Davis Polk

Comparison of the long-term debt proposal to the existing TLAC rule

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Davis Polk & Wardwell LLP

LTD Proposal and existing TLAC Rule

The joint FDIC, Federal Reserve and OCC notice of proposed rulemaking on long-term debt (LTD) requirements (the LTD Proposal) proposes to extend the LTD and clean holding company portions of the Federal Reserve's existing total loss-absorbing capacity (TLAC) rule for U.S. global systemically important banking organizations (GSIBs) and U.S. intermediate holding companies (IHCs) of foreign GSIBs (the TLAC Rule) to all large banking organizations (LBOs) with $100 billion or more in total assets, with virtually no tailoring and only a few other amendments to the existing TLAC Rule. This deck compares the key provisions of the LTD Proposal to the Federal Reserve's existing TLAC Rule.

- The existing TLAC Rule, which was issued in 2016 and became effective in 2019, applies to the top-tier parent companies of the U.S. GSIBs and the U.S. IHCs of foreign GSIBs. It imposes:
  - TLAC requirements (where TLAC generally consists of Tier 1 capital and eligible long-term debt);
  - Separate eligible LTD requirements; and
  - Clean holding company requirements that limit or prohibit those firms from incurring certain liabilities and entering into certain arrangements.
- The LTD Proposal would extend the LTD and clean holding company portions of the existing TLAC Rule to all bank holding companies (**BHCs**), savings and loan holding companies (**SLHCs**), and insured depository institutions (**IDIs**) with $100 billion or more in total consolidated assets and their smaller IDI affiliates, with virtually no tailoring for firms in Categories II, III, and IV under the Federal Reserve's tailoring rules.
- The LTD Proposal would also make certain very limited amendments to the existing TLAC Rule.
- The LTD Proposal is open for public comment until November 30, 2023, the same date that comments on the Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers and Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers (**165(d) Rule Guidance Proposals**), the IDI Resolution Planning Rule Proposal, and the Basel III Proposal are due.
  - Our client update analyzing the 165(d) Rule Guidance Proposals can be found here and our client update analyzing the IDI Resolution Planning Rule Proposal can be found here.
  - Our client update on the Basel III Proposal is forthcoming.

Applicability

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
The top-tier parent BHCs of the eight U.S. GSIBs (**U.S. GSIB BHCs**).	U.S. IHCs of foreign GSIBs required to be established or designated pursuant to Federal Reserve enhanced prudential standards (**Foreign GSIB U.S. IHCs**).	Holding company-level provisions would apply to the following GSIB and non-GSIB holding companies with ≥ $100 billion in total consolidated assets (**Covered LBO Holdcos**): – U.S. GSIB BHCs and Foreign GSIB U.S. IHCs that are already subject to the TLAC Rule **(Covered GSIB Holdcos**) – The following new **Covered Non-GSIB LBO Holdcos**: ▪ Category II, III and IV U.S. BHCs, excluding U.S. IHCs of FBOs (**U.S. Non-GSIB LBO BHCs**) ▪ Category II, III and IV SLHCs (**Covered LBO SLHCs**) ▪ Category II, III and IV U.S. IHCs controlled by non-GSIB FBOs (**Foreign Non-GSIB LBO U.S. IHCs**) IDI-level provisions would apply to any IDI with ≥ $100 billion in total consolidated assets that is not a consolidated subsidiary of a U.S. GSIB BHC, and any IDI affiliate of the foregoing (**Covered LBO IDIs**, and together with Covered LBO Holdcos, **Covered Entities**) – The preamble to the notice of proposed rulemaking states that the IDI-level provisions would not apply to IDI subsidiaries of U.S. GSIB BHCs because they are subject to the highest standards and to internal resolution capital adequacy and positioning (**RCAP**) requirements under 165(d) resolution planning guidance. – IDI-level provisions would, however, apply to IDI subsidiaries of Foreign GSIB U.S. IHCs.

