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## Part II

### Department of the Treasury

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Office of the Comptroller of the Currency

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12 CFR Part 50

### Federal Reserve System

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12 CFR Part 249

### Federal Deposit Insurance Corporation

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12 CFR Part 329

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 50**

[Docket ID OCC–2014–0029]

RIN 1557–AD97

**FEDERAL RESERVE SYSTEM****12 CFR Part 249**

[Regulation WW; Docket No. R–1537]

RIN 7100–AE 51

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 329**

RIN 3064–AE 44

**Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements**

**AGENCY:** Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking with request for public comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are inviting comment on a proposed rule that would implement a stable funding requirement, the net stable funding ratio (NSFR), for large and internationally active banking organizations. The proposed NSFR requirement is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. The proposed rule would also amend certain definitions in the liquidity coverage ratio rule that are also applicable to the NSFR. The proposed NSFR requirement would apply beginning on January 1, 2018, to bank holding companies, certain savings and loan holding companies, and depository institutions that, in each case, have \$250 billion or more in total consolidated assets or \$10 billion or more in total on-balance sheet foreign exposure, and to their consolidated subsidiaries that are depository institutions with \$10 billion or more in total consolidated assets.

In addition, the Board is proposing a modified NSFR requirement for bank

holding companies and certain savings and loan holding companies that, in each case, have \$50 billion or more, but less than \$250 billion, in total consolidated assets and less than \$10 billion in total on-balance sheet foreign exposure. Neither the proposed NSFR requirement nor the proposed modified NSFR requirement would apply to banking organizations with consolidated assets of less than \$50 billion and total on-balance sheet foreign exposure of less than \$10 billion.

A bank holding company or savings and loan holding company subject to the proposed NSFR requirement or modified NSFR requirement would be required to publicly disclose the company's NSFR and the components of its NSFR each calendar quarter.

**DATES:** Comments on this notice of proposed rulemaking must be received by August 5, 2016.

**ADDRESSES:** Comments should be directed to: OCC: Because paper mail in the Washington, DC area is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—**"*regulations.gov*": Go to <http://www.regulations.gov>. Enter "Docket ID OCC–2014–0029" in the Search Box and click "Search". Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments. Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

- **Email:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- **Fax:** (571) 465–4326.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC–2014–0029" in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide, such as name and address

information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>. Enter "Docket ID OCC–2014–0029" in the Search box and click "Search". Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

**Board:** You may submit comments, identified by Docket No. R–1537; RIN 7100 AE–51, by any of the following methods:

- **Agency Web site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- **FAX:** (202) 452–3819 or (202) 452–3102.

- **Mail:** Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW., (between 18th and 19th Street NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:** You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Agency Web site:** <http://www.FDIC.gov/regulations/laws/federal/propose.html>.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

- **Email:** [comments@FDIC.gov](mailto:comments@FDIC.gov).

**Instructions:** Comments submitted must include "FDIC" and "RIN: 3064-AE44." Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

**OCC:** Christopher McBride, Group Leader, (202) 649-6402, James Weinberger, Technical Expert, (202) 649-5213, or Ang Middleton, Bank Examiner (Risk Specialist), (202) 649-7138, Treasury & Market Risk Policy; Thomas Fursa, Bank Examiner (Capital Markets Lead Expert), (917) 344-4421; Patrick T. Tierney, Assistant Director, Carl Kaminski, Special Counsel, or Henry Barkhausen, Senior Attorney, Legislative and Regulatory Activities Division, (202) 649-5490; or Tena Alexander, Acting Assistant Director, or David Stankiewicz, Counsel, Securities and Corporate Practices Division, (202) 649-5510; for persons who are deaf or hard of hearing, TTY, (202) 649-5597; Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**Board:** Gwendolyn Collins, Assistant Director, (202) 912-4311, Peter Clifford, Manager, (202) 785-6057, Adam S. Trost, Senior Supervisory Financial Analyst, (202) 452-3814, J. Kevin Littler, Senior Supervisory Financial Analyst, (202) 475-6677, or Peter

Goodrich, Risk Management Specialist, (202) 872-4997, Risk Policy, Division of Banking Supervision and Regulation; Benjamin W. McDonough, Special Counsel, (202) 452-2036, Dafina Stewart, Counsel, (202) 452-3876, Adam Cohen, Counsel, (202) 912-4658, or Brian Chernoff, Senior Attorney, (202) 452-2952, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

**FDIC:** Bobby R. Bean, Associate Director, (202) 898-6705, Eric W. Schatten, Capital Markets Policy Analyst, (202) 898-7063, Andrew D. Carayiannis, Capital Markets Policy Analyst, (202) 898-6692, Nana Ofori-Ansah, Capital Markets Policy Analyst, (202) 898-3572, Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; Gregory S. Feder, Counsel, (202) 898-8724, Andrew B. Williams, II, Counsel, (202) 898-3591, or Suzanne J. Dawley, Senior Attorney, (202) 898-6509, Supervision and Corporate Operations Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925-4618.

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#### I. Introduction

##### A. Summary of the Proposed Rule

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are inviting comment on a proposed rule (proposed rule) that would implement a net stable funding ratio (NSFR) requirement. The proposed NSFR requirement is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. By requiring banking organizations to maintain a stable funding profile, the proposed rule would reduce liquidity risk in the financial sector and provide for a safer and more resilient financial system.

