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: Final rule.

SUMMARY: The Board is adopting 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 obtain approval from the Federal Reserve under certain circumstances before making a capital distribution. This rule applies only to bank holding companies with $50 billion or more of total consolidated assets.

DATES: The final rule will become effective on December 30, 2011.

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SUPPLEMENTARY INFORMATION:

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I. Background

On June 17, 2011, the Board published a proposal in the Federal Register 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 proposed rule or NPR).[1] The public comment period on the proposed rule closed on August 5, 2011. The Board is adopting the rule in final form with certain modifications that are discussed below (final rule).[2] The final rule applies only to bank holding companies with $50 billion or more of total consolidated assets.

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 final rule 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.[3]

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

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[1] 76 FR 35351 (June 17, 2011).

[2] The amendments to Regulation Y are codified at 12 CFR 225.8. As discussed in section VI of this preamble, the rule also makes conforming changes to section 225.4(b) of Regulation Y (12 CFR 225.4(b)).

[3] 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 09-4), *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20101117b1.pdf .

company's risk profile.[4] 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.[5] 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.[6]

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 process. The final rule does not diminish that responsibility. Rather, the final rule is designed to (i) establish common 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 large bank holding companies' proposed capital distributions under certain circumstances.

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[4] *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.

[5] *See* SR 09-4.

[6] *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).

In the Board's view, the analytical techniques and other requirements set forth in the final rule are necessary to identify, measure, and monitor risks to the financial stability of the United States.[7] An elevated capital planning standard for large bank holding companies is appropriate because of the heightened risk they pose to the financial system and the importance of capital in mitigating these risks.[8] 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, leverage, liquidity, and risk management requirements; and a requirement to establish a risk committee.[9] The Board expects that large bank holding companies will reflect these enhanced prudential standards, including the results of any required stress tests, in their capital planning strategies and internal capital adequacy processes.

The Dodd-Frank Act also requires the Board to implement 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

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[7] *See* section 165(i)(1)(B)(iii) of Pub. L. No. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act); 12 U.S.C. 5365(i)(1)(B)(iii).

[8] Currently, savings and loan holding companies are not subject to minimum regulatory capital ratio requirements. As discussed in the Board's *Notice of Intent To Apply Certain Supervisory Guidance to Savings and Loan Holding Companies*, the Board is considering applying to savings and loan holding companies the same consolidated risk-based and leverage capital requirements as bank holding companies to the extent reasonable and feasible taking into consideration the unique characteristics of savings and loan holding companies and the requirements of Home Owners' Loan Act. *See* 76 FR 22662, 22665 (April 22, 2011). The Board may extend the capital plan rule's requirements to savings and loan holding companies at such time as the Board applies minimum regulatory capital ratio requirements to them.

[9] *See generally* section 165 of the Dodd Frank Act; 12 U.S.C. 5365. One commenter expressed support for enhanced capital and leverage requirements.

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 large bank holding company's financial condition, early remediation requirements imposed under the Dodd-Frank Act may result in limitations on a company's capital distributions in addition to the requirements that are imposed by the final rule.

II. Overview of comments

The Board received 16 comments on the proposed rule. Commenters included financial trade associations, bank holding companies, policy institutions, and individuals. Commenters generally expressed support for the proposed rule. Several commenters recommended one or more changes to specific provisions of the proposed rule.

For instance, many commenters provided suggestions on the timeframe under which the Federal Reserve would review and act on a bank holding company's capital plan. Commenters asked for more information related to the data submissions that accompany the capital plan submission. In addition, many of the commenters asked for clarification on the content of the capital plans and provided views on the standards under which the Federal Reserve could object to capital plans. Other commenters provided suggestions on whether firms should be able to make capital distributions not specified in their capital plans without providing prior notice to the Federal Reserve and how such a

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

[11] *Id.*

standard should be crafted. In addition, three commenters raised issues that would be relevant to savings and loan holding companies should the final rule's requirements extend to these institutions at a future date.

In developing this final rule, the Board has carefully considered the comments received on the proposed rule. In response to these comments, the Board has clarified the requirements of the rule and modified the proposed rule in certain respects. For example, the Board has—

- Clarified in the preamble that a notice of a non-objection to a capital plan will extend through the first quarter of the subsequent year;
- Clarified in the preamble that large bank holding companies will remain subject to SR letter 09-4, which provides guidance regarding capital distributions;
- Revised the final rule to provide that, if the Federal Reserve objects to a bank holding company's capital plan, the bank holding company may not make any capital distribution (other than a capital distribution with respect to which the Federal Reserve did not object) until such time as the Federal Reserve issues a non-objection to the company's capital plan; and
- Added a limited exception that permits well capitalized large bank holding companies that are performing in accordance with baseline projections to make modest capital distributions in excess of the amount described in the company's capital plan under certain circumstances.

In addition, in response to commenters' requests for additional guidance on the data collection, the Federal Reserve has published a detailed description of the data that it intends to collect for supervisory purposes and to support the review of capital plans in a separate Federal Register notice.[12]

These changes, as well as the Board's other responses to the comments received, are discussed in greater detail below.

[12] 76 FR 55288 (September 7, 2011).

III. *Scope*

The final rule applies to every top-tier bank holding company domiciled in the United States that has $50 billion or more in total consolidated assets (large bank holding companies).[13] As of September 30, 2011, there were approximately 34 large bank holding companies. The Board notes that the asset threshold of $50 billion is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain bank holding companies.[14]

The Board received a comment suggesting that the $50 billion asset threshold be measured over a four-quarter period in order to minimize the likelihood that temporary asset fluctuations would trigger the rule's application. In response to this comment, the Board has amended the proposal to measure "total consolidated assets" as the average of a company's total consolidated assets over the previous four calendar quarters, as reflected on the bank holding company's Consolidated Financial Statements for Bank Holding Companies (FR Y-9C). This calculation will be effective as of the due date of the bank holding company's most recent FR Y-9C. The final rule also applies to any institution that the Board determines, by order, shall be subject in whole or in part to the rule's requirements based on the institution's size, level of complexity, risk profile, scope

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[13] Thus, the final rule will not apply to a foreign bank or foreign banking organization that is 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 will apply to any U.S.-domiciled bank holding company subsidiary of the foreign bank or foreign banking organization that meets the final rule's size threshold.

[14] 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).

of operations, or financial condition. The final rule provides that a bank holding company that becomes subject to the final rule by operation of the asset threshold after the 5th of January of a calendar year will not be subject until January 1 of the next calendar year to the final rule's requirement to file a capital plan with the Federal Reserve, resubmit a capital plan under certain circumstances, or to obtain prior approval of capital distributions in excess of those described in the firm's capital plan.

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 final rule does not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01-01 issued by the Board of Governors (as in effect on May 19, 2010).[15]

Several commenters suggested that the Board grant a transition period to large bank holding companies that did not participate in the 2011 Comprehensive Capital Analysis and Review (CCAR). One commenter further suggested that, during the transition period, this set of large bank holding companies (non-CCAR firms) participate in a capital planning exercise where they would submit data templates and conduct stress testing, but would not be subject to the other requirements of the rule, including the prior notice requirements. The Board has carefully considered these comments and has decided not to provide for a formal transition period for non-CCAR firms. Thus, all large

[15] 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.

bank holding companies will be required to submit capital plans in January 2012 and will generally be subject to the rule's requirements. The Board notes that the final rule 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 level of detail and analysis expected in a capital plan will vary based on the large bank holding company's size, complexity, risk profile, and scope of operations. Moreover, the Federal Reserve will work with non-CCAR firms to communicate the review process and the information requirements of the rule.

The Board understands that non-CCAR firms may need additional time to build and implement the internal systems necessary to satisfy the data collection requirements required with respect to stress scenarios provided by the Board. Thus, for purposes of the Federal Reserve's evaluation of capital plans due January 5, 2012, non-CCAR firms will not be required to submit the complete set of data templates required of the CCAR firms. Instead, as discussed in section IV.C. of the preamble, some non-CCAR firms may be asked to submit limited, summary information to the Federal Reserve about their projections of revenues and losses.

