supervision and Regulation Letter SR 01–01 issued by the Board of Governors (as in effect on May 19, 2010).[14] The proposed rule also would apply to any institution that the Board has determined, by order, shall be subject in whole or in part to the proposed rule's requirements based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

As of March 31, 2011, there were approximately 35 large U.S. bank holding companies. The Board notes that the proposed asset threshold of $50 billion is consistent with the threshold established by section 165 of the Dodd-

[6] *See generally* section 165 of Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act); 12 U.S.C. 5365.

[7] *See* Board of Governors of the Federal Reserve System, *The Supervisory Capital Assessment Program: Overview of Results* (May 7, 2009), *available at http://www.federalreserve.gov/bankinforeg/bcreg20090507a1.pdf.*

[8] *See* Board of Governors of the Federal Reserve System, *Comprehensive Capital Analysis and Review: Objectives and Overview* (March 18, 2010), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf.*

[9] Through separate rulemaking or by order, it is expected that the proposal's requirements would be extended to apply to large savings and loan holding companies and nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act.

[10] *See* section 166 of the Dodd-Frank Act; 12 U.S.C. 5366.

[11] *Id.*

[12] The Board notes that Basel III includes a capital conservation buffer designed to ensure that bank holding companies build up capital buffers outside periods of stress that can be drawn down as losses are incurred. Under Basel III, capital distribution constraints would be imposed on a bank holding company when capital levels fall within the capital conservation buffer. *See* Basel Committee on Banking Supervision, *Basel III: A Global Framework for More Resilient Banks and Banking Systems* (December 2010), *available at http://www.bis.org/publ/bcbs189.pdf.*

[13] Thus, the proposal would not apply to a foreign bank or foreign banking organization that was itself a bank holding company or treated as a bank holding company pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), but generally would apply to any U.S.-domiciled bank holding company subsidiary of the foreign bank or foreign banking organization that meets the proposal's size threshold.

[14] Under Supervision and Regulation Letter SR 01–01, as a general matter, a U.S. bank holding company that is owned and controlled by a foreign bank that is a financial holding company that the Board has determined to be well-capitalized and well-managed is not required to comply with the Board's capital adequacy guidelines. *See* SR letter 01–01 (January 5, 2001), *available at http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.*

Frank Act relating to enhanced supervision and prudential standards for certain bank holding companies.[15] The proposal generally would apply to large U.S. bank holding companies when any final rule becomes effective.

The Board solicits comment on whether the capital planning and prior notice requirements in the proposed rule should apply, as proposed, to large U.S. bank holding companies. What other asset threshold(s) would be appropriate and why? Are there other measures other than total consolidated assets that should be considered?

In addition, the Board solicits comment on whether the proposed rule should include a transitional period for institutions that did not participate in CCAR. For example, should such institutions have an additional year to come into compliance with the proposed capital planning and prior notice requirements?

III. Capital Plans

A. Annual Capital Planning Requirement

The proposed rule would require a bank holding company to develop and maintain a capital plan. For purposes of the proposal, a capital plan is defined as a written presentation of a company's capital planning strategies and capital adequacy processes that includes (i) An assessment of the expected uses and sources of capital over a nine-quarter forward-looking planning period (beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan) that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, (ii) a detailed description of the bank holding company's processes for assessing capital adequacy, and (iii) an analysis of the effectiveness of these processes. As described below, the proposed rule specifies certain mandatory elements of a capital plan. The level of detail and analysis expected in a capital plan would vary based on the bank holding company's size, complexity, risk profile, and scope of operations. Thus, for example, a bank holding company with extensive credit exposures to commercial real estate, but very limited trading activities, would be expected to have robust systems in place to identify and monitor its commercial real estate exposures; its systems related to trading activities would not need to be as sophisticated or extensive. In contrast, a bank holding company with extensive exposure to a variety of risk exposures, including both retail and wholesale exposures, as well as significant trading activities and international operations, would be expected to have an integrated system for measuring all these risk exposures and the interactions among them.

The bank holding company's board of directors or a designated committee thereof would be required at least annually to review the effectiveness of the holding company's processes for assessing capital adequacy, ensure that any deficiencies in the firm's processes for assessing capital adequacy are appropriately remediated, and approve the bank holding company's capital plan.[16] After the capital plan is approved by the board of directors, the bank holding company would be required to submit its complete capital plan to the appropriate Reserve Bank and the Board by the 5th of January of each year, or such later date as directed by the appropriate Reserve Bank, after consultation with the Board. A later date may be appropriate if, for example, the bank holding company would need additional time to update its plan to reflect any scenarios that the Federal Reserve has required the bank holding company to evaluate and incorporate in its capital plan as part of its submission.

A bank holding company would be required to update and resubmit its capital plan to the appropriate Reserve Bank and the Board within 30 calendar days after the occurrence of one of the following events:

(i) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile (including a material change in its business strategy or any material risk exposures), financial conditions, or corporate structure since the bank holding company adopted the capital plan; [17] or

(ii) The appropriate Reserve Bank, after consultation with the Board, directs the bank holding company to update its capital plan for reasons described in the proposal.

The appropriate Reserve Bank, after consultation with the Board, could at its sole discretion extend this 30-day period for up to an additional 60 calendar days. Any updated capital plan would be required to satisfy all the requirements of the proposal as if it were the original submission, unless otherwise specified by the appropriate Reserve Bank, after consultation with the Board. However, to the extent that the analysis underlying an initial capital plan were still considered valid, the bank holding company would be able to continue to rely on this analysis for purposes of any revised or updated plan, provided that the analysis was accompanied by an explanation of how the analysis should be considered in the light of any new capital actions or changes in risk profile or strategy.