Maturity and liquidity transformation are important components of the financial intermediation performed by banking organizations, which contributes to efficient resource allocation and credit creation in the United States. These activities entail a certain inherent level of funding instability, however. Consequently, the risks of these activities must be well-managed by banking organizations in order to help ensure their ongoing

ability to provide financial intermediation.

The proposed rule would establish a quantitative metric, the NSFR, to measure the stability of a covered company's funding profile.<sup>1</sup> Under the requirement, a covered company would calculate a weighted measure of the stability of its equity and liabilities over a one-year time horizon (its available stable funding amount or ASF amount). The proposed rule would require a covered company's ASF amount to be greater than or equal to a minimum level of stable funding (its required stable funding amount or RSF amount) calculated based on the liquidity characteristics of its assets, derivative exposures, and commitments over the same one-year time horizon. A covered company's NSFR would measure the ratio of its ASF amount to its RSF amount. Sections II.C and II.D of this **SUPPLEMENTARY INFORMATION** section describe in more detail the calculation of a covered company's ASF and RSF amounts, respectively.

The proposed rule would require a covered company to maintain a minimum NSFR of 1.0. Given their size, complexity, scope of activities, and interconnectedness, covered companies with an NSFR of less than 1.0 face an increased likelihood of liquidity stress in the event of demands for repayment of their short- and medium-term liabilities, which may also contribute to financial instability in the broader economy. The NSFR would help to identify a covered company that has a heightened liquidity risk profile and poses greater risk to U.S. financial stability. It would allow the agencies, before a liquidity crisis, to require the covered company to take steps to improve its liquidity and resilience, as discussed in section I.C.1 of this **Supplementary Information** section.

As part of this proposal, the Board is also inviting comment on a modified NSFR requirement for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have \$50 billion or more, but less than \$250 billion, in total consolidated assets and less than \$10 billion in total on-balance sheet foreign exposure (each, a modified NSFR holding company). This modified NSFR

<sup>1</sup> As discussed in section I.C.2 of this **SUPPLEMENTARY INFORMATION** section, covered companies are bank holding companies, certain savings and loan holding companies, and depository institutions, in each case with \$250 billion or more in total consolidated assets or \$10 billion or more in total on-balance sheet foreign exposure, as well as any consolidated subsidiary depository institution with total consolidated assets of \$10 billion or more.

requirement is described in section IV of this **SUPPLEMENTARY INFORMATION** section.

The proposed rule also includes public disclosure requirements for depository institution holding companies that would be subject to the proposed NSFR requirement or modified NSFR requirement.

### B. Background

The 2007–2009 financial crisis exposed the vulnerability of large and internationally active banking organizations to liquidity shocks. For example, before the crisis, many banking organizations lacked robust liquidity risk management metrics and relied excessively on short-term wholesale funding to support less liquid assets.<sup>2</sup> In addition, firms did not sufficiently plan for longer-term liquidity risks, and the control functions of banking organizations failed to challenge such decisions or sufficiently plan for possible disruptions to the organization's regular sources of funding. Instead, the control functions reacted only after funding shortfalls arose.

During the crisis, many banking organizations experienced severe contractions in the supply of funding. As access to funding became limited and asset prices fell, many banking organizations faced the possibility of default and failure. The threat this presented to the financial system caused governments and central banks around the world to provide significant levels of support to these institutions to maintain global financial stability. This experience demonstrated a need to address these shortcomings at banking organizations and to implement a more rigorous approach to identifying, measuring, monitoring, and limiting reliance by banking organizations on less stable sources of funding.<sup>3</sup>

Since the 2007–2009 financial crisis, the agencies have developed quantitative and qualitative standards focused on strengthening banking organizations' overall risk management, liquidity positions, and liquidity risk management. By improving banking organizations' ability to absorb shocks arising from financial and economic stress, these measures, in turn, promote a more resilient banking sector and financial system. This work has taken into account ongoing supervisory reviews and analysis in the United

<sup>2</sup> See Senior Supervisors Group, Risk Management Lessons from the Global Banking Crisis of 2008, (October 21, 2009), available at [https://www.newyorkfed.org/medialibrary/media/newsevents/news/banking/2009/SSG\\_report.pdf](https://www.newyorkfed.org/medialibrary/media/newsevents/news/banking/2009/SSG_report.pdf).