Finally, three commenters raised issues that would be relevant to savings and loan holding companies should the final rule's requirements extend to these institutions at a future date. If the Board decides to extend the final rule to savings and loan holding companies through separate rulemaking or by order, it intends to take these comments into account.

IV. Capital planning

A. Annual capital planning requirement

The final rule requires a large bank holding company to develop and maintain a capital plan. At least annually, the bank holding company's board of directors or a designated committee thereof is required to review the robustness[16] of the holding company's process for assessing capital adequacy, ensure that any deficiencies in the firm's process for assessing capital adequacy are appropriately remedied, and approve the bank holding company's capital plan.[17]

Robustness of a large bank holding company's capital adequacy process should be evaluated based on the following elements:

(i) A sound risk management infrastructure that supports the identification, measurement, and assessment of all material enterprise-level risks arising from the exposures and business activities of the bank holding company;

(ii) An effective process for translating risk measures into estimates of potential loss over a range of adverse scenarios and environments – using multiple, complementary loss forecasting methodologies – and for aggregating those estimated losses across the bank holding company;[18]

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[16] The proposed rule would have required a bank holding company's board of directors or designated committee to review the "effectiveness" of the holding company's process for assessing internal capital adequacy. In response to comments that this requirement was unclear, the Board has replaced the term "effectiveness" with the term "robustness" and provided guidance on how robustness should be evaluated.

[17] As part of this review, the board of directors should consider any remaining uncertainties, limitations, and assumptions associated with the bank holding company's capital adequacy process.

[18] While a company should use multiple, complementary loss forecasting methodologies in its process for assessing capital adequacy (see section 225.8(d)(2)(ii) of the final rule), a company is not required to use multiple methodologies when estimating the expected uses and sources of capital for purposes of section 225.8(d)(2)(i) of the final rule.

(iii) A clear definition of available capital resources and an effective process for forecasting available capital resources (including any forecasted revenues) over the same range of adverse scenarios and environments used for loss forecasting;

(iv) A process for considering the impact of loss and resource estimates on capital adequacy, in line with the bank holding company's stated goals for the level and composition of capital, and taking into account any limitations of the company's capital adequacy process and its components;

(v) A process, supported by the bank holding company's capital policy, to use its assessments of the impact of loss and resource estimates on capital adequacy to make key decisions regarding the current level and composition of capital, specific capital actions, and capital contingency plans as they affect capital adequacy;

(vi) Robust internal controls governing capital adequacy process components, including sufficient documentation; change control; model validation and independent review; and audit testing; and

(vii) Effective board and senior management oversight of the bank holding company's capital adequacy process, including periodic review of capital goals, assessment of the appropriateness of adverse scenarios considered in capital planning, regular review of any limitations and uncertainties in the process, and approval of planned capital actions.

Under the proposed rule, a large bank holding company would have been required to submit its capital plan by January 5th. Commenters provided suggestions on the proposed deadline. One commenter expressed the concern that a large bank holding company will be required to rely on tentative fourth quarter financial statements in

developing its capital plan and suggested that the deadline be pushed to later in the first quarter. Another commenter suggested that the Board adopt a rolling submission process to permit firms to align capital plan submission with internal capital planning process. As discussed below, these concerns were motivated in part by the concern that the timing of the capital plan submission and review interrupted firms' ability to make capital distributions in the first quarter. The Board has addressed these concerns to a degree by clarifying in the preamble that, for a capital plan submitted in the first quarter, a non-objection would cover the four-quarter period commencing with the second quarter and extend through the first quarter of the following year. For a capital plan resubmitted after the first quarter, a non-objection would extend through the first quarter of the subsequent year.

As further discussed below, the Board has decided to maintain the proposed submission date of January 5th for capital plans. Doing so will permit review of capital plans within the first quarter, thus minimizing to the greatest extent possible the potential to disrupt a large bank holding company's ability to make capital distributions in subsequent quarters of that year. In addition, a single submission date ensures that firms are finalizing their capital plans based on the same quarter's data, which permits the Board to perform a cross-firm comparison of capital plans based on the same scenarios and to determine whether to object to firms' capital plans based on consistent scenarios.

B. Mandatory elements of a capital plan

Consistent with the NPR, the final rule defines a capital plan as a written presentation of a large bank holding company's capital planning strategies and capital

adequacy process that includes certain mandatory elements. These mandatory elements are organized into four main components:

(i) an assessment of the expected uses and sources of capital over the planning horizon (at least nine quarters, 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 process for assessing capital adequacy;

(iii) the bank holding company's capital policy; and

(iv) 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.

The mandatory elements under each component are described below. While the final rule reflects a different organizational structure than the proposed rule, the elements are substantively the same.[19]

[19] The proposed rule defined a "capital plan" as "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." Section 225.8(d)(2) of the proposed rule set forth additional mandatory elements of a capital plan. The final rule simplifies the organization by locating all of the required elements of a capital plan in one place. The final rule defines a "capital plan" as "written presentation of a bank holding company's capital planning strategies and capital adequacy processes that includes the mandatory elements set forth in [section 225.8(d)(2) of the final rule]." Section 225.8(d)(2) of the final rule sets forth the comprehensive list

These mandatory elements of a capital plan are consistent with the Federal Reserve's existing supervisory practice with respect to the information that it expects large bank holding companies to include in a capital plan for internal planning purposes. A large bank holding company should include in its capital plan other information and analysis that it determines is relevant to its capital planning strategies and internal capital adequacy process.

The level of detail and analysis expected in a capital plan will vary based on the large bank holding company's size, complexity, risk profile, and scope of operations. Thus, for example, a large bank holding company that has extensive credit exposures to commercial real estate but very limited trading activities will be expected to have robust systems in place to identify and monitor its commercial real estate exposures, but its systems related to trading activities will not need to be as sophisticated or extensive. In contrast, a large 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, will be expected to have an integrated system for measuring and aggregating all of these risk exposures.

One commenter requested that the Board clarify that the capital planning process should focus on the consolidated organization. The Board confirms that the capital

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of elements required to be included in a firm's capital plan, including elements of the definition of a "capital plan" in the proposed rule.

The final rule does not require a capital plan to include an analysis of the effectiveness of the large bank holding company's processes for assessing capital adequacy. As described in section IV.A of this preamble, the board of directors of a large bank holding company is required to assess the robustness of the bank holding company's capital plan at least annually. In light of the Board's supervisory review of this assessment, the Board will not require a large bank holding company to include a separate analysis in its capital plan.

planning process should focus on the consolidated organization, but should also provide for the specific capital needs of material subsidiaries consistent with the large bank holding company's obligations to serve as a source of strength to its subsidiary depository institutions.

Another commenter requested that the Federal Reserve recognize that bank holding companies that are wholly-owned subsidiaries of foreign banking organizations have different capital planning goals than publicly-traded domestic bank holding companies. In particular, capital planning by these institutions should take into account the financial condition of their parent foreign bank and/or developments in the parent foreign bank's home country. The Board recognizes that the capital planning considerations will be different for domestic subsidiaries of foreign banking organizations than for publicly traded domestic bank holding companies and expects that the capital plans of such domestic subsidiaries will reflect these differences.

1. Assessment of the expected uses and sources of capital over the planning horizon that reflects the large bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions

The first component of a large bank holding company's capital plan is an assessment of the expected uses and sources of capital over the planning horizon, assuming both expected and stressful conditions. This assessment must contain the following elements:

(1) 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;[20]

(2) a calculation of the pro forma tier 1 common ratio over the planning horizon under expected conditions and under a range of stressed scenarios and discussion of how the company will maintain a pro forma tier 1 common ratio above 5 percent under the stressed scenarios required by the final rule;

(3) 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

(4) a description of all planned capital actions over the planning horizon.

a. Stress Scenarios

In assessing its expected uses and sources of capital over the planning horizon, a large bank holding company must estimate projected revenues, losses, reserves, and pro forma capital levels under expected conditions and under a range of stressed scenarios, including any scenarios provided by the Federal Reserve. Several commenters asked that the Board provide more guidance on these stressed scenarios and to provide the scenarios to a bank holding company well before the company's capital plan is due. Because the Board expects that the stressed scenarios will change over time and in order for the

[20] Whereas the proposed rule required a large bank holding company to conduct a probabilistic assessment of the likelihood of the bank holding company-developed scenario, the Board has not included it as a mandatory element in the final rule because it does not believe that such a probabilistic assessment will assist the bank holding company's board of directors in determining the robustness of a capital plan in all circumstances. The Board has also provided additional guidance on its expectations in regard to the bank holding company-developed scenarios.

scenarios to reflect current data, the Board intends to provide the stressed scenarios to a firm at least several weeks before the capital plans are due.