Minimum eligible LTD requirements

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Calibration. – Must maintain an outstanding eligible ***external*** LTD amount no less than the greater of: ▪ 6% of risk-weighted assets (**RWAs**) + the firm's GSIB surcharge (expressed as a percentage); and ▪ 4.5% of total leverage exposure.	**Calibration.** – Must maintain an outstanding eligible ***external or internal*** LTD amount no less than the greatest of: ▪ 6% of RWAs; ▪ 2.5% of total leverage exposure if subject to the supplementary leverage ratio (**SLR**); and ▪ 3.5% of average total consolidated assets.	**Calibration.** **Covered GSIB Holdcos:** – No change to existing minimum eligible LTD requirements under the TLAC Rule. **Covered Non-GSIB LBO Holdcos and Covered LBO IDIs:** – Same minimum calibration as Foreign GSIB U.S. IHCs – i.e., must maintain outstanding eligible LTD amount no less than the greatest of: ▪ 6% of RWAs; ▪ 2.5% of total leverage exposure if subject to SLR; and ▪ 3.5% of average total consolidated assets.

Minimum eligible LTD requirements

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Internal vs. External. – External LTD only.	**Internal vs. External**. Ability to satisfy minimum requirements with internal vs. external LTD depends on the resolution strategy of the IHC's foreign GSIB parent: – Foreign parent has adopted an SPOE resolution strategy: *Internal LTD only* – Foreign parent has adopted an MPOE resolution strategy: *Any combination of external and internal LTD*	**Internal vs. External**. Ability of Covered Non-GSIB LBO Holdcos and Covered LBO IDIs to satisfy minimum requirements with internal vs. external LTD varies across entities: – **U.S. Non-GSIB LBO BHCs and Covered LBO SLHCs:** *External LTD only* – **Foreign Non-GSIB LBO U.S. IHCs:** ▪ Foreign parent has adopted an SPOE resolution strategy: *Internal LTD only* ▪ Foreign parent has adopted an MPOE resolution strategy: *Any combination of external and internal LTD* – **Covered LBO IDIs:** ▪ Covered LBO IDI is a consolidated subsidiary of a Covered Non-GSIB LBO Holdco or a Foreign GSIB U.S. IHC: *Internal LTD only* ▪ Covered LBO IDI (i) is a consolidated subsidiary of a company that is not a Covered Non-GSIB LBO Holdco or Foreign GSIB U.S. IHC or (ii) is controlled but not consolidated by another company: *Any combination of external and internal LTD* ▪ Covered LBO IDI is not controlled by any parent entity: *External LTD only*

Key defined terms

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Eligible External Debt Security. A debt instrument that: – Is paid in and issued by the U.S. GSIB BHC; – Is not secured, not guaranteed by the U.S. GSIB BHC or an affiliate and is not subject to any other arrangement that enhances seniority of the instrument; – Has a maturity ≥ one year from the date of issuance; – Is governed by the laws of the United States or any State; – Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of: ▪ Receivership, insolvency, liquidation, or similar proceedings of the U.S. GSIB BHC; or ▪ Failure of the U.S. GSIB BHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more; – Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the U.S. GSIB BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the U.S. GSIB BHC's credit quality, in relation to general market interest rates or similar adjustments; – Is not a structured note; and – Does not provide that the instrument may be converted into or exchanged for equity of the U.S. GSIB BHC.	**Eligible External Debt Security**. Same as for U.S. GSIB BHCs, except that the instrument must be issued to, and remain held by, a person that does not directly or indirectly control the Foreign GSIB U.S. IHC and is not a wholly owned subsidiary.	**Eligible External Debt Security**.* Would amend the definition to include the following additional eligibility requirements for debt instruments: – **For all Covered Entities:** ▪ Must not be issued in denominations of less than $400k and must not be exchanged for smaller denominations by the entity. – This requirement would not apply to existing eligible external debt securities. – **For U.S. GSIB BHCs, U.S. GSIB LBO BHCs and Covered LBO SLHCs:** ▪ Must be issued to, and remain held by, a person that is not an affiliate of the holding company – We view this revision to the U.S. GSIB BHC rule text as a clarification, not a substantive change. – **For Covered LBO IDIs only:** ▪ Must be contractually subordinated to claims of depositors and general unsecured creditors in an FDIC receivership for purposes of 12 U.S.C. 1821(d)(11)(A)(iv) or any similar proceeding. ▪ Must be issued to, and remain held by, a person that is not an affiliate of the IDI, unless the affiliate controls but does not consolidate the IDI. * At the FDIC meeting on the LTD Proposal, CFPB Director Rohit Chopra stated that banks would be able to issue debt as a substitute for other types of executive compensation.