<sup>3</sup> See *id.*

States, as well as international discussions regarding appropriate liquidity standards.<sup>4</sup>

The agencies have implemented or proposed several measures to improve the liquidity positions and liquidity risk management of supervised banking organizations. First, the agencies adopted the liquidity coverage ratio (LCR) rule in September 2014,<sup>5</sup> which requires certain banking organizations to hold a minimum amount of high-quality liquid assets (HQLA) that can be readily converted into cash to meet net cash outflows over a 30-calendar-day period. Second, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>6</sup> (Dodd-Frank Act) and in consultation with the OCC and the FDIC, the Board adopted general risk management, liquidity risk management, and stress testing requirements for bank holding companies with total consolidated assets of \$50 billion or more in Regulation YY.<sup>7</sup> Third, the Board adopted a risk-based capital surcharge for global systemically important banking organizations (GSIBs) in the United States that is calculated based on a bank holding company's risk profile, including its reliance on short-term wholesale funding (GSIB surcharge rule).<sup>8</sup> Fourth, the Board recently proposed a long-term debt requirement and a total loss-absorbing capacity (TLAC) requirement that would apply to U.S. GSIBs and the U.S. operations of certain foreign GSIBs, and would require these firms and operations to have sufficient amounts of equity and eligible long-term debt to improve their ability to absorb significant losses and withstand financial stress, which would also improve the funding profile of these firms.<sup>9</sup>

<sup>4</sup> See, e.g., Principles for Sound Liquidity Risk Management and Supervision (September 2008), available at <http://www.bis.org/publ/bcb144.htm>; Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (January 2013), available at <http://www.bis.org/publ/bcb238.pdf>; Basel III: the net stable funding ratio (October 2014), available at <http://www.bis.org/bcb/publ/d295.pdf>.

<sup>5</sup> "Liquidity Coverage Ratio: Liquidity Risk Measurement Standards," 79 FR 61440 (October 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

<sup>6</sup> Public Law 111–203, 124 Stat. 1376, 1423–1432 (2010) § 165, codified at 12 U.S.C. 5365.

<sup>7</sup> See "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations," 79 FR 17240 (March 27, 2014), codified at 12 CFR part 252.

<sup>8</sup> "Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies," 80 FR 49082 (August 14, 2015).

<sup>9</sup> "Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of

The agencies have also focused specifically on the importance of banking organizations maintaining a stable funding profile. The agencies have issued supervisory guidance to address the risks arising from excessive reliance on unstable funding, such as short-term wholesale funding, both before and after the 2007–2009 financial crisis, and have incorporated such guidance in their supervisory ratings. For example, in 1990, the Board issued guidance that cautioned against excessive reliance on the use of short-term debt,<sup>10</sup> and in 2010, the agencies issued interagency guidance emphasizing the importance of diversifying funding sources and tenors.<sup>11</sup> In addition, there are statutory restrictions under the Federal Deposit Insurance Act (FDI Act) on the ability of an insured depository institution that is less than well capitalized to accept or renew brokered deposits, which can be a less stable form of funding than other retail deposits.<sup>12</sup>

The proposed rule would complement existing law and regulations and the proposed TLAC and long-term debt requirements, as well as existing supervisory guidance.<sup>13</sup> For example, it would build on the LCR rule's goal of improving resilience to short-term economic and financial stress by focusing on the stability of a covered company's structural funding profile over a longer, one-year time horizon. It would also address liquidity risks that are not readily mitigated by the agencies' capital requirements. In a

financial crisis, financial institutions without stable funding sources may be forced by creditors to monetize assets at the same time, driving down asset prices. The proposed rule would mitigate such risks by directly increasing the funding resilience of individual covered companies, thereby indirectly increasing the overall resilience of the U.S. financial system.

The proposed NSFR requirement would also provide a standardized means for measuring the stability of a covered company's funding structure, promote greater comparability of funding structures across covered companies and foreign firms subject to similar requirements, and improve transparency and increase market discipline through the proposed rule's public disclosure requirements.

The proposed rule would be consistent with the net stable funding ratio standard published by the Basel Committee on Banking Supervision (BCBS)<sup>14</sup> in October 2014 (Basel III NSFR)<sup>15</sup> and the net stable funding ratio disclosure standards published by the BCBS in June 2015.<sup>16</sup> The Basel III NSFR is a longer-term structural funding metric that complements the BCBS's short-term liquidity risk metric, the BCBS liquidity coverage ratio standard (Basel III LCR).<sup>17</sup> In developing the Basel III NSFR, the agencies and their international counterparts in the BCBS considered a number of possible structural funding metrics. For example, the BCBS considered the traditional "cash capital" measure, which compares a firm's amount of long-term and stable sources of funding to the amount of its illiquid assets. The BCBS found that this cash capital measure failed to account for material funding risks, such as those related to off-balance sheet commitments and certain on-balance sheet short-term funding and lending mismatches. The Basel III NSFR incorporates consideration of these and

other funding risks, as would the proposed rule's NSFR requirement.

### C. Overview of the Proposed Rule

#### 1. NSFR Calculation, Shortfall Remediation, and Disclosure Requirements

The proposed rule would require a covered company to maintain an amount of ASF, or available stable funding, that is no less than the amount of its RSF, or required stable funding, on an ongoing basis. A covered company's NSFR would be expressed as a ratio of its ASF amount (the numerator of the ratio) to its RSF amount (the denominator of the ratio). A covered company's ASF amount would be a weighted measure of the stability of the company's funding over a one-year time horizon. A covered company would calculate its ASF amount by applying standardized weightings (ASF factors) to its equity and liabilities based on their expected stability. Similarly, a covered company would calculate its RSF amount by applying standardized weightings (RSF factors) to its assets, derivative exposures, and commitments based on their liquidity characteristics.<sup>18</sup> These characteristics would include credit quality, tenor, encumbrances, counterparty type, and characteristics of the market in which an asset trades, as applicable.