B. Mandatory Elements of a Capital Plan

Every capital plan would be required to contain at least the following elements:

(i) A discussion of how the bank holding company will, under stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios, and serve as a source of strength to its depository institution subsidiaries;

(ii) A discussion of how the bank holding company will, under stressful conditions, continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) A discussion of the bank holding company's sources and uses of capital over a minimum nine-quarter planning horizon reflecting the risk profile of the firm, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including any minimum regulatory capital ratios (for example, leverage, tier 1 risk-based, and total risk-based) and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under expected conditions and under a range of stressed scenarios, including any scenarios provided by the Federal Reserve and at least one stressed scenario developed by the bank holding company appropriate to its business model and portfolios, and a probabilistic assessment of the likelihood of the bank holding company-developed scenario(s); [18]

[15] *See* section 165(a) of the Dodd-Frank Act; 12 U.S.C. 5365(a). The Dodd-Frank Act provides that the Board may, upon the recommendation of the Financial Stability Oversight Council, increase the $50 billion asset threshold for the application of the resolution plan, concentration limit, and credit exposure report requirements. *See* 12 U.S.C. 5365(a)(2)(B).

[16] As part of this review the board of directors should be made aware of any remaining uncertainties, limitations, and assumptions associated with the bank holding company's capital adequacy processes.

[17] For purposes of determining whether a change in its risk profile was material, a bank holding company would be required to consider a variety of risks, including credit, market, operational, liquidity, and interest rate risks.

[18] With respect to this criterion, for any Federal Reserve-provided stressed scenarios and any related

Continued

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon (for example, issuances of debt and equity capital instruments, distributions on capital instruments, and redemptions and repurchases of capital instruments);

(iv) The bank holding company's capital policy;

(v) A discussion of any expected changes to the bank holding company's business plan that are likely to have a material impact on the firm's capital adequacy or liquidity; and

(vi) Until January 1, 2016, a calculation of the pro forma tier 1 common ratio under expected and stressful conditions and discussion of how the company would maintain a pro forma tier 1 common ratio of 5 percent under stressed scenarios.

These proposed mandatory elements of a capital plan are consistent with the Federal Reserve's existing supervisory practice with respect to the information that it expects certain bank holding companies to include in a capital plan for internal planning purposes. As bank holding companies begin to conduct stress tests in accordance with rules to be issued by the Board pursuant to section 165(i)(2) of the Dodd-Frank Act, bank holding companies would be required to incorporate the results of these stress tests into their capital plans.[19] A bank holding company should include in its capital plan other information that it determined was relevant to its capital planning strategies and internal capital adequacy processes.

For purposes of the proposal, a capital action would be defined as any issuance of a debt or equity capital instrument, capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital. A capital distribution would be defined as a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.[20]

A capital policy would be defined as the bank holding company's written assessment of the principles and guidelines used for capital planning, capital issuance, usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for dividend and stock repurchases; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines. With respect to a bank holding company's internal capital goals, such goals should apply throughout the planning horizon in the form of capital levels or ratios. The bank holding company should be able to demonstrate that achieving its stated internal capital goals would allow it to continue its operations after the impact of the stressed scenarios included in its capital plan. As part of the continuation of a bank holding company's operations, the Federal Reserve would expect the bank holding company to maintain ready access to funding, meet its obligations to creditors and other counterparties, and continue to serve as a credit intermediary.[21] Similarly, a bank holding company's capital policy should reflect strategies for addressing potential capital shortfalls, such as by reducing or eliminating capital distributions, raising additional capital, or preserving its existing capital, to support circumstances where the bank holding company has underestimated its risks or where its performance has not met its expectations.

As noted above, a bank holding company must include pro forma estimates of its minimum regulatory capital ratios in its capital plan. The proposal would define minimum regulatory capital ratios as any minimum regulatory capital ratio that the Federal Reserve may require of a bank holding company, by regulation or order, including the bank holding company's leverage ratio and tier 1 and total risk-based capital ratios as calculated under Appendices A, D, E, and G to this part 225 (12 CFR part 225 Appendices A, D, E, and G), or any successor regulation. If the Board were to adopt additional or different minimum regulatory capital ratios in the future, a bank holding company would be required to incorporate these minimum capital ratios into its capital plan as they come into effect and reflect them in its planning horizon.

In addition to the requirements discussed above, until January 1, 2016, a bank holding company would be required to calculate its pro forma tier 1 common ratio under expected and stressful conditions and discuss in its capital plan how the bank holding company would maintain a pro forma tier 1 common ratio of 5 percent under those conditions throughout the planning horizon. For purposes of this requirement, a bank holding company's tier 1 common ratio would mean the ratio of a bank holding company's tier 1 common capital to its total risk-weighted assets. Tier 1 common capital would be calculated as tier 1 capital less non-common elements in tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities.[22] Tier 1 capital would have the same meaning as under Appendix A to Regulation Y, or any successor regulation, and total risk-weighted assets would have the same meaning as under Appendices A, E, and G of Regulation Y, or any successor regulation.[23]

This definition of tier 1 common capital is consistent with the definition that the Federal Reserve has used for supervisory purposes, including in CCAR. The Basel III framework proposed by the Basel Committee on Bank Supervision includes a different

data requests that would be required to be reflected in the bank holding company's annual capital plan, the Federal Reserve would provide such scenarios and data requests to bank holding companies several weeks before the capital plan due date of January 5. With respect to scenarios designed by the bank holding company, such an exercise will involve robust scenario design and effective translation of scenarios into measures of impact on capital positions. Selection of scenario variables is important for this purpose, as scenarios serve as the link between the overall narrative of the scenario and the tangible capital impact on the firm as a whole. For instance, in aiming to capture the combined capital impact of a severe recession and a financial market downturn, a firm may choose a set of variables that include changes in U.S. Gross Domestic Product, unemployment rate, interest rates, stock market levels, or home price levels.