Key defined terms

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Eligible Internal Debt Security: N/A	**Eligible Internal Debt Security**. Same as eligible external debt security, except: – No prohibition on a credit sensitive feature; – No prohibition on the instrument being convertible or exchangeable for equity of the Foreign GSIB U.S. IHC; – Must be issued and remain held by a foreign parent entity of the Foreign GSIB U.S. IHC or a wholly-owned subsidiary of its foreign GSIB parent, but cannot be issued to a U.S. affiliate or to third parties; and – Must have a contractual provision that is approved by the Federal Reserve that provides for the immediate conversion or exchange of the instrument into CET 1 capital of the Foreign GSIB U.S. IHC upon issuance by the Federal Reserve of an internal debt conversion order.	**Eligible Internal Debt Security**. – **For Covered LBO IDIs:** Same as for eligible external debt security, except: ▪ No minimum denomination requirement applies; ▪ Must be issued to, and remain held by, a company: – of which the Covered LBO IDI is a consolidated subsidiary; and – in the case of a Covered LBO IDI that is a consolidated subsidiary of a U.S. IHC, that company is domiciled in the United States. – **For Foreign Non-GSIB LBO U.S. IHCs:** Same as existing definition for Foreign GSIB U.S. IHCs.

Key defined terms

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Structured Note. – Generally defined as a debt instrument that: ▪ Has a principal amount, redemption amount, or stated maturity date that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature; ▪ Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities; ▪ Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or ▪ Is not classified as debt under GAAP. – **Exceptions**. Notwithstanding the general definition, an instrument is not a structured note solely because it is one or both of the following: ▪ A non-dollar-denominated instrument; or ▪ An instrument whose interest payments are based on an interest rate index.	**Structured Note**. Same.	**Structured Note**. Same.

Key defined terms

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Total risk-weighted assets. – For a U.S. GSIB BHC that has completed a parallel run process and received notification from the Federal Reserve, the greater of: ▪ Standardized total RWAs as defined in Reg YY; and ▪ Advanced approaches total RWAs as defined in Reg YY.	**Total risk-weighted assets**. Same.	**Total risk-weighted assets**. Same with respect to each Covered Non-GSIB LBO Holdco and Covered LBO IDI with respect to its appropriate federal banking regulator and applicable risk-based capital rules.* *On July 27, 2023, the federal banking agencies jointly issued a proposed rule implementing the Basel III endgame reforms to the U.S. regulatory capital rules, which would substitute a new enhanced risk-based approach for the internal models used by banking organizations in the current advanced approaches in Reg YY; increase RWAs by an estimated 25% for holding companies subject to Category I or II standards; and extend that new approach to all LBOs with assets of $100 billion or more.

Limit on redemption and repurchase

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Limit on Redemption and Repurchase. – An outstanding eligible debt security (**EDS**) may not be redeemed or repurchased without the prior approval of the Federal Reserve if doing so would cause the U.S. GSIB BHC to fall below its TLAC or LTD requirements.	**Limit on Redemption and Repurchase**. Same with respect to the Foreign GSIB U.S. IHCs.	**Limit on Redemption and Repurchase**. **Covered GSIB Holdcos:** – No change to existing redemption and repurchase limit under the TLAC Rule. **Covered Non-GSIB LBO Holdcos:** – Would be subject to the same redemption and repurchase limit as currently applies to Covered GSIB Holdcos, but only in relation to falling below LTD requirements (because TLAC requirements would not apply). **Covered IDIs:** – Would not impose any limitation on redemption or repurchase of outstanding EDS.