As noted above, the proposed rule would require a covered company to maintain, on a consolidated basis, an NSFR equal to or greater than 1.0. The proposed rule would require a covered company to take several steps if its NSFR fell below 1.0, as discussed in more detail in section III of this **SUPPLEMENTARY INFORMATION** section. In particular, a covered company would be required to notify its appropriate Federal banking agency of the shortfall no later than 10 business days (or such other period as the appropriate Federal banking agency may require by written notice) following the date that any event has occurred that would cause or has caused the covered company's NSFR to fall below the minimum requirement. In addition, a covered company would be required to submit to its appropriate Federal banking agency a plan to remediate its NSFR shortfall. These procedures would enable supervisors to monitor and respond appropriately to the particular circumstances that give rise to any deficiency in a covered company's funding profile. Given the range of possible reasons, both

Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies," 80 FR 74926 (November 20, 2015).

<sup>10</sup> See Supervision and Regulation Letter 90–20 (June 22, 1990), available at <http://www.federalreserve.gov/boarddocs/srletters/1990/sr9020.htm>, superseded by OCC, Board, FDIC, Office of Thrift Supervision, and National Credit Union Administration, "Interagency Policy Statement on Funding and Liquidity Risk Management," 75 FR 13656 (March 22, 2010) (Interagency 2010 Policy Statement on Funding and Liquidity Risk Management); and Supervision and Regulation Letter 96–38 (December 27, 1996), available at <http://www.federalreserve.gov/boarddocs/srletters/1996/sr9638.htm>.

<sup>11</sup> See Interagency 2010 Policy Statement on Funding and Liquidity Risk Management.

<sup>12</sup> See 12 U.S.C. 1831f(a).

<sup>13</sup> See, e.g., Interagency 2010 Policy Statement on Funding and Liquidity Risk Management; Supervision and Regulation Letter 12–17 (December 12, 2012), available at <http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm>; Interagency Guidance on Funds Transfer Pricing Related to Funding and Contingent Liquidity Risks (March 1, 2016), available at <http://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-7.html> (OCC), <http://www.federalreserve.gov/bankinforeg/srletters/sr1603a1.pdf> (Board), and <https://www.fdic.gov/news/news/financial/2016/fil16012.pdf> (FDIC).

<sup>14</sup> The BCBS is a committee of banking supervisory authorities that was established by the central bank governors of the G10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at <http://www.bis.org>.

<sup>15</sup> See *supra* note 4.

<sup>16</sup> "Net Stable Funding Ratio disclosure standards" (June 2015), available at <http://www.bis.org/bcbs/publ/d324.pdf> (Basel III NSFR Disclosure Standards).

<sup>17</sup> See *supra* note 4.

<sup>18</sup> ASF factors are described in section II.C, RSF factors are described in section II.D, and the derivatives RSF amount is described in section II.E of this Supplementary Information section.

idiosyncratic and systemic, for a covered company having an NSFR below 1.0, the proposed rule would establish a framework that would allow for flexible supervisory responses. The agencies expect circumstances where a covered company has an NSFR shortfall to arise only rarely.

Nothing in the proposed rule would limit the authority of the agencies under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

The proposed rule would require a covered company that is a depository institution holding company to publicly disclose, each calendar quarter, its NSFR and NSFR components in a standardized tabular format and to discuss certain qualitative features of its NSFR calculation. These disclosures, which are described in further detail in section V of this Supplementary Information section, would enable market participants to assess and compare the liquidity profiles of covered companies and non-U.S. banking organizations.

The proposed NSFR requirement would take effect on January 1, 2018.

## 2. Scope of Application of the Proposed Rule

The proposed NSFR requirement would apply to the same large and internationally active banking organizations that are subject to the LCR rule: (1) Bank holding companies, savings and loan holding companies without significant commercial or insurance operations, and depository institutions that, in each case, have \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure,<sup>19</sup> and (2) depository institutions with \$10 billion or more in total consolidated assets that are consolidated subsidiaries of such bank holding companies and savings and loan holding companies.

The proposed rule would apply to banking organizations that tend to have larger and more complex liquidity risk profiles than smaller and less internationally active banking organizations. While banking organizations of any size can face

threats to their safety and soundness based on an unstable funding profile, covered companies' scale, scope, and complexity require heightened measures to manage their liquidity risk. In addition, covered companies with total consolidated assets of \$250 billion or more can pose greater risks to U.S. financial stability than smaller banking organizations because of their size, the scale and breadth of their activities, and their interconnectedness with the financial sector. Consequently, threats to the availability of funding to larger firms pose greater risks to the financial system and economy. Likewise, the foreign exposure threshold identifies firms with a significant international presence, which may also present risks to financial stability for similar reasons. By promoting stable funding profiles for large, interconnected institutions, the proposed rule would strengthen the safety and soundness of covered companies and promote a more resilient U.S. financial system and global financial system.