[19] At this time, the Board does not expect that the results of stress tests conducted under the Dodd-Frank Act alone will be sufficient to address all relevant adverse outcomes that should be covered in a satisfactory capital plan for purposes of this proposed rule.

[20] For example, this definition would include payments on trust preferred securities, but would not include payments on subordinated debt that could not be temporarily or permanently suspended by the issuer.

[21] In addition, each bank holding company would be required to ensure that its internal capital goals reflect any relevant minimum regulatory capital ratio levels, any higher levels of regulatory capital ratios (above regulatory minimums), and any additional capital measures that, when maintained, would allow the bank holding company to continue its operations.

[22] Specifically, non-common elements would include the following items captured in the FR Y–9C: Schedule HC, line item 23 net of Schedule HC–R, line item 5; Schedule HC–R, line items 6a, 6b, and 6c; and Notes to the Balance Sheet—Other as captured in Schedule HC–R, line item 10.

[23] *See* 12 CFR part 225, Appendices A, E, and G.

definition of tier 1 common capital.[24] In recognition of the fact that the Board and the other federal banking agencies continue to work on implementing Basel III in the United States, the Board is proposing to require a bank holding company to demonstrate until January 1, 2016 how it would meet a minimum tier 1 common ratio of 5 percent under stressful conditions under the Board's existing supervisory definition of tier 1 common capital. This level reflects a supervisory assessment of the minimum capital needed to be a going concern on a post-stress basis, based on an analysis of the historical distribution of earnings by large banking organizations.[25]

In connection with its submissions of a capital plan to the Federal Reserve, a bank holding company would be required to provide certain data to the Federal Reserve. To the greatest extent possible, the data templates, and any other data requests, would be designed to minimize burden on the bank holding company and to avoid duplication, particularly in light of potential new reporting requirements arising from the Dodd-Frank Act. Data required by the Federal Reserve would include, but not be limited to, information regarding the bank holding company's financial condition, structure, assets, risk exposure, policies and procedures, liquidity, and management. For example, the Federal Reserve will require the bank holding company to complete data templates that describe in greater detail the bank holding company's assets and potential exposures, whether these reside on balance sheet or not. The frequency of the data collection will depend on the type of data being collected, and certain data may be collected on a quarterly, monthly, weekly, or daily basis. In some cases, the Federal Reserve may require this information to be reported on a loan-level basis.

The Board solicits comment on the proposed mandatory elements of a capital plan. In particular, the Board solicits comment on the requirement that a bank holding company calculate its pro forma tier 1 common ratio under expected and stressful conditions, and the manner in which a bank holding company should include internal capital goals as part of its capital policy.

C. Federal Reserve's Review of Capital Plans

The proposal provides that the Federal Reserve would consider the following factors in reviewing a bank holding company's capital plan:

(i) The reasonableness of the bank holding company's assumptions and analysis underlying the capital plan and its methodologies for reviewing the effectiveness of its capital adequacy processes;

(ii) The comprehensiveness of the capital plan, including the company's capital policy; and

(iii) The bank holding company's ability to maintain capital above each minimum regulatory capital ratio, and, until January 1, 2016, a tier 1 common ratio of 5 percent, on a pro forma basis under stressful conditions throughout the planning horizon.

The Federal Reserve would also consider the following information in reviewing a bank holding company's capital plan:

(i) Relevant supervisory information about the bank holding company and its subsidiaries;

(ii) The bank holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of a bank holding company's loss, revenue, and reserve projections;

(iii) As applicable, the Federal Reserve's own pro forma estimates of the firm's potential losses, revenues, reserves, and resulting capital adequacy under stressful conditions, as well as the results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(iv) Other information requested or required by the Federal Reserve, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

With respect to the third criterion, the Board expects that, as it develops and conducts supervisory stress testing requirements pursuant to section 165(i)(1) of the Dodd-Frank Act and reviews stress tests submitted by companies pursuant to section 165(i)(2) of the Dodd-Frank Act, the Federal Reserve would consider the results of such stress tests in its evaluation of bank holding companies' capital plans.[26]

D. Federal Reserve Action on a Capital Plan

The proposed rule describes the timeframe under which the Federal Reserve would review and act on a bank holding company's capital plan. Generally, as described in more detail below, the Federal Reserve's review of a capital plan would not delay a bank holding's ability to make capital distributions. Under the proposed rule, a bank holding company would be required to submit a complete annual capital plan by January 5 with respect to that calendar year. The Federal Reserve would object by March 15 to the capital plan, in whole or in part, or provide the bank holding company with a notice of non-objection.