Other commenters requested guidance on the relationship between these stressed scenarios and the scenarios that the Board is required to provide under section 165(i) of the Dodd-Frank Act. The Board expects that the stress scenarios that it provides under the final rule will be consistent with the stress scenarios it will provide to firms for stress tests they conduct under section 165 of the Dodd-Frank Act. In addition, the Board confirms that stress testing should be conducted in accordance with any applicable supervisory guidance.

One commenter suggested that the Board design stress scenarios based on extreme yet plausible conditions that are administered simultaneously across multiple banks. Generally, the Board expects that the stressed scenarios will consist of forecasts of key economic and financial variables consistent with a stressful environment. In calibrating the severity of a stress scenario, the Federal Reserve will target a severe scenario that is not outside the range of possibilities. There are multiple quantitative and qualitative approaches to achieve this level of target severity, described below.

One approach involves the construction of a baseline forecast from a large-scale macroeconomic model and identification of a scenario that would have a specific probabilistic likelihood given the baseline forecast. For example, a scenario may be constructed that has a 5 percent chance of occurring, conditional on the baseline outlook. While many scenarios would be equally likely using this "probabilistic approach" there are a variety of statistical approaches (together with some judgment) that help to select an appropriate scenario from this set. However, given that the probabilities of

macroeconomic events can only be imprecisely estimated, and that many macroeconomic models tend to underestimate the true probabilities of stressful economic outcomes, such an approach may not, by itself, be well-suited to scenario design.

An alternative approach assumes that the future path of the U.S. economy would follow the path experienced during post-war recessions. For example, of the 9 recessions since 1957, the average increase in the unemployment rate was 2.4 percentage points and the average peak-to-trough decline in GDP was 2.2 percent; the stress scenario could thus be designed to match these changes, or one could select from among scenarios that were worse than the average one. While this "recession approach" is transparent and straightforward to implement, it may not account for the underlying state of the economy at the time the stress test is conducted. The same shocks may lead to better or worse macroeconomic performance at a particular point in time depending on the scope for monetary or fiscal policy to offset the shocks or other factors. The "recession approach" may be augmented with a macroeconomic model to take into account the effect of current conditions on macroeconomic performance.

Another approach augments the scenario generated by either the "probabilistic approach" or "recession approach" with one or more particularly salient risks facing the economy or the financial system. As an example, while the more adverse macroeconomic scenario used in the 2009 Supervisory Capital Assessment Program (SCAP) was designed to capture a generally stressful macroeconomic environment, it also assumed an unprecedented 30 percent fall in house prices in 2009-2010, in part because of the important role that house prices had played in the macro-financial stress

over the previous few years and expectations that house price declines would continue to be a salient risk facing the economy and the banking system.

The stress scenarios will provide forecasts for a number of macroeconomic variables. In SCAP, the Federal Reserve defined the macro scenarios by providing forecasts for three variables: GDP, unemployment and house prices. In CCAR, the Federal Reserve defined the macroeconomic scenarios using nine variables: GDP, the consumer price index, disposable personal income, the unemployment rate, the three-month T-bill rate, the 10-year Treasury rate, the rate on triple-B rated corporate bonds, the value of a broad index of U.S. stock prices, and house prices. Going forward, the Federal Reserve will likely modestly increase the number of variables used to define the scenarios. In particular, it will likely increase the number of U.S. macroeconomic indicators, as well as variables summarizing global macroeconomic conditions and exchange rates. In increasing the number of variables, the Federal Reserve intends to balance the benefits of additional precision to the scenarios with the cost of increased complexity.

Measuring the effects of the scenarios on a firm's trading exposures requires the consideration of additional variables. Evaluating the profit and loss sensitivity of a firm's trading portfolio in response to an adverse market shock requires defining a large set of specific factors for which macroeconomic models can give only limited guidance (e.g., the Libor-overnight indexed swap rate spread). In the SCAP and CCAR, the Federal Reserve used financial market shocks consistent with what actually occurred from the end of June 2008 to year-end 2008, a period of severe financial dislocation. In the future, as the financial products traded by firms evolve, the trading scenario will likely rely less

on a particular historical episode, and be guided more by a statistical framework based on historical experience, or hypothetical assumptions, reflecting salient risks facing the financial system. However, the trading book shock will not be inconsistent with the environment and circumstances characterized by the general macroeconomic scenario that is used.

The Board intends that a large bank holding company will integrate into its capital plan, as one part of the underlying analysis, the results of the company-run stress tests conducted under section 165 of the Dodd-Frank Act, when implemented, and the Federal Reserve will consider the results of those stress tests in its evaluation of that bank holding company's capital plan.[21] However, 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 the final rule. The bank holding company-designed stress scenario should reflect an individual company's unique vulnerabilities to factors that affect its firm-wide activities and risk exposures, including macroeconomic, market-wide, and firm-specific events.

b. Minimum regulatory capital ratios and 5 percent tier 1 common ratio

The following discussion provides more detail on the requirement that a company calculate pro forma capital levels, including any minimum regulatory capital ratios, and its pro forma tier 1 common ratio over the planning horizon under expected and stressful conditions. The final rule defines minimum regulatory capital ratios as any minimum

[21] See section 165(i)(1) and (2) of the Dodd-Frank Act; 12 U.S.C. 5365(i)(1) and (2). In reviewing stress test results of U.S. subsidiaries of foreign banking organizations, the Federal Reserve intends to take into account any stress tests applicable to the foreign consolidated group.

regulatory capital ratio that the Federal Reserve may require of a large 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. In the future, the Board may propose to modify, or add to, the existing minimum regulatory capital requirements.

In addition to the requirements discussed above, under the proposed rule, until January 1, 2016, a large bank holding company would have been 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 will maintain a pro forma tier 1 common ratio above 5 percent under those conditions throughout the planning horizon. This level reflects a supervisory assessment of the minimum capital needed to be a going concern throughout stressful conditions and on a post-stress basis, based on an analysis of the historical distribution of earnings by large banking organizations.

For purposes of this requirement, a large bank holding company's tier 1 common ratio means the ratio of a large bank holding company's tier 1 common capital to its total risk-weighted assets. Tier 1 common capital is 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 has the same meaning as under Appendix A to Regulation Y, or any successor regulation, and total risk-weighted assets has the

[22] Specifically, non-common elements will include the following items captured in the FR Y-9C: Schedule HC, line item 23 net of Schedule HC-R, line item 5; and Schedule HC-R, line items 6a, 6b, and 6c.

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 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 requiring a large bank holding company to demonstrate how it will maintain a minimum tier 1 common ratio above 5 percent under stressful conditions using the Board's existing supervisory definition of tier 1 common capital. The Board will work with the other federal banking agencies to implement Basel III and to propose a Basel III tier 1 common capital ratio as a new minimum regulatory capital ratio. The existing supervisory definition of tier 1 common capital will remain in force under the final capital plan rule until the Board adopts the Basel III tier 1 common ratio, which the Board remains strongly committed to implement.

c. Planned capital actions

In its assessment of the uses and sources of capital, a large bank holding company's capital plan must describe all planned capital actions over the planning horizon. The final rule defines a capital action as any issuance of a debt or equity capital instrument, capital distribution, and any similar action that the Federal Reserve

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

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

determines could impact a large bank holding company's consolidated capital. A capital distribution is 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.[25]

One commenter requested that the Board permit a capital plan to specify alternative uses of capital. The Board believes that the effects on a bank holding company's capital adequacy may vary significantly depending on the nature of a capital distribution and thus has not changed the requirement that a capital plan must include a description of all planned capital actions over the planning horizon.