Clean holding company requirements

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Prohibitions. A U.S. GSIB BHC must not directly: – **Short-term Debt**. Issue any debt instrument with an original maturity of less than 1 year, including short-term deposits or demand deposits, to a *subsidiary*; – **Setoff**. Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owned by the holder or its affiliates to a subsidiary of the U.S. GSIB BHC against the amount, or a portion of the amount owed by the U.S. GSIB BHC under the instrument; – **QFC**. Enter into a qualified financial contract (**QFC**) with a person that is not a *subsidiary*; – **Parent Guarantees with Impermissible Cross-Default**. Enter into an agreement in which the U.S. GSIB BHC guarantees a liability of a *subsidiary* if such liability permits the exercise of a default right that is related, directly or indirectly, to the U.S. GSIB BHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership under Title II of the Dodd-Frank Act, unless the liability is subject to the requirements of the Federal Reserve restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or – **Upstream Guarantees**. Enter into, or otherwise begin to benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.	**Prohibitions**. A Foreign GSIB U.S. IHC must not directly: – **Short-term Debt**. Issue any debt instrument with an original maturity of less than 1 year, including short-term deposits or demand deposits, to an *affiliate*; – **Setoff**. Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owned by the holder or its affiliates to the Foreign GSIB U.S. IHC or a subsidiary of the Foreign GSIB U.S. IHC against the amount, or a portion of the amount owed by the Foreign GSIB U.S. IHC under the instrument; – **QFC**. Enter into a qualified financial contract with a person that is not an *affiliate*; – **Parent Guarantees with Impermissible Cross-Default**. Enter into an agreement in which the Foreign GSIB U.S. IHC guarantees a liability of an *affiliate* if such liability permits the exercise of a default right that is related, directly or indirectly, to the Foreign GSIB U.S. IHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership under Title II of the Dodd-Frank Act, unless the liability is subject to the requirements of the Federal Reserve restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or – **Upstream Guarantees**. Enter into, or otherwise benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.	**Prohibitions**. – **Covered GSIB Holdcos:** No change, except with respect to QFCs discussed below. – U.S. Non-GSIB LBO BHCs and Covered LBO SLHCs would become subject to the same clean holding company prohibitions as U.S. GSIB BHCs, and Foreign Non-GSIB LBO U.S. IHCs would become subject to the same clean holding company prohibitions as Foreign GSIB U.S. IHCs. – For all firms subject to the clean holding company prohibitions, the prohibition on QFCs with third parties would not apply to: ▪ underwriting agreements, fully paid structured share repurchase agreements, employee and director stock options, each as defined further in the rule; or ▪ any other agreement for which the Federal Reserve Board determines that exempting the agreement from the prohibition would not pose a material risk to the orderly resolution of the covered entity or the stability of the U.S. banking or financial system.* – Covered LBO IDIs would not be subject to the clean holding company prohibitions. * This exemptive authority is described in the preamble and in the proposed rule text, except in the proposed rule text for U.S. IHCs of FBOs; this appears to be unintentional.

Clean holding company requirements

Existing TLAC Rule for U.S. GSIB BHCs

Cap on Unrelated Liabilities.

- The aggregate amount, on an unconsolidated basis, of unrelated liabilities must not exceed 5% of the U.S. GSIB BHC's external TLAC amount.
- **Definition of Unrelated Liabilities**. Unrelated liability means any noncontingent liability of a U.S. GSIB BHC owed to a person that is not an affiliate other than:
  - Instruments used to satisfy the U.S. GSIB BHC's TLAC amount;
  - Any dividend or other liability arising from the instruments used to satisfy the U.S. GSIB BHC's TLAC amount;
  - An EDS that does not provide the holder of the instrument with a currently exercisable right to require immediate repayment of the total or remaining principal amount; and
  - A secured liability, to the extent secured, or a liability that otherwise represents a claim that would be senior to EDS under Title II of the Dodd-Frank Act or the Bankruptcy Code.
- **Exception**. This limit does not apply if all of the EDS issued by the U.S. GSIB BHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceedings of the U.S. GSIB BHC (e.g., it is contractually subordinated to all other claims).

Existing TLAC Rule for Foreign GSIB U.S. IHCs

Cap on Unrelated Liabilities.

- Same, except the limit on unrelated liabilities is to any person:
  - *other than an affiliate* for a Foreign GSIB U.S. IHC with a foreign parent that has adopted an SPOE strategy or
  - *other than a subsidiary* for a Foreign GSIB U.S. IHC with a foreign parent that has adopted an MPOE strategy.

LTD Proposal

Cap on Unrelated Liabilities.