This proposed timeframe is intended to balance the Federal Reserve's interest in having adequate time to review a capital plan with the bank holding company's interest in a process that does not unduly interfere with the ability of its board of directors and senior management to take appropriate capital actions. For example, if a firm submitted a complete annual plan to the Federal Reserve on January 5 of Year 1 with respect to its Year 1 capital plan, the Federal Reserve would provide a response by no later than March 15 of Year 1. The Federal Reserve expects that any non-objection to a capital plan would cover the subsequent four quarters (through the fourth quarter of Year 1). If the firm discussed above submitted a complete capital plan by January 5 of Year 2 with respect to its Year 2 capital plan and had received the Federal Reserve's non-objection to the capital plan provided in Year 1, any fourth-quarter capital distributions in Year 1 would have been covered by non-objection that the Federal Reserve provided in Year 1, and the firm would be notified by March 15 whether or not the Federal Reserve had any objection to dividend payments in the first quarter of Year 2. Thus, for this hypothetical firm, the Federal Reserve's review of its capital plan generally would not delay the bank holding company's ability to pay dividends or take other capital actions while awaiting a response from the Federal Reserve.

In order to adhere to the schedule set forth in the proposed rule, the Federal Reserve would likely require bank holding companies to submit data templates and other required information several weeks before complete capital plans are due.

The proposed rule provides that the Federal Reserve may object to a capital plan, in whole or in part, if (i) The Federal Reserve determines that the

[24] *See* Basel Committee on Banking Supervision, *Basel III: A global framework for more resilient banks and banking systems* (December 2010), *available at http://www.bis.org/publ/bcbs189.pdf.*

[25] As indicated in footnote 21, a bank holding company's internal capital goals must reflect any relevant minimum regulatory capital ratio levels, any higher levels of regulatory capital ratios (above regulatory minimums), and any additional capital measures that, when maintained, would allow the bank holding company to continue its operations. *See* SR 09–04; *see also* Basel Committee on Banking Supervision, Calibrating regulatory minimum capital requirements and capital buffers: A top-down approach (October 2010), *available at http://www.bis.org/publ/bcbs180.htm.*

[26] *See* section 165(i)(1) and (2) of the Dodd-Frank Act; 12 U.S.C. 5365(i)(1) and (2).

bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy processes; (ii) the assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies for reviewing the effectiveness of its capital adequacy processes, are not reasonable or appropriate; (iii) the bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio, or until January 1, 2016, a tier 1 common ratio of 5 percent, on a pro forma basis under stressful conditions throughout the planning horizon; or (iv) the bank holding company's capital planning processes or proposed capital distributions constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board.[27]

With respect to the first criterion, material supervisory issues could include inadequate risk management processes, such as the inability to accurately identify and monitor credit risk, market risk, operational risk, liquidity risk or interest rate risk, and any other significant weaknesses in a bank holding company's ability to identify and measure its risk exposures or other potential and material vulnerabilities. The Federal Reserve generally would expect an institution to correct such deficiencies before making any significant capital distributions.

The Federal Reserve would notify the bank holding company in writing of the reasons for a decision to object to a capital plan. Within 5 calendar days of receipt of a notice of objection, the bank holding company could submit a written request for reconsideration of the objection, including an explanation of why reconsideration should be granted. Within 10 calendar days of receipt of the bank holding company's request, the Board would notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan.

To the extent that Federal Reserve objected to a capital plan and to the capital actions described therein, and until such time as the Federal Reserve determined that the bank holding company's capital plan satisfies the factors provided in the proposal, the bank holding company generally would not be able to make a capital distribution without providing prior notice to the Federal Reserve under the procedures discussed in section IV of this preamble.

As discussed below in section IV of this preamble, prior notice would not be required in circumstances where the Federal Reserve expressly did not object to specific capital distributions. For example, the Federal Reserve may object to a bank holding company's proposed payments of dividends on common stock, but expressly not object to payments on its preferred stock. In this situation, the bank holding company would not have to provide prior notice in order to make payments on its preferred stock in accordance with its capital plan.

The Board solicits comment on the proposed rule's process for the Federal Reserve's review and action on a capital plan, including the proposed annual deadline for submission of the capital plan of January 5 and the proposed date of March 15 by which the Federal Reserve would object or provide the bank holding company with a notice of non-objection.

E. Resubmission of a Capital Plan

Under the proposal, a bank holding company would be required to revise and resubmit its capital plan if the Federal Reserve objected to the capital plan or the Federal Reserve directed the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(i) The capital plan is incomplete or the capital plan or the bank holding company's internal capital adequacy processes contain weaknesses;

(ii) There has been or will likely be a material change in the bank holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(iii) The bank holding company-developed stressed scenario(s) in the capital plan are not sufficiently stressed, or changes in the macro-economic outlook that could have a material impact on a bank holding company's risk profile require the use of updated scenarios; or

(iv) The capital plan or the condition of the bank holding company raise any issues to which the Federal Reserve could object to in its review of a capital plan.

IV. Prior Notice Requirements

The proposal would require a bank holding company to notify the Federal Reserve before making a capital distribution if the Federal Reserve had objected to the bank holding company's capital plan and that objection was still outstanding.[28] Even if the Federal Reserve did not object to the bank holding company's capital plan, the bank holding company *still* would be required to provide prior notice to the Federal Reserve before making capital distributions if:

(i) After giving effect to the capital distribution, the bank holding company would not meet a minimum regulatory capital ratio or, until January 1, 2016, a tier 1 common ratio of 5 percent;

(ii) The Federal Reserve determines that the capital distribution would result in a material adverse change to the organization's capital or liquidity structure or that earnings were materially underperforming projections;[29]

(iii) The dollar amount of the capital distribution would exceed the amount described in the capital plan approved by the Federal Reserve; or

(iv) The capital distribution would occur during a period in which the appropriate Reserve Bank is reviewing the capital plan.