2. Description of the bank holding company's process for assessing capital adequacy

The second component of a large bank holding company's plan is a description of the bank holding company's process for assessing capital adequacy. This description must contain the following elements:

(1) a discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios and above a tier 1 common ratio of 5 percent, and serve as a source of strength to its subsidiary depository institutions; and

[25] For example, this definition includes payments on trust preferred securities, but does not include payments on subordinated debt that could not be temporarily or permanently suspended by the issuer under the terms of the instrument.

(2) a discussion of how the bank holding company will, under expected and stressful conditions, maintain sufficient capital to 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.

One commenter requested that the Board clarify that bank holding companies subject to an internal capital adequacy assessment process (ICAAP) requirement under the Federal Reserve's advanced approaches rules would be able to combine components of their ICAAP with their capital plan submissions and submit them on the capital plan timeline. ICAAP would constitute an internal capital adequacy process for purposes of the final rule, and bank holding companies that have a satisfactory ICAAP generally would be considered to have a satisfactory internal capital adequacy process for purposes of the final rule.

Moreover, the description of the bank holding company's process for assessing capital adequacy may be presented in a document separate from the capital plan. Like other elements of a large bank holding company's capital plan, this description must be submitted to the Federal Reserve on an annual basis and must describe any changes to the bank holding company's capital planning process and any new analyses supporting changes to this process.

3. Capital policy

The third component of a large bank holding company's plan is its capital policy. A capital policy is 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. A large bank holding company should be able to demonstrate that achieving its stated internal capital goals will allow it to maintain ready access to funding, meet its obligations to creditors and other counterparties, and continue to serve as a credit intermediary during and after the impact of the stressed scenarios included in its capital plan over the planning horizon.[26] Similarly, a large 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 economic outlook has deteriorated, the bank holding company has underestimated its risks, or the bank holding company's performance has not met its expectations.

4. 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.

The fourth element of a large bank holding company's capital plan is 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. For example, the capital plan should reflect any expected material effects of new lines of business or activities on the bank holding company's capital adequacy or liquidity, including revenue and losses.

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[26] In addition, each bank holding company should 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, will allow the bank holding company to continue its operations.

C. Data submissions

In connection with its submission of a capital plan to the Federal Reserve, a large bank holding company is required to provide certain data to the Federal Reserve. To the greatest extent possible, the data templates, and any other data requests, are 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 may include, but are not limited to, information regarding the bank holding company's financial condition, structure, assets, risk exposure, policies and procedures, liquidity, and management.

Commenters requested that the Board provide more guidance on the nature and scope of the data requirements and to provide any data templates at the time that the final rule becomes effective. Commenters also asked that the Federal Reserve be mindful to avoid duplicative data requests.

In response to these comments, the Board has published a separate notice in the Federal Register that clarifies the nature and scope of the data requirements on the large bank holding companies firms that participated in CCAR, including the data templates, and is soliciting public comments on this information collection.[27]

Commenters suggested that companies be given additional time to develop technology and processes to the extent strict compliance with a data request would result in undue burden or expense. The Board understands that non-CCAR firms are less likely to have technology and processes relevant for the specific data collection than the bank holding companies that participated in CCAR, and thus only large bank holding

[27] 76 FR 55288 (September 7, 2011).

companies that previously participated in CCAR will be required to provide the complete set of data templates in connection with the submission of the capital plan due on January 5, 2012. In connection with this capital plan submission, non-CCAR firms may be required to submit certain limited, summary information under the baseline and stress scenarios, which may include income, balance sheet, capital, and revenue information by asset class. Going forward, the Federal Reserve will require a more complete set of data from non-CCAR firms to support their future capital plan submissions.

In addition, the Board recognizes that non-CCAR firms have not had the benefit of receiving the supervisory review and feedback provided in the CCAR and Supervisory Capital Assessment Program. The Federal Reserve is engaging in extensive dialogue with these non-CCAR firms to communicate its expectations on capital planning and capital policies.

In addition, commenters requested that the Board provide additional information regarding the security controls and processes the Board and the Reserve Banks have in place to safeguard data. The Board and Reserve Banks have internal controls and processes in place to help to ensure the integrity of confidential and proprietary data. In addition, the Board follows the National Institute of Standards and Technology guidance and adheres to Federal Information Security Management Act compliance for all the information collections and storage where sensitive data are concerned.[28]

One commenter suggested that capital plans, non-objections or objections to capital plans, requests for reconsideration, approvals or rejections of any such requests,

[28] See generally National Institute of Standards and Technology, http://csrc.nist.gov/; 44 U.S.C. § 3541, et seq.

prior notice filings, and results of stressed scenarios be treated as confidential supervisory information. The confidentiality of information submitted to the Board under the final rule and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

D. Federal Reserve review of a capital plan

The final rule provides that the Federal Reserve will consider the following factors in reviewing a large bank holding company's capital plan:

(i) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the firm and the company's capital policy;

(ii) The reasonableness of the bank holding company's assumptions and analysis underlying the capital plan and its methodologies for reviewing the robustness of its capital adequacy process; and

(iii) The bank holding company's ability to maintain capital above each minimum regulatory capital ratio and above a tier 1 common ratio of 5 percent on a pro forma basis under expected and stressful conditions throughout the planning horizon, including but not limited to any stressed scenarios required under the final rule.

The Federal Reserve will also consider the following information in reviewing a large 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 will allow for an analysis of the 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 expected and stressful conditions, including but not limited to any stressed scenarios required under the final rule, 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.

A commenter suggested that the Federal Reserve recognize the significance of consultation and coordination with appropriate home country supervisory authorities to the capital planning and review process. The Federal Reserve intends to continue consultation and coordination with home country supervisors in evaluating compliance with prudential standards.

E. Federal Reserve action on a capital plan

Nearly all commenters expressed the concern that the timing of the capital plan submission and review will interrupt the ability of bank holding companies to make capital distributions in the first quarter. Commenters proposed several alternatives, including a rolling submission process to allow greater flexibility and both earlier and later submission due dates to address blackout periods under the federal securities laws.

In response to these commenters, the Board has adjusted the period over which a non-objection applies. For a capital plan submitted in the first quarter, a non-objection would cover the four-quarter period commencing with the second quarter. For a capital plan resubmitted after the first quarter, a non-objection would extend through the first quarter of the subsequent year. This change is intended to permit bank holding companies to continue to engage in planned capital actions throughout the first quarter of the calendar year while their capital plans are under review.

In the final rule, a large bank holding company is required to submit a complete annual capital plan by January 5 of each calendar year. The Federal Reserve will object by March 31 to the capital plan, in whole or in part, or provide the large bank holding company with a notice of non-objection. With respect to a large bank holding company that submits its 2012 capital plan on a timely basis in January 2012, the Federal Reserve commits to respond by March 15, 2012, in order to give the bank holding company adequate opportunity to make adjustments to its capital distributions in the first quarter of 2012.

This 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 capital plan to the Federal Reserve on a timely basis in January 2012, the Federal Reserve would provide a response by no later than March 15, 2012. The Federal Reserve's non-objection to that capital plan would extend through the first quarter of 2013, meaning that the firm could continue to make capital distributions during the first quarter of 2013 in accordance with the capital plan it submitted in 2012. If the firm submitted its 2013 capital plan on a timely basis in January 2013, the firm would be notified by March 31, 2013, whether or not the Federal Reserve had any objection to its 2013 capital plan. If the Federal Reserve did not object to the firm's 2013 capital plan, the firm could begin making capital distributions under that capital plan in the second quarter of 2013. Thus, for this hypothetical firm, the Federal Reserve's review of its capital plan should not delay the bank holding company's ability to pay dividends or take other capital actions while awaiting a response from the Federal Reserve.

Commenters also suggested that the Board make appropriate transitional arrangements so that bank holding companies are not unnecessarily prevented from making capital distributions in the period between the effective date of the final rule and the first date on which a large bank holding company would be permitted to make capital distributions pursuant to its initial capital plan.