The proposed rule would also apply the NSFR requirement to depository institutions that are the consolidated subsidiaries of covered companies and that have \$10 billion or more in total consolidated assets.<sup>20</sup> These large depository institution subsidiaries can play a significant role in covered companies' funding structures and operations, and present a larger exposure to the FDIC's Deposit Insurance Fund than smaller insured institutions because of the greater volume of their deposit-taking and lending activities. To reduce the potential impacts of a liquidity event on the safety and soundness of such large depository institution subsidiaries, the proposed rule would require that such

<sup>20</sup> Pursuant to the International Banking Act (IBA), 12 U.S.C. 3101 *et seq.*, and OCC regulation, 12 CFR 28.13(a)(1), a Federal branch or agency regulated and supervised by the OCC has the same rights and responsibilities as a national bank operating at the same location. Thus, as a general matter, Federal branches and agencies are subject to the same laws as national banks. The IBA and the OCC regulation state, however, that this general standard does not apply when the IBA or other applicable law provides other specific standards for Federal branches or agencies or when the OCC determines that the general standard should not apply. This proposal would not apply to Federal branches and agencies of foreign banks operating in the United States. At this time, these entities have assets that are substantially below the proposed \$250 billion asset threshold for applying the proposed liquidity standard to large and internationally active banking organizations. As part of its supervisory program for Federal branches and agencies of foreign banks, the OCC reviews liquidity risks and takes appropriate action to limit such risks in those entities.

entities independently have sufficient stable funding.

Consistent with the LCR rule, the proposed rule would not apply to depository institution holding companies with large insurance operations or savings and loan holding companies with large commercial operations because their business models and liquidity risks differ significantly from those of other covered companies.<sup>21</sup> The proposed rule would also not apply to nonbank financial companies designated by the Financial Stability Oversight Council (Council) for Board supervision (nonbank financial companies).<sup>22</sup> However, the Board may apply an NSFR requirement and disclosure requirements to these companies in the future by separate rule or order. The Board would assess the business model, capital structure, and risk profile of a nonbank financial company to determine whether, and if so how, the proposed NSFR requirement should apply to a nonbank financial company or to a category of nonbank financial companies, as appropriate. The Board would provide nonbank financial companies, either collectively or individually, with notice and opportunity to comment prior to applying an NSFR requirement.

The proposed rule would also not apply to the U.S. operations of foreign banking organizations or intermediate holding companies required to be formed under the Board's Regulation YY that do not otherwise meet the requirements to be a covered company (for example, as a U.S. bank holding company with more than \$250 billion in total consolidated assets). The Board anticipates implementing an NSFR requirement through a future, separate rulemaking for the U.S. operations of foreign banking organizations with \$50 billion or more in combined U.S. assets.

The proposed rule would not apply to a "bridge financial company" or a subsidiary of a "bridge financial

<sup>21</sup> The proposed rule would not apply to: (i) A grandfathered unitary savings and loan holding company (as described in section 10(c)(9)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(9)(A)) that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)); (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies. For purposes of (iii), the company must calculate its total consolidated assets in accordance with GAAP or estimate its total consolidated assets, subject to review and adjustment by the Board.

<sup>22</sup> See 12 U.S.C. 5323.

<sup>19</sup> Total consolidated assets for the purposes of the proposed rule would be as reported on a banking organization's most recent year-end Consolidated Reports of Condition and Income or Consolidated Financial Statements for Bank Holding Companies, Federal Reserve Form FR Y-9C. Foreign exposure data would be calculated in accordance with the Federal Financial Institutions Examination Council 009 Country Exposure Report.

company,” a “new depository institution,” or a “bridge depository institution,” as those terms are used in the FDI Act in the resolution context.<sup>23</sup> Requiring these entities to maintain a minimum NSFR may constrain the FDIC’s ability to resolve a depository institution or its affiliates in an orderly manner.

The Board is also proposing to implement a modified version of the NSFR requirement for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have \$50 billion or more, but less than \$250 billion, in total consolidated assets and less than \$10 billion in total on-balance sheet foreign exposure. Modified NSFR holding companies are large financial companies that have sizable operations in banking, brokerage, or other financial activities, as discussed in section IV of this **SUPPLEMENTARY INFORMATION** section. Although they generally are smaller in size, less complex in structure, and less reliant on riskier forms of funding than covered companies, these modified NSFR holding companies are nevertheless important providers of credit in the U.S. economy. The Board is therefore proposing a form of the NSFR requirement that is tailored to the less risky liquidity profile of these companies.

The agencies would each reserve the authority to apply the proposed rule to additional companies if the application of the NSFR requirement would be appropriate in light of a company’s asset size, complexity, risk profile, scope of operations, affiliation with covered companies, or risk to the financial system. A covered company would remain subject to the proposed NSFR requirement until its appropriate Federal banking agency determines in writing that application of the rule to the company is not appropriate in light of these same factors. The agencies would also reserve the authority to require a covered company to maintain an ASF amount greater than otherwise required under the proposed rule, or to take any other measure to improve the covered company’s funding profile, if the appropriate Federal banking agency determines that the covered company’s NSFR requirement under the proposed rule is not commensurate with its liquidity risks.