With respect to the third criterion, the Board solicits comments on whether there should be a *de minimis* exception, and if so, how the Board should measure materiality. For example, should the Board exempt a capital distribution from the proposed prior notice requirements if the effect of the distribution, combined with all other capital distributions in the prior 12 months to which the Federal Reserve had not been given prior notice, would reduce the bank holding company's tier 1 risk-based capital ratio by 10 basis points or less?

Under any of these circumstances, notwithstanding a notice of non-objection on its capital plan from the Federal Reserve, the bank holding company would be required to provide the Federal Reserve with 30 calendar days prior notice of the proposed capital distribution. A bank holding company would be required to file its notice of a proposed capital distribution with the appropriate Reserve Bank. Such a notice would be required to contain the following information:

[27] In determining whether a capital plan or proposed capital distributions would constitute an unsafe or unsound practice, the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

[28] For purposes of the proposed prior notice requirements, the Federal Reserve would treat a bank holding company that became subject to the proposed rule after January 5 of a calendar year as if it had received the Federal Reserve's non-objection to its capital plan. Accordingly, it would not be subject to this aspect of the proposed prior notice requirements. *See* proposed sections 225.8(f)(1)(i),(iv).

[29] A bank holding company would be notified in advance if any of the circumstances in the second criterion applied or were likely to apply.

(i) The bank holding company's previously approved capital plan or an attestation that there have been no changes to its capital plan;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the appropriate Reserve Bank or Board.

In most circumstances, within 15 calendar days of receipt of a notice, the appropriate Reserve Bank would either approve the proposed transaction or capital distribution or refer the notice to the Board for decision. If the notice were referred to the Board for decision, the Board would be required act on the notice within 30 calendar days after the Reserve Bank receives the notice. The appropriate Reserve Bank, after consultation with the Board, may, at its sole discretion, shorten the 30-day prior notice period.

With respect to notices provided for capital distributions that would occur during the period that the appropriate Reserve Bank is reviewing the company's capital plan, a bank holding company would not be permitted to consummate the proposed capital distribution until the appropriate Reserve Bank provides the bank holding company with a notice of non-objection to the capital plan.

The Board could deny the proposed capital distribution under circumstances that parallel those under which the Board may object to a bank holding company's capital plan.

The proposal provides that the Board would notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company could submit a written request for a hearing.

If the bank holding company requested a hearing, the Board would order a hearing within 10 calendar days of receipt of the request if it finds that material facts are in dispute, or if it otherwise appears appropriate. Any hearing conducted would be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of any hearing, the Board would by order approve or disapprove the proposed capital action on the basis of the record of the hearing.

The Board solicits comments on the proposed prior notice requirements. Are there any circumstances that may arise under which bank holding companies may need additional flexibility with respect to capital distributions? If so, please describe those circumstances and indicate how the Board could assure that any added flexibility would not be used to circumvent the proposal's prior notice requirements.

V. Conforming Amendments to Section 225.4(b) of Regulation Y

In addition to the capital planning and prior notice requirements discussed above, the Board is proposing to make conforming changes to section 225.4(b) of Regulation Y, which currently requires prior notice to the Federal Reserve of certain purchases and redemptions of a bank holding company's equity securities.[30] Because such prior notice would be separately required in the proposed rule at section 225.8 of Regulation Y, the Board is proposing an amendment to section 225.4(b) to provide that section 225.4(b) shall not apply to any bank holding company that is subject to section 225.8.

The Board solicits comments on this proposed amendment to section 225.4(b) of Regulation Y and on all other aspects of the proposal.

VI. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a bank holding company with assets of $175 million or less (small bank holding company).[31] As of December 31, 2010, there were approximately 4,493 small bank holding companies.

As discussed in the Supplementary Information, the proposed rule applies to every top-tier bank holding company domiciled in the United States with $50 billion or more in total consolidated assets. Bank holding companies that are subject to the proposed rule therefore substantially exceed the $175 million asset threshold at which a banking entity would qualify as a small bank holding company.

Because the proposed rule is not likely to apply to any bank holding company with assets of $175 million or less, if adopted in final form, it is not expected to apply to any small bank holding company for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by Office of Management and Budget (OMB). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number will be assigned.

The proposed rule contains requirements subject to the PRA. The collection of information that would be required by this proposed rule is found in new section 225.8 of Regulation Y (12 CFR part 225). The Board is proposing to require certain bank holding companies to submit capital plans to the Federal Reserve on an annual basis and to require such holding companies to provide prior notice to the Federal Reserve under certain circumstances before making a capital distribution.

Section 225.8(d)(1)(i) would require a bank holding company to develop and maintain an initial capital plan. The level of detail and analysis expected in a capital plan would vary based on the bank holding company's size, complexity, risk profile, scope of operations, and the effectiveness of its processes for assessing capital adequacy. Section 225.8(d)(2) provides a list of the mandatory elements to be included in the capital plan.

Sections 225.8(d)(1)(ii) would require a bank holding company to submit its complete capital plan to the appropriate Reserve Bank and the Board each year by the 5th of January, or such later date as directed by the appropriate Reserve Bank after consultation with the Board.

Section 225.8(d)(1)(iii) would require the bank holding company's board of directors or a designated committee to review and approve the bank holding company's capital plan prior to its

[30] *See* 12 CFR 225.4(b).