Large bank holding companies remain subject to the SR letter 09-4. SR letter 09-4 states that a banking organization should consult with the Federal Reserve before

making certain capital distributions[29] In addition, SR letter 09-4 states that a banking organization should hold capital commensurate with its overall risk profile and that a banking organization should include a full understanding of its risks in its assessment of capital adequacy and ensure that it holds capital corresponding to those risks to maintain overall capital adequacy.[30]

With respect to the period between the effective date of the final rule and the date on which capital distributions would be permitted pursuant to a bank holding company's initial capital plan, bank holding companies that participated in CCAR will continue to be subject to Revised Temporary Addendum to SR letter 09-4 until the firms receive a notice of objection or non-objection from the Federal Reserve with respect to the capital plan due January 5, 2012.[31] Thus, the Board expects such firms would not increase their capital distributions above the amount described in an approved capital plan, which may include an updated and resubmitted capital plan. Non-CCAR firms—which are subject to SR letter 09-4 but not the Revised Temporary Addendum to SR letter 09-4—may make capital distributions before receiving a response from the Federal Reserve with respect to their capital plans due January 5, 2012, but are expected to consult with their appropriate Reserve Bank before increasing capital distributions.[32]

The Board recognizes that certain bank holding companies may have to align their internal capital planning processes with the required dates for capital plan submission.

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[29] *See supra* note 3.

[30] *Id.*

[31] *Id.*

[32] *Id.*

However, the Board believes that the timeframes set forth in the final rule balance the Federal Reserve's interest in performing a cross-firm comparison of capital plans based on the same scenarios with the bank holding company's interest in minimizing disruptions to firms' capital planning processes. In order to adhere to the schedule set forth in the final rule, the Federal Reserve may require bank holding companies to submit data templates and other required information several weeks before complete capital plans are due.

F. Federal Reserve objection to a capital plan

As under the NPR, the final 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 bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;

(ii) the assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies for reviewing the robustness of its capital adequacy process, 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 above a tier 1 common ratio of 5 percent on a pro forma basis under expected and stressful conditions throughout the planning horizon; or

(iv) the bank holding company's capital planning process or proposed capital distributions otherwise 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 proposed capital distributions would constitute an unsafe or unsound practice, the Federal Reserve will consider whether the bank holding company is and will remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

The Federal Reserve received general comments on the grounds for objection. One commenter suggested that the Federal Reserve not substitute its judgment regarding capital distributions for the board of directors' judgment. As noted above, the Board believes that the board of directors and senior management of a large bank holding company bear the primary responsibility for developing, implementing, and monitoring the bank holding company's capital planning strategies and internal capital adequacy process. The Federal Reserve's review of capital plans is intended to ensure that large bank holding companies have sufficient capital to weather stressful economic conditions and help to mitigate any systemic risks posed by the firms. In this manner, the Board intends to strike a balance between maintaining the board of directors and senior management's primary responsibility in capital planning and ensuring that these firms have sufficient capital to operate in a manner that is safe and sound and does not pose material risk to the financial system.

The Federal Reserve intends to review capital plans on a firm-by-firm basis in accordance with the regulatory standards set forth in the final rule. When evaluating capital adequacy and reviewing banks' estimates of capital adequacy, the Federal Reserve may consider macroprudential factors, including financial stability, in determining whether the assumptions and analysis underlying the bank holding company's capital

plan, or the bank holding company's methodologies for assessing its capital adequacy, are reasonable or appropriate.

Commenters also had several comments on the use of material unresolved supervisory issues as grounds for objection. For example, commenters requested that the Board confirm that not every "matter requiring attention" will constitute a "material unresolved supervisory issue." Commenters also suggested that supervisory issues unlikely to have a material impact on a large bank holding company's capital position, liquidity, or financial results should not be grounds for objecting to a proposed capital plan.

Under the final rule, not every "matter requiring attention" will constitute a "material unresolved supervisory issue"; rather, the Federal Reserve will review supervisory issues on a case-by-case basis. The Federal Reserve generally expects an institution to correct such deficiencies before making any significant capital distributions.

The Federal Reserve will notify the bank holding company in writing of the reasons for a decision to object to a capital plan. The Federal Reserve will communicate the basis for the objection when it notifies the firm of the objection. Within ten calendar days of receipt of a notice of objection, the bank holding company may submit a written request for reconsideration of the objection, including an explanation of why reconsideration should be granted. Within ten calendar days of receipt of the bank holding company's request, the Board will notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan.

Under the final rule, the period in which a large bank holding company is permitted to submit a written request for reconsideration was increased from five days to

ten days in response to a commenter request. The Board had initially proposed the five-day period to permit adequate processing time with respect to dividend proposals before the end of the first quarter. The commenter suggested giving a large bank holding company the ability to respond within ten days would not necessarily interfere with that process. The final rule provides that the Federal Reserve will respond to a request for reconsideration within ten days of receipt. With respect to a capital plan submitted on a timely basis in January 2012, a large bank holding company that chooses to submit a written request for reconsideration not later than ten days before quarter-end will receive a response before the end of the quarter. With respect to a capital plan submitted on a timely basis in future years, the timing of a written request for reconsideration would not constrain a large bank holding company's ability to make capital distributions in the first quarter.

Under the final rule, as an alternative to requesting reconsideration of the Federal Reserve's objection to a capital plan, a large bank holding company may instead choose to request a hearing. The hearing procedures would be the same as those that apply following the Federal Reserve's disapproval of a capital distribution. These procedures are discussed in section V.B. of this preamble.

To the extent that the Federal Reserve objects to a capital plan and to the capital actions described therein, and until such time as the Federal Reserve determines that the bank holding company's capital plan satisfies the factors provided in the final rule, the bank holding company generally may not make any capital distribution, other than as provided below.

G. *Re-submission of a capital plan*

A large bank holding company is required to update and re-submit its capital plan to the Federal Reserve 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 condition, or corporate structure since the bank holding company adopted the capital plan;[33]

(ii) The Federal Reserve objects to the capital plan; or

(iii) The Federal Reserve directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:[34]

(1) The capital plan is incomplete or the capital plan, or the bank holding company's internal capital adequacy process, contains material weaknesses;

(2) 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;

(3) The stressed scenario(s) developed by the bank holding company is not appropriate to its business model and portfolios, or changes in financial markets or the

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

[34] At the request of a commenter, the Board clarifies that a bank holding company is not required to file a new full capital plan under section 225.8(d)(4)(i)(A) if the Federal Reserve has required that an updated plan be filed under section 225.8(d)(4)(i)(C).

macro-economic outlook that could have a material impact on the bank holding company's risk profile and financial condition require the use of updated scenarios; or

(4) 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.

While the final rule reflects a different organizational structure than the proposed rule, the requirements for resubmission are substantively the same.[35]

Commenters asked for more guidance on the first condition for resubmission, which requires a large bank holding company to resubmit its capital plan if 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. For example, resubmission may be required if the financial performance of the bank holding company is substantially worse than anticipated in its initial capital plan, or if the company engages in a significant acquisition. In addition, one commenter requested that the Board limit a "material change" requiring a large bank holding company to resubmit its capital plan to one that would adversely affect the bank holding company's financial condition and capital position.

The final rule leaves the decision to resubmit based on "a material change in the bank holding company's risk profile" to the bank holding company in the first instance. In addition, the Federal Reserve may notify the bank holding company in writing that the

[35] In the proposed rule, section 225.8(d)(1)(iv) imposed the resubmission requirement and section 225.8(e)(4) set forth additional grounds for resubmission. The final rule simplifies the organization by locating all of the resubmission provisions in section 225.8(d)(4).

Federal Reserve had determined that a material change in the company's risk profile, financial condition, or corporate structure had occurred or was likely to occur.

One commenter suggested that the criteria for plan resubmission should focus only on events that occurred after the date that the Federal Reserve issued its non-objection. The Federal Reserve generally does not intend to reevaluate a firm's capital plan to which it has issued a non-objection, but reserves the right to determine that such a capital plan was incomplete or the scenarios used in the capital plan were not sufficiently stressed based on new information or changed circumstances.