A company that becomes subject to the proposed rule pursuant to § \_\_\_\_\_.1(b)(1) after the effective date would be required to comply with the proposed NSFR requirement beginning

on April 1 of the following year. For example, if a bank holding company becomes subject to the proposed rule on December 31, 2020, because it reports on its year-end Consolidated Financial Statements for Holding Companies (FR Y–9C) that it has total consolidated assets of \$251 billion, that bank holding company would be required to begin complying with the proposed NSFR requirement on April 1, 2021.

*Question 1: Would the proposed one-quarter transition period provide sufficient time for a covered company to make any needed adjustments to its systems to come into compliance with the proposed rule’s requirements? What alternative transition period, if any, would be more appropriate and why? What would be the benefits of providing covered companies with a longer or shorter transition period?*

#### D. Definitions

The proposed rule would share definitions with the LCR rule and would be adopted and codified in the same part of the Code of Federal Regulations as the LCR rule for each of the agencies.<sup>24</sup> In connection with the proposed rule, the agencies are proposing to revise certain of the existing definitions in § \_\_\_\_\_.3 of the LCR rule and to add certain new definitions. This part of the **SUPPLEMENTARY INFORMATION** section discusses these definitions.

##### 1. Revisions to Existing Definitions

The proposed rule would amend the existing definition of “calculation date” in § \_\_\_\_\_.3 of the LCR rule to define “calculation date” for purposes of the NSFR requirement as any date on which a covered company calculates its NSFR under § \_\_\_\_\_.100.

The existing definition of “collateralized deposit” in § \_\_\_\_\_.3 of the LCR rule includes those fiduciary deposits that a covered company is required by federal law, as applicable to national banks and Federal savings associations, to collateralize using its own assets. The LCR rule excludes collateralized deposits from the set of secured funding transactions that a covered company is required to unwind in its calculation of adjusted liquid asset amounts under § \_\_\_\_\_.21 of the LCR rule. To provide consistent treatment for covered companies subject to state laws that require collateralization of deposits, the proposed rule would amend the definition of “collateralized deposit” to include those deposits collateralized as required under state law, as applicable

to state member and nonmember banks and state savings associations. In addition, the proposed rule would amend the definition of “collateralized deposit” to include those fiduciary deposits held at a covered company for which a depository institution affiliate of the covered company is a fiduciary and that the covered company has collateralized pursuant to 12 CFR 9.10(c) (for national banks) or 12 CFR 150.310 (for Federal savings associations). Although a covered company may not be required under applicable law to collateralize fiduciary deposits held at an affiliated depository institution, if the covered company decides to collateralize those deposits, then they should also be excluded from the unwind of applicable secured funding transactions.

The existing definition of “committed” in § \_\_\_\_\_.3 of the LCR rule provides the criteria under which a credit facility or liquidity facility would be considered committed for purposes of the LCR rule, and thus receive an outflow rate as specified in § \_\_\_\_\_.32(e). The definition provides that a credit facility or liquidity facility is committed if (1) the covered company may not refuse to extend credit or funding under the facility or (2) the covered company may refuse to extend credit under the facility (to the extent permitted under applicable law) only upon the satisfaction or occurrence of one or more specified conditions not including change in financial condition of the borrower, customary notice, or administrative conditions.

To more clearly capture the intended meaning of “committed,” the proposed rule would amend the definition to state that a credit or liquidity facility is committed if it is not unconditionally cancelable under the terms of the facility. The proposed rule would define “unconditionally cancelable,” consistent with the agencies’ risk-based capital rules, to mean that a covered company may refuse to extend credit under the facility at any time, including without cause (to the extent permitted under applicable law).<sup>25</sup> For example, a credit or liquidity facility that only permits a covered company to refuse to extend credit upon the occurrence of a specified event (such as a material adverse change) would not be considered unconditionally cancelable, and therefore the facility would be considered committed under the proposed definition. Conversely, a credit or liquidity facility that the covered company may cancel without

<sup>23</sup> See 12 U.S.C. 1813(i) and 12 U.S.C. 5381(a)(3).

<sup>24</sup> 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

<sup>25</sup> See 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), and 12 CFR 324.2 (FDIC).



cause would not be considered committed because the covered company may refuse to extend credit under the facility at any time. For example, home equity lines of credit and credit cards lines that are cancelable without cause (to the extent permitted under applicable law), as is generally the case, would not be considered committed under the proposed amendment to the definition.

The proposed rule would revise the definition of “covered nonbank company” to clarify that if the Board requires a company designated by the Council for Board supervision to comply with the LCR rule or the proposed rule, it will do so through a rulemaking that is separate from the LCR rule and this proposed rule or by issuing an order.

The existing definition of “operational deposit” provides the parameters under which funding of a covered company would be considered an operational deposit for purposes of the LCR rule, meaning that the funding amount is necessary for the provision of operational services, as defined in § \_\_\_\_\_.3 of the LCR rule. While the LCR rule defines the term “operational deposit” to refer only to funding of a company, the proposed rule would use the term to refer to both funding and lending. Accordingly, the proposed rule would amend the definition of “operational deposit” to include both deposits received by the covered company in connection with operational services provided by the covered company and deposits placed by the covered company in connection with operational services received by the covered company. The proposed rule would also amend the definition of “operational deposit” to clarify that only deposits, as defined in § \_\_\_\_\_.3 of the LCR rule, can qualify as operational deposits. Other forms of funding from, or provided to, wholesale customers or counterparties (e.g., longer-term unsecured funding) would not qualify as operational deposits. Because operational deposits are limited to accounts that facilitate short-term transactional cash flows associated with operational services, operational deposits also should only have short-term maturities, falling within the proposed rule’s less-than-6-month maturity category and generally within the LCR rule’s 30 calendar-day period. Notwithstanding the proposed revisions to this definition, the treatment of operational deposits under §§ \_\_\_\_\_.32 and \_\_\_\_\_.33 of the LCR rule would remain the same.