[31] 13 CFR 121.201.

submission to the appropriate Federal Reserve Bank under section 225.8(d)(1)(ii). In addition, section 225.8(d)(1)(iv) would require the bank holding company to update and re-submit its capital plan within 30 days of the occurrence of certain events.

Within 5 calendar days of receipt of a notice of objection by the Board of the bank holding company's capital plan, pursuant to section 225.8(e)(3), the banking holding company may submit a written request for reconsideration.

In certain circumstances, large bank holding companies would be required, pursuant to section 225.8(f)(1), to provide prior notice to the Federal Reserve before making capital distributions. As listed in section 225.8(f)(2), such a notice would be required to contain the following information: The bank holding company's current capital plan or an attestation that there have been no changes to its current capital plan; the purpose of the transaction; a description of the capital action, including for redemptions or repurchases of securities, the gross consideration to be paid, and for dividends, the amount of the dividend(s); the terms and sources of funding for the transaction; and any additional information requested by the appropriate Reserve Bank or Board.

Under section 225.8(f)(8)(i), if the Federal Reserve disapproves of a bank holding company's capital plan, the bank holding company within 10 calendar days of receipt of a notice of disapproval by the Board may submit a written request for a hearing.

In connection with submissions of capital plans to the Federal Reserve, bank holding companies would be required pursuant to section 225.8(d)(3) to provide certain data to the Federal Reserve. Data request templates, would be designed to minimize burden on the bank holding company and to avoid duplication. Data required by the Federal Reserve could include, but would not be limited to, information regarding the bank holding company's financial condition, structure, assets, risk exposure, policies and procedures, liquidity, and management.

The proposed rule would apply to every top-tier bank holding company domiciled in the United States with $50 billion or more in average total consolidated assets. Currently, 35 bank holding companies would be required to comply with the proposed information collection.

The Federal Reserve estimates that each of the bank holding companies would take, on average, 12,000 hours to comply with the section 225.8(d)(1)(i) recordkeeping requirement to develop and maintain the initial capital plan and with the section 225.8(d)(1)(ii) reporting requirement to submit the initial capital plan. The one-time implementation burden for these requirements is estimated to be 420,000 hours.

The Federal Reserve estimates that each of the bank holding companies would take, on average, 100 hours annually to comply with the section 225.8(d)(1)(iii) recordkeeping requirement to review and revise its capital plan. The annual burden for this recordkeeping requirement is estimated to be 3,500 hours.

Upon written request from the Federal Reserve, each bank holding company would be required to revise and resubmit its capital plan to the Federal Reserve. It is estimated that 10 bank holding companies would be requested to provide revised capital plans. The Federal Reserve estimates that it would take this subset of bank holding companies, on average, 100 hours to comply with the section 225.8(d)(1)(iv) recordkeeping requirement to revise and resubmit their capital plans.

Of the 10 bank holding companies, it is estimated that 2 would provide written request for a hearing regarding the disapproval of its capital plan. These bank holding companies would take, on average, 16 hours to comply with the section 225.8(e)(3) reporting requirement. The annual burden for these requirements is estimated to be 1,832 hours.

The Federal Reserve estimates that approximately 10 bank holding companies would be required to provide prior notice before giving capital distributions. The 10 bank holding companies would take, on average, 16 hours to comply with the section 225.8(f)(1) reporting requirement. Of the 10 bank holding companies, it is estimated that 2 would provide written request for a hearing regarding the disapproval of its prior notice. The 2 bank holding companies would take, on average, 16 hours to comply with the section 225.8(f)(8)(i) reporting requirement. The annual burden for these reporting requirements is estimated to be 192 hours.

The Federal Reserve estimates that bank holding companies would take, on average, 1,042 hours monthly to comply with the section 225.8(d)(3) reporting requirement to provide additional data to the Federal Reserve in connection with the submission of capital plans. The annual burden for this reporting requirement is estimated to be 437,640 hours.

The total annual burden for this proposed information collection is estimated to be 862,364 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–to be assigned), Washington, DC 20503.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the interim final rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposed to amend subpart A of Regulation Y, 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

2. Section 225.4 is amended by adding paragraph (b)(7):

§ 225.4 Corporate practices.

* * * * *

(b) * * *

(7) *Exception for certain bank holding companies.* This section 225.4(b) shall not apply to any bank holding company that is subject to § 225.8 of Regulation Y (12 CFR 225.8).

* * * * *

2. Add § 225.8 to read as follows:

§ 225.8 Capital planning.

(a) *Purpose.* This section establishes capital planning and prior notice requirements for capital distributions by certain bank holding companies.

(b) *Scope and Effective Date.*

(1) This section applies to every top-tier bank holding company domiciled in the United States:

(i) With total consolidated assets greater than or equal to $50 billion computed on the basis of the average of the company's total consolidated assets over the course of the previous two calendar quarters, as reflected on the bank holding company's consolidated financial statement for bank holding companies (FR Y–9C); provided that until July 21, 2015, this section will not apply to any bank holding company subsidiary of a foreign banking organization that has relied on Supervision and Regulation Letter SR 01–01 issued by the Board of Governors (as in effect on May 19, 2010); or

(ii) That is subject to this section, in whole or in part, by order of the Board based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(2) On or after January 1, 2012, the provisions this section shall apply to any bank holding company that becomes subject to this section under paragraph (b)(1) beginning on the date the company becomes subject to this section, except that, for purposes of the requirements described in paragraph (f), a bank holding company that becomes subject to this section pursuant to paragraph (b)(1)(i) after the 5th of January of a calendar year will be deemed to have received a notice of non-objection from the Federal Reserve on its capital plan for capital distributions made within that calendar year.