The Federal Reserve may extend the 30-day period for resubmission for up to an additional 60 calendar days. The Board considered a commenter's suggestion that the timing of a resubmission should depend on the nature of the triggering event. Under the final rule, the Federal Reserve may exercise its authority to extend the 30-day period to provide for a longer resubmission period as necessary to adjust for the nature of the triggering event.

Under the final rule, a large bank holding company is only required to resubmit those portions of its capital plan that have changed. To the extent that information contained in an initial capital plan were still considered accurate and appropriate, the bank holding company would be able to continue to rely on this information for purposes of any revised or updated plan, provided that the bank holding company provides an explanation of how the information should be considered in the light of any new capital actions or changes in the bank holding company's risk profile or strategy.

One commenter suggested that a large bank holding company be able to comply with the resubmission requirement by updating portions of the plan affected by the

change or providing an informational supplement to the plan describing its change and its impact. The Board expects that bank holding companies will be able to incorporate by reference portions of their previously filed capital plan to the extent those portions were unaffected by the change requiring resubmission, and that an informational supplement may be appropriate depending on the nature of the revisions. However, in cases in which a large bank holding company anticipates undertaking a significant acquisition of a financial company, the Federal Reserve expects that nearly all of a company's capital plan will be affected. Furthermore, to the extent that the firm elects to develop new stressed scenarios or must incorporate new stressed scenarios provided by the Federal Reserve into its capital plan, the bank holding company should resubmit all portions of the capital plan affected by those new stressed scenarios.

Another commenter suggested that the criteria for the issuance of a non-objection to a revised and resubmitted capital plan focus on whether the plan addresses the deficiencies identified in the Federal Reserve's objection to the capital plan. Under the final rule, the Federal Reserve intends to focus on whether the plan addresses deficiencies identified in the objection, but will consider all aspects of a company's capital adequacy in connection with a resubmission. In conducting this review, the Federal Reserve will apply the same standards that would apply to the review of an initial capital plan.

Another commenter requested that capital plan resubmissions be responded to within 15 days, subject to a 15-day extension. The final rule provides that the Federal Reserve will respond to a resubmitted capital plan within 75 days of its resubmission. However, the Federal Reserve intends to respond to a resubmitted capital plan in a

shorter time period if possible. The length of the review period will depend on the materiality of the issues raised in the resubmission.

V. Approval requirements

A. *General requirements*

The proposed rule would have required a large bank holding company to notify the Federal Reserve before making a capital distribution if the Federal Reserve objected to the bank holding company's capital plan and that objection was still outstanding.[36] The Board is modifying this requirement in the final rule. The final rule provides that, if the Federal Reserve objects to a capital plan and until such time as the Federal Reserve issues a non-objection to the bank holding company's capital plan, the bank holding company *may not make* any capital distribution, other than those capital distributions with respect to which the Federal Reserve has indicated its non-objection. This prohibition would remain in place until the Federal Reserve issued a non-objection to the bank holding company's capital plan.

The change in the final rule is intended to avoid confusion on the part of a large bank holding company that has received an objection to its capital plan regarding whether it would be able to make a capital distribution. Under the final rule, consistent with the proposed rule, the Federal Reserve will evaluate a capital distribution using the same standards it uses to evaluate a capital plan; thus, the Federal Reserve would expect to disapprove a capital distribution request by a large bank holding company that had

[36] Notwithstanding this requirement, prior notice would not have been required under the NPR with respect to specific capital distributions described in a company's capital plan that the Federal Reserve did not object to, unless other circumstances required prior notice.

received an objection to its capital plan until the company had corrected the deficiencies that led to the objection to the plan. As discussed in section IV.G. of this preamble, the final rule provides a process for bank holding companies to resubmit their capital plans to the Federal Reserve and for the Federal Reserve to evaluate the re-submitted capital plans. If the Federal Reserve provides its non-objection to a re-submitted capital plan, the bank holding company generally may thereafter make capital distributions consistent with the resubmitted capital plan.

In addition, there may be circumstances where the Federal Reserve objects to some but not all of a large bank holding company's proposed capital distributions as described in its capital plan. For example, the Federal Reserve may object to a large bank holding company's proposed payments of dividends on common stock, but notify the company that the Federal Reserve does not object to payments on its preferred stock. Unless changed circumstances would require approval of a capital distribution as described below, the bank holding company in this example may make payments on its preferred stock.

The proposed rule provided circumstances where prior notice would be required for a capital distribution in circumstances where the Federal Reserve had provided a non-objection to a capital plan. The Board is modifying that requirement to require a large bank holding company to obtain the Federal Reserve's prior approval with respect to these capital distributions under the process set forth in the final rule. The Federal Reserve expects that a large bank holding company would apply the same rigorous capital planning process that it used to develop its capital plan to its evaluation of capital distributions that would cause the company to fall below its minimum capital

requirements, capital distributions that are above the amount described in its capital plan, and capital distributions that follow a change in circumstances. Similarly, the Federal Reserve will need significant information to evaluate these types of proposed capital distributions. Accordingly, the Board believes that a prior approval process would be a more appropriate mechanism to evaluate these capital distributions.

Under the final rule, a large bank holding company generally will need to obtain prior approval from the Federal Reserve before making capital distributions if:

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

(ii) The Federal Reserve notifies the company that the Federal Reserve has determined that the capital distribution will result in a material adverse change to the organization's capital or liquidity structure or that the company's earnings were materially underperforming projections;

(iii) The dollar amount of the capital distribution will exceed the amount described in the capital plan to which the Federal Reserve had issued a non-objection; or

(iv) The capital distribution will occur during a period in which the Federal Reserve is reviewing, or has requested resubmission of, the bank holding company's capital plan.[37] Commenters requested that the Board provide clarity on a large bank holding company's ability to make capital distributions in the following two periods: (1) during the period beginning when a large bank holding company resubmits its capital plan and the plan is under review by the Federal Reserve, and (2) during the first quarter

[37] The Board clarified in the final rule that prior notice is required during the period when the Board has requested resubmission, but the bank holding company has not yet resubmitted its capital plan.

of a calendar year if a large bank holding company receives an objection to its capital plan for the upcoming planning period, but where the Federal Reserve had previously issued a non-objection to capital distributions in the current quarter and planning period based on a prior capital plan. In the first case, the answer depends on whether the Federal Reserve has objected to the bank holding company's capital plan. If the Federal Reserve has objected to the capital plan, the bank holding company may not make any capital distribution, except for any distribution to which the Federal Reserve did not object. If the Federal Reserve has not objected to the capital plan and the resubmission is required because of a change in circumstances, the bank holding company must obtain the Federal Reserve's approval before making a capital distribution.

In the second case, during the first quarter of a calendar year, a large bank holding company may make a capital distribution to which the Federal Reserve did not object, unless the final rule would otherwise require the company to obtain approval of the capital distribution or the Federal Reserve has otherwise notified the company that it may not make the distribution.[38] For instance, assuming the criteria for resubmission of a capital plan have not been triggered, if the Federal Reserve issued a non-objection to a firm's capital plan through the first quarter of Year 2 but objected to the capital plan submitted by that firm for the second quarter of Year 2 through the first quarter of Year 3, that firm would still be able to make all planned capital distributions in the first quarter of Year 2, unless the Federal Reserve specifically objected to any remaining first quarter distributions.

[38] *See* section 225.8(e)(2)(iv) of Regulation Y.

Several commenters suggested that the Board adopt an exception to the prior notice requirements that permits a large bank holding company to increase its capital distributions to take advantage of changes in market conditions. The Board has adopted a modification to the rule to provide a limited exception to the prior approval requirements if:

(A) The bank holding company is, and after the capital distribution would remain, well capitalized as defined in section 225.2(r) of Regulation Y (12 CFR 225.2(r));

(B) The bank holding company's performance and capital levels are, and after the capital distribution would remain, consistent with the projections under expected conditions set forth in its capital plan;

(C) The annual aggregate dollar amount of all capital distributions (beginning on April 1 of a calendar year and ending on March 31 of the following calendar year) would not exceed the total amounts described in the company's capital plan for which the bank holding company received a notice of non-objection by more than 1.00 percent multiplied by the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's first quarter FR Y-9C;

(D) The bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to a capital distribution that includes the elements described in section V.B. of this preamble, and

(E) The Federal Reserve does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Federal Reserve will apply the criteria under which it reviews requests related to proposed capital distributions that require Federal Reserve approval.