Finally, the proposed rule would revise the definitions of “secured

funding transaction” and “secured lending transaction” to clarify that the obligations referenced in those definitions must be secured by a lien on securities or loans (rather than secured by a lien on other assets), that such transactions are only those with wholesale customers or counterparties, and that securities issued or owned by a covered company do not constitute secured funding or lending transactions of the covered company. The treatment of secured transactions in the LCR rule, which adjusts inflow and outflow rates based on the relative liquidity of the collateral, would be appropriate only for transactions where the collateral is securities or loans because these forms of collateral are generally more liquid than others. For example, inflows in a stressed environment associated with lending secured by collateral types that are not generally traded in liquid markets, such as property, plant, and equipment, are typically based on the nature of the counterparty rather than the collateral, thus making the liquidity risk associated with such arrangements more akin to that of unsecured lending. Said another way, lending secured by property, plant, and equipment should not receive a 100 percent inflow rate; rather, the inflow should depend on the characteristics of the borrower, which more accurately reflects the likelihood a covered company will roll over such a loan during a period of significant stress. By the same reasoning, the definition of “unsecured wholesale funding” would be revised to include transactions that are not secured by securities or loans, but that may be secured by other forms of collateral (such as property, plant, and equipment), which are generally less liquid.

By limiting the definitions of “secured funding transaction” and “secured lending transaction” to those transactions with wholesale customers or counterparties, the proposed rule would clarify that funding and lending transactions with a retail customer or counterparty, even if collateralized, are subject to the retail treatment under the LCR rule and the proposed rule. For the same reasons as discussed above, the inflows and outflows associated with funding provided by a retail customer or counterparty, even if collateralized, are more dependent on the retail nature of the counterparty and not any collateral that secures the funding. Lastly, by excluding securities from these definitions, the proposed rule would clarify that securities issued by a covered company or owned by a covered company are treated based on

the provisions applicable to securities in the LCR rule and the proposed rule. For example, securities issued through conduit structures that are consolidated on a covered company’s balance sheet would not be considered secured funding transactions but rather, would be considered securities issued by the covered company.

*Question 2: What modifications, if any, should be made to the proposed revised definitions of “calculation date,” “collateralized deposits,” “committed,” “covered nonbank company,” “operational deposit,” “secured funding transaction,” “secured lending transaction,” and “unsecured wholesale funding” and why? What, if any, are the unintended consequences to the operation of the LCR rule and the proposed rule that may result from the proposed revisions to these definitions?*

*Question 3: Given that the terms “unsecured wholesale funding” and, as discussed below, “unsecured wholesale lending” would include funding and lending that is secured by certain less liquid forms of collateral, would it be clearer to use different terminology for these terms and “secured funding transaction” and “secured lending transaction?”*

*Question 4: For the definitions of “secured funding transaction” and “secured lending transaction,” what, if any, assets beyond securities and loans should be included as qualifying collateral because they are sufficiently liquid to be relevant in assigning inflow and outflow rates to such transactions under the LCR rule? What, if any, securities or loans should be excluded from the qualifying collateral because they are not sufficiently liquid and why?*

*Question 5: Is the term “unsecured wholesale lending” appropriately defined by reference to a liability or obligation of a wholesale customer or counterparty? If not, in what ways should the definition be modified and why? What specific assets, if any, should be, but are not currently, included or excluded from the definition of “unsecured wholesale lending” for purposes of the NSFR? Likewise, what specific liabilities, if any, should be, but are not currently, included or excluded from the definition of “unsecured wholesale funding” for purposes of the NSFR? For example, what assets or liabilities within these terms, if any, such as a receivable based on an insurance claim or a payable for services rendered by a wholesale service provider, should be assigned different RSF and ASF*



factors<sup>26</sup> than other assets or liabilities within these terms?

*Question 6: Given that the definitions in the LCR rule would apply to the proposed rule and the Board's GSIB surcharge rule, are there other definitions or terms, in addition to those noted above, that the agencies should amend and why? For example, should the definition of "liquid and readily-marketable" be amended, including any of its criteria, to provide more clarity or to ease operational burden, given its implication on the determination of HQLA and HQLA treatment under the proposed NSFR requirement, and if so, why? Commenters are invited to provide suggested language to amend any definitions.*