(3) Nothing in this section shall be read to limit the authority of the Federal Reserve to issue a capital directive or take any other supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(2) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(3) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy processes that includes—

(i) an assessment of the expected uses and sources of capital over a nine-quarter forward-looking planning period (beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan) that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions,

(ii) a detailed description of the bank holding company's processes for assessing capital adequacy, and

(iii) an analysis of the effectiveness of these processes.

(4) *Capital policy* means a bank holding company's written assessment of the principles and guidelines used for capital planning, capital issuance, usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for dividend and stock repurchases; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(5) *Minimum regulatory capital ratio* means any minimum regulatory capital ratio that the Federal Reserve may require of a bank holding company, by regulation or order, including the bank holding company's leverage ratio and tier 1 and total risk-based capital ratios as calculated under Appendices A, D, E, and G to this part (12 CFR part 225), or any successor regulation.

(6) *Tier 1 capital* has the same meaning as under Appendix A to this part or any successor regulation.

(7) *Tier 1 common capital* means tier 1 capital less the non-common elements of tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities.

(8) *Tier 1 common ratio* means the ratio of a bank holding company's tier 1 common capital to total risk-weighted assets.

(9) *Total risk-weighted assets* has the same meaning as under Appendices A, E, and G to this part, or any successor regulation.

(d) *General requirements.*

(1) *Annual capital planning.*

(i) A bank holding company must develop and maintain a capital plan.

(ii) A bank holding company must submit its complete capital plan to the appropriate Reserve Bank and the Board each year by the 5th of January, or such later date as directed by the appropriate Reserve Bank after consultation with the Board.

(iii) The bank holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii):

(A) Review the effectiveness of its processes for assessing capital adequacy,

(B) Ensure that any deficiencies in its processes for assessing capital adequacy are appropriately remediated; and

(C) Approve the bank holding company's capital plan.

(iv) The bank holding company must update and re-submit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile, financial condition, or corporate structure since the bank holding company adopted the capital plan; or

(B) The appropriate Reserve Bank, after consultation with the Board,

directs the bank holding company to revise and re-submit its capital plan under paragraph (e)(4).

(v) The appropriate Reserve Bank, after consultation with the Board, may at its sole discretion extend the 30-day period in paragraph (d)(1)(iv) for up to an additional 60 calendar days.

(vi) Any updated capital plan must satisfy all the requirements of this section, including the requirements set forth in paragraphs (d)(1), (d)(2), and (e)(4), unless otherwise specified by the appropriate Reserve Bank, after consultation with the Board.

(2) *Mandatory elements of capital plan.* Every capital plan must contain at least the following elements:

(i) A discussion of how the bank holding company will, under stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios, and serve as a source of strength to its depository institution subsidiaries;

(ii) A discussion of how the bank holding company will, under stressful conditions, continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) A discussion of the bank holding company's sources and uses of capital reflecting the risk profile of the firm over a minimum nine-quarter planning horizon, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including any minimum regulatory capital ratios (for example, leverage, tier 1 risk-based, and total risk-based capital ratios) and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under expected conditions and under a range of stressed scenarios, including any scenarios provided by the Federal Reserve and at least one stressed scenario developed by the bank holding company appropriate to its business model and portfolios, and a probabilistic assessment of the likelihood of the bank holding company developed scenario(s);

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon;

(iv) The bank holding company's capital policy;

(v) A discussion of any expected changes to the bank holding company's business plan that are likely to have a material impact on the firm's capital adequacy or liquidity; and

(vi) Until January 1, 2016, a calculation of the pro forma tier 1 common ratio under expected and stressful conditions and discussion of how the company will maintain a pro forma tier 1 common ratio of 5 percent under the stressed scenarios required under paragraph (d)(2)(iii).

(3) *Data collection.* Upon the request of the appropriate Reserve Bank or the Board, the bank holding company shall provide the appropriate Reserve Bank with information regarding—

(i) the bank holding company's financial condition, including its capital;

(ii) the bank holding company's structure;

(iii) amount and risk characteristics of the bank holding company's on- and off-balance sheet exposures, including exposures within the bank holding company's trading portfolio, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions in the trading portfolio to changes in market rates and prices;

(iv) the bank holding company's relevant policies and procedures, including risk management policies and procedures;

(v) the bank holding company's liquidity profile and management; and

(vi) any other relevant qualitative or quantitative information requested by the appropriate Reserve Bank or the Board to facilitate review of the bank holding company's capital plan under this section.

(e) *Review of capital plans by the Federal Reserve.*

(1) *Considerations and inputs.*

(i) The appropriate Reserve Bank, after consultation with the Board, will consider the following factors in reviewing a bank holding company's capital plan:

(A) The reasonableness of the bank holding company's assumptions and analysis underlying the capital plan and its methodologies for reviewing the effectiveness of its capital adequacy processes;

(B) The comprehensiveness of the capital plan, including the company's capital policy; and

(C) The bank holding company's ability to maintain capital above each minimum regulatory capital ratio, and until January 1, 2016, a tier 1 common ratio of 5 percent, on a pro forma basis under expected and stressful conditions throughout the planning horizon.