- **Covered GSIB Holdcos:** No change to the cap.
- **Covered Non-GSIB LBO Holdcos:**
  - Would be subject to the cap like Covered GSIB Holdcos, except that the denominator would be calculated as the sum of the firm's CET 1 capital and AT1 capital (excluding minority interests) and eligible LTD amount (i.e., the components of the TLAC amount for firms subject to TLAC requirements).
  - For a Foreign Non-GSIB LBO U.S. IHC, the liabilities subject to the limit would vary depending on the resolution strategy of the parent, as it does for Foreign GSIB U.S. IHCs.
- **Covered LBO IDIs:** The cap would not apply.

Key defined terms

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Default Right (for prohibition on parent guarantees that contain impermissible cross-defaults). Means: – Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; (**Continued on Slide 13)**	**Default Right**. Same.	**Default Right**. Same.

Key defined terms

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Default Right (for prohibition on parent guarantees that contain impermissible cross-defaults). Means: – Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and – Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.	**Default Right**. Same.	**Default Right**. Same.

Minimum TLAC requirements

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Minimum TLAC Requirement. A U.S. GSIB BHC must maintain an outstanding ***external*** TLAC amount equal to no less than the greater of: – 18% of RWAs; and – 7.5% of its total leverage exposure. **External TLAC Buffer**. A U.S. GSIB BHC is also subject to graduated limitations on distributions and discretionary bonus payments if it does not maintain an external TLAC risk-based buffer, composed solely of CET1 capital, and an external TLAC leverage buffer, composed solely of Tier 1 capital, above certain specified levels.	**Minimum TLAC Requirements**. Requirements vary depending on the resolution strategy of the foreign parent. – A foreign GSIB U.S. IHC with a foreign parent that has adopted an ***MPOE*** strategy must maintain an outstanding ***external or internal*** TLAC amount equal to no less than the greatest of: ▪ 18% of RWAs; ▪ 6.75% of total leverage exposure if subject to an SLR; and ▪ 9% of average total consolidated assets. – A foreign GSIB U.S. IHC with a foreign parent that has adopted an ***SPOE*** strategy must maintain an outstanding ***internal*** TLAC amount equal to no less than the greatest of: ▪ 16% of RWAs; ▪ 6% of total leverage exposure if subject to an SLR; and ▪ 8% of average total consolidated assets. **TLAC Buffer**. A Foreign GSIB U.S. IHC is also subject to graduated limitations on distributions and discretionary bonus payments if it does not maintain a TLAC risk-based buffer, composed solely of CET1 capital, above certain specified levels.	**Covered GSIB Holdcos:** – **Minimum TLAC Requirements**. Calibration unchanged, but see the next slide for a change in the calculation of a firm's TLAC amount. – **TLAC Buffers**. Unchanged. **Covered Non-GSIB LBO Holdcos and Covered LBO IDIs:** N/A

Calculation of LTD and TLAC amounts

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Eligible LTD amount equals the unpaid principal of EDS, subject to: – 100% haircut for amounts due to be paid of unpaid principal of EDS in <1 year; and – 50% haircut for amounts due to be paid of unpaid principal of EDS in ≥1 year but <2 years. Eligible TLAC amount equals the sum of its: – CET 1 capital (excluding minority interests); – AT1 capital (excluding minority interests); and – The unpaid principal of EDS, subject to a 100% haircut for amounts due to be paid of unpaid principal of EDS in <1 year.	Same as for U.S. GSIB BHCs, including haircuts.	**Covered Non-GSIB LBO Holdcos and Covered LBO IDIs:** – Would apply the same haircuts on eligible LTD amounts as currently apply to Covered GSIB Holdcos. – TLAC haircuts are N/A. **Covered GSIB Holdcos:** – Would expand the application of the 50% haircut on the amount due to be paid of unpaid principal of EDS in ≥1 year but <2 years so that it also applies when calculating a U.S. GSIB BHC's or Foreign GSIB U.S. IHC's TLAC amount. ▪ This change would also impact the size of each firm's 5% cap on unrelated liabilities, which is tied to the TLAC amount. – Would apply immediately to outstanding TLAC amount, with no transition period for the implementation of this additional haircut. – The preamble to the LTD Proposal estimates that this proposed change would reduce the numerator in the minimum TLAC ratios of the Covered GSIB Holdcos by $65 billion in the aggregate, while at the same time the proposed amendments to the capital requirements implementing the Basel III endgame will increase their RWAs by 25% on average, which will automatically apply to the TLAC Rule if finalized as proposed in the proposed amendments to the capital rules.