The Federal Reserve may notify the bank holding company in writing that it may not take advantage of this exception. Examples of factors that the Federal Reserve would consider in notifying a large bank holding company that it may not take advantage of the exception include, but are not limited to, the bank holding company's risk profile and its actual financial performance relative to baseline projections in its capital plan.

B. Contents of request for approval and procedures for review

Under the final rule, a large bank holding company that requests approval of a capital distribution to the Federal Reserve must include the following information in its request:

(i) The capital plan to which the Federal Reserve had previously issued a non-objection or an attestation that there have been no changes to the 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 Federal Reserve (which may include, among other information, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data).

In addition, any request submitted for a capital distribution where the bank holding company would not meet a minimum regulatory capital ratio or a tier 1 common ratio of at least five percent after giving effect to the distribution must also include a plan

for restoring the bank holding company's capital to an amount above a minimum level within 30 days and a rationale for why the capital distribution would be appropriate.

The Federal Reserve will act on a request for prior approval within 30 calendar days after the receipt of a request that contains all of the information set forth above.[39] If the Federal Reserve requests that the bank holding company provide an assessment of its capital adequacy under a revised stress scenario, the Federal Reserve will not consider the 30-day period to begin until the bank holding company provides the requested information.

The final rule provides that the Board will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. In reviewing a request under this section, the Federal Reserve will apply the considerations and principles under which it evaluates capital plans. In addition, the Board may disapprove the transaction if the bank holding company does not provide the information required to be submitted. Within 10 calendar days of receipt of a disapproval, the bank holding company could submit a written request for a hearing.

If the bank holding company requested a hearing, 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 will be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

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[39] As noted above, bank holding companies that qualify for the exception to the prior approval requirement need to provide 15 days prior notice of a qualifying capital distribution. Because the final rule provides the Federal Reserve with discretion to act on a shorter timeframe, the final rule does not include the proposed rule's provision permitting the Federal Reserve to shorten the 30-day period.

At the conclusion of any hearing, the Board will by order approve or disapprove the proposed capital action on the basis of the record of the hearing.

VI. Conforming amendments to section 225.4(b) of Regulation Y

In addition to the capital planning and approval requirements discussed above, the Board is making 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.[40] Because such approval of certain capital distributions will be separately required in the rule at section 225.8 of Regulation Y, the Board is amending 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.

VII. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), 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.[41] The regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks and bank holding companies with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the Federal Register along with its rule.

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

[41] *See* 5 U.S.C. § 603(a).

As of December 31, 2010, there were approximately 4,493 small bank holding companies.

The agencies solicited public comment on the rule in a notice of proposed rulemaking. The agencies did not receive any comments regarding burden to small banking organizations.

As discussed above, the final 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 final rule therefore substantially exceed the $175 million asset threshold at which a banking entity would qualify as a small bank holding company, and the final rule will not 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 final rule would have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number. The Board reviewed the final rule under the authority delegated to the Board by OMB. The OMB control number for this information collection is 7100-0342.

The Board received 16 comment letters, none of which specifically addressed the PRA analysis. Commenters did however requested that the Board provide more guidance

on the nature and scope of the data requirements (as required by 225.8(d)(3)(i)-(vi)) and to provide any data templates at the time the final rule becomes effective. Commenters also asked that the Federal Reserve be mindful to avoid duplicative data requests. In response to these comments, the Board has published a separate Federal Register notice that clarifies the nature and scope of the data requirements, including the data templates, and solicited public comments on this information collection (Capital Assessments and Stress Testing; FR Y-14A/Q; OMB No. 7100- 0341).[42] In doing so, the Board is removing the majority of the burden for the data reporting requirements found in 225.8(d)(3) from the information collection associated with this rule and accounting for this burden under the new FR Y-14A/Q information collection.

Title of Information Collection: Recordkeeping and Reporting Requirements Associated with Regulation Y (Capital Plans) (Reg Y-13).

Frequency of Response: Recordkeeping requirements, annually. Reporting requirements, varied— the capital plan exercise would be done at least annually, capital plan resubmissions and prior approval requirements would be event-generated.

Affected Public: The final rule applies 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). As of September 30, 2011, there were approximately 34 large U.S. bank holding companies.

General Description of Information Collection: This information collection is mandatory and the recordkeeping requirement to maintain the Capital Plan is in effect until either a

[42] 76 Federal Register 55288 (September 7, 2011). The comment period ended on November 7, 2011.

bank holding company is no longer operational or until further notice by the Board. Section 616(a) of the Dodd-Frank Act amended section 5(b) of the Bank Holding Company Act (BHC Act) (12 U.S.C. § 1844(b)) to specifically authorize the Board to issue regulations and orders relating to capital requirements for bank holding companies. The Board is also authorized to collect and require reports from bank holding companies pursuant to section 5(c) of the BHC Act (12 U.S.C. § 1844(c)). Additionally, the Board's rulemaking authority for the information collection requirements associated with Reg Y-13 is found in sections 908 and 910 of the International Lending Supervision Act, as amended (12 U.S.C. §§ 3907 and 3909). Additional support for Reg Y-13 is found in sections 165 and 166 of the Dodd-Frank Act (12 U.S.C. §§ 5365 and 5366).

The capital plan information submitted by the covered bank holding company would consist of confidential and proprietary modeling information and highly sensitive business plans, such as acquisition plans submitted to the Federal Reserve for approval. Therefore, it appears the information would be subject to withholding under exemption 4 of the Freedom of Information Act (5 U.S.C. §552(b)(4)).

Abstract: Section 225.8(d)(1)(i) will 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 the list of mandatory elements to be included in the capital plan.

Section 225.8(d)(1)(ii) will 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) will 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 submission to the appropriate Federal Reserve Bank under section 225.8(d)(1)(ii).

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 templates, and any other data requests, 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. In addition, section 225.8(d)(4) would require the bank holding company to update and resubmit its capital plan within 30 days of the occurrence of certain events.

Within 10 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 bank holding company may submit a written request for reconsideration or hearing, including an explanation of why reconsideration should be granted.

In certain circumstances, large bank holding companies would be required, pursuant to section 225.8(f)(1), to obtain approval from the Federal Reserve before

making capital distributions.[43] As listed in section 225.8(f)(3), such an approval request 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 the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and any additional information requested by the appropriate Reserve Bank or Board, which may include, among other information, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data.

Under section 225.8(f)(5), if the Federal Reserve disapproves of a bank holding company's capital distribution, 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.

Estimated Burden

Number of Respondents: 34 (19 CCAR firms and 15 non-CCAR firms).

Estimated Burden Per Response:

__.8(d)(1)(i) and (ii) Recordkeeping and Reporting, 12,000 hours

__.8(d)(1)(iii) Recordkeeping, 100 hours

__.8(d)(3)(i)-(vi) CCAR firm Reporting, 100 hours

__.8(d)(3)(i)-(vi) Non-CCAR firm Reporting, 1,000 hours

[43] The final rule provides an exception to the prior approval requirements section 225.8(f)(2) for an institution that is well capitalized and meets certain other requirements.

__.8(d)(4) Reporting, 100 hours

__.8(e)(3)(i) Reporting, 16 hours

__.8(f)(1), (2) and (3) Reporting, 3,400 hours

__.8(f)(5) Reporting, 16 hours

Total Estimated Annual Burden: 432,764 hours

The Board has a continuing interest in the public's opinions of collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0342), Washington, DC 20503.

List of Subjects

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 amends subpart A of part 225 of chapter II of title 12 of the Code of Federal Regulations 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 and approval 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 four calendar quarters, as reflected on the bank holding company's consolidated financial statement for bank holding companies (FR Y-9C (the calculation shall be effective as of the due date of the bank holding company's most recent FR Y-9C required to be filed under 12 CFR 225.5(b))); 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) Beginning on December 30, 2011, the provisions of this section shall apply to any bank holding company that is subject to this section pursuant to paragraph (b)(1) of this section, provided that:

(i) Until July 21, 2015, this section will not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01-01 issued by the Board (as in effect on May 19, 2010); and

(ii) A bank holding company that becomes subject to this section pursuant to paragraph (b)(1)(i) of this section after the 5th of January of a calendar year shall not be subject to the requirements of paragraphs (d)(1)(ii), (d)(4), and (f)(1)(iii) of this section until January 1 of the next calendar year.