(ii) The appropriate Reserve Bank, after consultation with the Board, will also consider the following information in reviewing a bank holding company's capital plan:

(A) Relevant supervisory information about the bank holding company and its subsidiaries;

(B) The bank holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of a bank holding company's loss, revenue, and reserve projections;

(C) As applicable, the Federal Reserve's own pro forma estimates of the firm's potential losses, revenues, reserves, and resulting capital adequacy under stressful conditions, as well as the results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(D) Other information requested or required by the appropriate Reserve Bank or the Board, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

(2) *Federal Reserve action on a capital plan.*

(i) By March 15 of the calendar year in which a capital plan was submitted, the appropriate Reserve Bank, after consultation with the Board, will object, in whole or in part, to the capital plan or provide the bank holding company with a notice of non-objection to the capital plan.

(ii) The appropriate Reserve Bank, after consultation with the Board, may object to a capital plan if it determines that:

(A) The bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy processes;

(B) The assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies for reviewing the effectiveness of its capital adequacy processes, are not reasonable or appropriate;

(C) The bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio, or, until January 1, 2016, a tier 1 common ratio of 5 percent, on a pro forma basis under stressful conditions throughout the planning horizon; or

(D) The bank holding company's capital planning processes or proposed capital distributions constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a capital plan or

any proposed capital distribution would constitute an unsafe or unsound practice, the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

(iii) The appropriate Reserve Bank, after consultation with the Board, will notify the bank holding company in writing of the reasons for a decision to object to a capital plan.

(iv) If the appropriate Reserve Bank, after consultation with the Board, objects to a capital plan and until such time as the appropriate Reserve Bank, after consultation with the Board, determines that the bank holding company's capital plan does not give rise to a condition described under paragraph (e)(2)(ii), the bank holding company may not make any capital distribution, other than those capital distributions with respect to which the appropriate Reserve Bank has indicated its non-objection, without providing prior notice to the appropriate Reserve Bank under the procedures set forth in paragraph (f).

(3) *Request for reconsideration.*

(i) Within 5 calendar days of receipt of a notice of objection by the appropriate Reserve Bank, the bank holding company may submit a written request to the Board requesting reconsideration of the objection, including an explanation of why reconsideration should be granted.

(ii) Within 10 calendar days of receipt of the bank holding company's request under paragraph (i), the Board would notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan.

(4) *Re-submission of a capital plan.* A bank holding company must revise and resubmit its capital plan pursuant to paragraph (d)(1)(iv)(B) if:

(i) The appropriate Reserve Bank objects to the capital plan; or

(ii) The appropriate Reserve Bank, after consultation with the Board, directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(A) The capital plan is incomplete or the capital plan or the bank holding company's internal capital adequacy processes contain weaknesses;

(B) There has been or will likely be a material change in the bank holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(C) The bank holding company-developed stressed scenario(s) in the capital plan are not sufficiently stressed, or changes in the macro-economic outlook that could have a material impact on a bank holding company's risk profile require the use of updated scenarios; or

(D) The capital plan or the condition of the bank holding company raise any of the issues described in paragraph (e)(2)(ii).

(f) *Prior notice requirements.*

(1) *Circumstances requiring prior notice.* Except as provided in paragraph (f)(2)(iv), notwithstanding a notice of non-objection under paragraph (e)(2)(i), a bank holding company must provide the appropriate Reserve Bank with 30 calendar days prior notice of a capital distribution under the following circumstances:

(i) The appropriate Reserve Bank, after consultation with the Board, has objected to the bank holding company's capital plan;

(ii) After giving effect to the capital distribution, the bank holding company would not meet a minimum regulatory capital ratio, or, until January 1, 2016, a tier 1 common ratio of 5 percent;

(iii) The Federal Reserve determines that the capital distribution would result in a material adverse change to the organization's capital or liquidity structure or that earnings were materially underperforming projections;

(iv) The dollar amount of the capital distribution would exceed the amount described in the capital plan approved under this section; or

(v) The capital distribution would occur during the period that the appropriate Reserve Bank is reviewing the company's capital plan under paragraph (e).

(2) *Contents of notice.* Any notice of a capital distribution under this section shall be filed with the appropriate Reserve Bank and the Board and shall contain the following information:

(i) The bank holding company's previously approved capital plan or an attestation that there have been no changes to its capital plan;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the appropriate Reserve Bank or Board.

(3) *Shortening the notice period.* The appropriate Reserve Bank, after consultation with the Board, may, at its sole discretion, shorten the prior notice period described in paragraph (f)(1).

(4) *Acting on notice.* Within 15 calendar days of receipt of a notice under this section, the appropriate Reserve Bank, after consultation with the Board, will either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board will act on the notice within 30 calendar days after the Reserve Bank receives the notice.

(5) Notwithstanding any other provision in paragraph (f), with respect to a prior notice provided under paragraph (f)(1)(v), a bank holding company may not consummate the proposed capital distribution until the appropriate Reserve Bank provides the bank holding company with a notice of non-objection to the capital plan pursuant to paragraph (e)(2).

(6) *Factors considered in acting on notice.* The Board may disapprove a proposed capital distribution for any of the reasons described in paragraph (e)(2)(ii).

(7) *Disapproval and hearing.*

(i) The Board will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board will order a hearing within 10 calendar days of receipt of the request if it finds that material facts are in dispute, or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(iii) At the conclusion of the hearing, the Board will by order approve or disapprove the proposed capital distribution on the basis of the record of the hearing.

By order of the Board of Governors of the Federal Reserve System, June 10, 2011.

Jennifer J. Johnson,

Secretary of the Board.

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