Reservation of authority

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
N/A	N/A	– Each Agency would reserve the discretionary authority, subject to existing notice and response procedures, to require a Covered Entity to maintain an eligible TLAC amount (if applicable) or eligible LTD amount greater or less than otherwise required under the rule if the Agency determines that the TLAC or LTD requirement under the rule is not commensurate with the risk that the activities of the entity pose to public and private stakeholders in the event of material distress and failure of the entity.

Transition period

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Compliance was required by 1/1/2019 (or, in the case of a new U.S. GSIB BHC, 3 years after it becomes a U.S. GSIB BHC).	Compliance was required by 1/1/2019 (or, in the case of a new Foreign GSIB U.S. IHC, 3 years after it becomes a Foreign GSIB U.S. IHC).	– No change to 3-year transition period for new Covered GSIB Holdcos. – Each Covered Non-GSIB LBO HoldCo and Covered LBO IDI would be required to comply with the LTD Proposal beginning 3 years after the later of (i) the date of the final rule and (ii) the date it becomes a Covered Non-GSIB LBO Holdco or Covered LBO IDI, except it must have: ▪ 25% of required eligible LTD amount by the end of year 1; and ▪ 50% of required eligible LTD amount by the end of year 2.

Grandfathering

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Permanently grandfathered debt instruments issued by U.S. GSIB BHCs prior to December 31, 2016 as EDS if they satisfied all of the requirements in the definition of EDS on slides 5-7 above *other than* the limitations on acceleration clauses and the U.S. governing law requirement. (**Continued on Slide 19**)	Same as for U.S. GSIB BHCs.	– Would permanently grandfather certain debt instruments issued before the date of the final rule as EDS if they satisfy all of the requirements in the revised definition of EDS on slides 5-7 above *other than*: ▪ For all debt instruments (including of Covered GSIB Holdcos): – Minimum denomination requirement ▪ For debt instruments of Covered Non-GSIB LBO Holdcos: – Limitations on acceleration clauses ▪ For debt instruments of Covered LBO IDIs: – Limitations on acceleration clauses – Contractual subordination to general unsecured creditors (but subordination to depositors, which is currently statutory under 12 U.S.C. 1821(d)(11), would still be required) – For internal debt instruments, requirement that the instrument be issued to, and remain held by, a company of which the IDI is a consolidated subsidiary (and in the case of an IDI subsidiary of a U.S. IHC, that is domiciled in the United States) • Instead, would require that the instrument be issued to, and remain held by, a person that is not an affiliate of the IDI, unless the affiliate controls but does not consolidate the IDI.

Grandfathering

Existing TLAC Rule for U.S. GSIB BHCs	Existing TLAC Rule for Foreign GSIB U.S. IHCs	LTD Proposal
Permanently grandfathered debt instruments issued by U.S. GSIB BHCs prior to December 31, 2016 as EDS if they satisfied all of the requirements in the definition of EDS on slides 5-7 above o*ther than* the limitations on acceleration clauses and the U.S. governing law requirement.	Same as for U.S. GSIB BHCs.	▪ For external debt instruments of Foreign Non-GSIB LBO U.S. IHCs: – Requirement that the instrument must be issued to, and remain held by, a person that does not directly or indirectly control the U.S. IHC and is not a wholly owned subsidiary • Instead, would require that the instrument be issued to, and remain held by, a person that is not an affiliate of the U.S. IHC – Would permit eligible external LTD issued before the date of the final rule by a consolidated subsidiary IDI of a Covered Non-GSIB LBO Holdco to be used to satisfy the minimum external LTD requirement applicable to its parent Covered Non-GSIB LBO Holdco (unless the parent is a U.S. IHC whose foreign parent has adopted an SPOE resolution strategy and therefore may fulfill the LTD requirement with internal LTD only), as well as any internal LTD requirement applicable to the subsidiary IDI itself.

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