(3) Nothing in this section shall 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 process that includes the mandatory elements set forth in paragraph (d)(2) of this section.

(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) Planning horizon means the period of at least nine quarters, beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan, over which the relevant projections extend.

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

(8) 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.

(9) Tier 1 common ratio means the ratio of a bank holding company's tier 1 common capital to total risk-weighted assets. This definition will remain in effect until the Board adopts an alternative tier 1 common ratio definition as a minimum regulatory capital ratio.

(10) 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 Board or 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) of this section:

(A) Review the robustness of the bank holding company's process for assessing capital adequacy,

(B) Ensure that any deficiencies in the bank holding company's process for assessing capital adequacy are appropriately remedied; and

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

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

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, 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;

(B) A calculation of the pro forma tier 1 common ratio over the planning horizon under expected conditions and under a range of stressed scenarios and discussion of how the company will maintain a pro forma tier 1 common ratio above 5 percent under expected conditions and the stressed scenarios required under paragraphs (d)(2)(i)(A) and (ii) of this section;

(C) 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

(D) A description of all planned capital actions over the planning horizon.

(ii) A detailed description of the bank holding company's process for assessing capital adequacy, including:

(A) A discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios and above a tier 1 common ratio of 5 percent, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the bank holding company will, under expected and stressful conditions, maintain sufficient capital to 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) The bank holding company's capital policy; and

(iv) 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.

(3) Data collection. Upon the request of the Board or appropriate Reserve Bank, the bank holding company shall provide the Federal Reserve 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 account, 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 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 Board or the appropriate Reserve Bank to facilitate review of the bank holding company's capital plan under this section.

(4) Re-submission of a capital plan. (i) A 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;

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

(C) The Board or 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:

(1) The capital plan is incomplete or the capital plan, or the bank holding company's internal capital adequacy process, contains material weaknesses;

(2) 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;

(3) The stressed scenario(s) developed by the bank holding company is not appropriate to its business model and portfolios, or changes in financial markets or the

macro-economic outlook that could have a material impact on a bank holding company's risk profile and financial condition require the use of updated scenarios; or

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

(ii) The Board or the appropriate Reserve Bank, after consultation with the Board, may, at its discretion, extend the 30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(e) Review of capital plans by the Federal Reserve. (1) Considerations and inputs. (i) The Board or 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 comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the firm and the company's capital policy;

(B) The reasonableness of the bank holding company's assumptions and analysis underlying the capital plan and its methodologies for reviewing the robustness of its capital adequacy process; and

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

not limited to any stressed scenarios required under paragraphs (d)(2)(i)(A) and (ii) of this section.

(ii) The Board or 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 the 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 expected and stressful conditions, including but not limited to any stressed scenarios required under paragraphs (d)(2)(i)(A) and (ii) of this section, 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) The Board or 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:

(A) By March 31 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section, and

(B) By the date that is 75 calendar days after the date on which a capital plan was resubmitted pursuant to paragraph (d)(4) of this section.

(ii) The Board or 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 process;

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

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

(D) The bank holding company's capital planning process or proposed capital distributions otherwise 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 Board or 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 Board or the appropriate Reserve Bank, after consultation with the Board, objects to a capital plan and until such time as the Board or the appropriate Reserve Bank, after consultation with the Board, issues a non-objection to the bank holding company's capital plan, the bank holding company may not make any capital distribution, other than those capital distributions with respect to which the Board or the appropriate Reserve Bank has indicated in writing its non-objection.

(3) Request for reconsideration or hearing. Within 10 calendar days of receipt of a notice of objection to a capital plan by the Board or the appropriate Reserve Bank:

(i) A 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. Within 10 calendar days of receipt of the bank holding company's request, the Board will notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan or a specific capital distribution; or

(ii) As an alternative to paragraph (e)(3)(i) of this section, a bank holding company may submit a written request to the Board for a hearing. Any hearing shall follow the procedures described in paragraph (f)(5)(ii)-(iii) of this section.

(f) Approval requirements for certain capital actions. (1) Circumstances requiring approval. Notwithstanding a notice of non-objection under paragraph (e)(2)(i) of this section a bank holding company may not make a capital distribution under the

following circumstances, unless it receives approval from the Board or appropriate Reserve Bank pursuant to paragraph (f)(4) of this section:

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

(ii) The Board or the appropriate Reserve Bank, after consultation with the Board, notifies the company in writing that the Federal Reserve has determined that the capital distribution would result in a material adverse change to the organization's capital or liquidity structure or that the company's earnings were materially underperforming projections;

(iii) Except as provided in paragraph (f)(2) of this section, the dollar amount of the capital distribution will exceed the amount described in the capital plan for which a non-objection was issued under this section; or

(iv) The capital distribution would occur after the occurrence of an event requiring resubmission under paragraphs (d)(4)(A) and (C) of this section and before the Federal Reserve acted on the resubmitted capital plan.

(2) Exception for well capitalized bank holding companies. (i) A bank holding company may make a capital distribution for which the dollar amount exceeds the amount described in the capital plan for which a non-objection was issued under this section if the following conditions are satisfied:

(A) The bank holding company is, and after the capital distribution would remain, well capitalized as defined in § 225.2(r) of Regulation Y (12 CFR 225.2(r));

(B) The bank holding company's performance and capital levels are, and after the capital distribution would remain, consistent with its projections under expected conditions as set forth in its capital plan under paragraph (d)(2)(i) of this section;

(C) The annual aggregate dollar amount of all capital distributions (beginning on April 1 of a calendar year and ending on March 31 of the following calendar year) would not exceed the total amounts described in the company's capital plan for which the bank holding company received a notice of non-objection by more than 1.00 percent multiplied by the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's first quarter FR Y-9C;

(D) The bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to a capital distribution that includes the elements described in paragraph (f)(3) of this section; and

(E) The Board or the appropriate Reserve Bank, after consultation with the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank, after consultation with the Board, shall apply the criteria described in paragraph (f)(4)(iv) of this section.

(ii) The exception in this paragraph (f)(2) shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it may not take advantage of this exception.

(3) Contents of request. (i) A request for a capital distribution under this section shall be filed with the appropriate Reserve Bank and the Board and shall contain the following information:

(A) The bank holding company's current capital plan or an attestation that there have been no changes to the capital plan since it was last submitted to the Federal Reserve;

(B) The purpose of the transaction;

(C) 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

(D) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data).

(ii) Any request submitted with respect to a capital distribution described in paragraph (f)(1)(i) of this section shall also include a plan for restoring the bank holding company's capital to an amount above a minimum level within 30 days and a rationale for why the capital distribution would be appropriate.

(4) Approval of certain capital distributions. (i) A bank holding company must obtain approval from the Board or the appropriate Reserve Bank, after consultation with the Board, before making a capital distribution described in paragraph (f)(1) of this section.

(ii) A request for a capital distribution under this section must be filed with the appropriate Reserve Bank and contain all the information set forth in paragraph (f)(3) of this section.

(iii) The Board or the appropriate Reserve Bank, after consultation with the Board, will act on a request under this paragraph (f)(4) within 30 calendar days after the

receipt of a complete request under paragraph (f)(4)(ii) of this section. The Board or the appropriate Reserve Bank may, at any time, request additional information that it believes is necessary for its decision.

(iv) In acting on a request under this paragraph, the Board or appropriate Reserve Bank will apply the considerations and principles in paragraph (e) of this section. In addition, the Board or the appropriate Reserve Bank may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraphs (f)(3) and (f)(5)(iii) of this section.

(5) Disapproval and hearing. (i) The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 10 calendar days after receipt of a 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, November 21, 2011.

Jennifer J. Johnson,
Secretary of the Board.

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