## 2. New Definitions

The proposed rule would add several new defined terms. The proposed rule would define "carrying value" to mean the value on a covered company's balance sheet of an asset, NSFR regulatory capital element, or NSFR liability, as determined in accordance with U.S. generally accepted accounting principles (GAAP). The proposed rule includes this definition because RSF and ASF factors generally would be applied to the carrying value of a covered company's assets, NSFR regulatory capital elements, and NSFR liabilities. By relying on values based on GAAP, the proposed rule would ensure consistency in the application of the NSFR requirement across covered companies and limit operational burdens to comply with the proposed rule because covered companies already prepare financial reports in accordance with GAAP. This definition would be consistent with the definition used in the agencies' regulatory capital rules.<sup>27</sup>

The proposed rule would define "encumbered" using the criteria for an unencumbered asset in § \_\_\_\_.22(b) of the LCR rule. The proposed definition does not include any substantive changes to the concept of encumbrance included in the LCR rule. The proposed rule would also use the defined term in place of the criteria enumerated in § \_\_\_\_.22(b) of the LCR rule. The addition of this definition is necessary to apply the concept of encumbrance in § \_\_\_\_.106(c) and (d) of the proposed rule, as discussed below.

The proposed rule would define two new related terms, "NSFR regulatory capital element" and "NSFR liability." The proposed rule would define "NSFR

regulatory capital element" to mean any capital element included in a covered company's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, as those terms are defined in the agencies' risk-based capital rules, prior to the application of capital adjustments or deductions set forth in the agencies' risk-based capital rules.<sup>28</sup> This definition would exclude any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § \_\_\_\_.22 of the agencies' risk-based capital rules or that is being phased out of tier 1 or tier 2 capital pursuant to subpart G of the agencies' risk-based capital rules.<sup>29</sup> The term "NSFR regulatory capital element" would include both equity and liabilities under GAAP that meet the requirements of the definition. This definition of "NSFR regulatory capital element" would generally align with the definition of regulatory capital in the agencies' risk-based capital rules, but would not include capital deductions and adjustments.<sup>30</sup> Because the proposed rule would require assets that are capital deductions (such as goodwill) to be fully supported by stable funding, as discussed in section II.D.3.a.viii of this **SUPPLEMENTARY INFORMATION** section below, deducting the value of these assets from a covered company's NSFR regulatory capital elements would understate a company's NSFR.

The proposed rule would define "NSFR liability" to mean any liability or equity reported on a covered company's balance sheet that is not an NSFR regulatory capital element. The term "NSFR liability" primarily refers to balance sheet liabilities but may include equity because some equity may not qualify as an NSFR regulatory capital element. The definitions of "NSFR liability" and "NSFR regulatory capital element," taken together, should capture the entirety of the liability and equity side of a covered company's balance sheet.

The proposed rule would define "QMNA netting set" to refer to a group of derivative transactions with a single

counterparty that is subject to a qualifying master netting agreement,<sup>31</sup> and is netted under the qualifying master netting agreement.<sup>32</sup> QMNA netting sets would include, in addition to non-cleared derivative transactions, a group of cleared derivative transactions (that is, a group of derivative transactions that have been entered into with, or accepted by, a central counterparty (CCP)) if the applicable governing rules for the group of cleared derivative transactions meet the definition of a qualifying master netting agreement. The proposed rule would use the term "QMNA netting set" in the calculation of a covered company's stable funding requirement attributable to its derivative transactions, as discussed in section II.E of this **SUPPLEMENTARY INFORMATION** section.

The proposed rule would define "unsecured wholesale lending" as a liability or general obligation of a wholesale customer or counterparty to the covered company that is not a secured lending transaction. Although the term "unsecured wholesale funding" is defined in the LCR rule, "unsecured wholesale lending" is not. The proposed rule's NSFR requirement would require a covered company to hold stable funding against unsecured wholesale lending, so a definition of this term is included in the proposed rule.

*Question 7: In what ways, if any, should the agencies modify the newly proposed definitions of "carrying value," "encumbered," "NSFR liability," "NSFR regulatory capital element," "QMNA netting set," and "unsecured wholesale lending" and why?*

*Question 8: What other terms, if any, should the agencies define and why?*

*Question 9: In the definition of "NSFR regulatory capital element," what adjustments to, or deductions from, regulatory capital, if any, should the agencies include in NSFR regulatory capital elements and why? For example, should the NSFR regulatory capital elements include adjustments or deductions for changes in the fair value of a liability due to a change in a*

<sup>28</sup> See 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

<sup>29</sup> Tier 2 capital instruments that have a remaining maturity of less than one year are not included in regulatory capital. See 12 CFR 3.20(d)(1)(iv) (OCC), 12 CFR 217.20(d)(1)(iv) (Board), and 12 CFR 324.20(d)(1)(iv) (FDIC); see also 12 CFR 3.300 (OCC), 12 CFR 217.300 (Board), and 12 CFR 324.300 (FDIC).

<sup>30</sup> The proposed definition of "NSFR regulatory capital element" would include allowances for loan and lease losses (ALLL) to the same extent as under the risk-based capital rules. See 12 CFR 3.20(d)(3) (OCC), 12 CFR 217.20(d)(3) (Board), and 12 CFR 324.20(d)(3) (FDIC).

<sup>31</sup> Each QMNA netting set must meet each of the conditions specified in the definition of "qualifying master netting agreement" under § \_\_\_\_.3 of the LCR rule and the operational requirements under § \_\_\_\_.4(a) of the LCR rule.

<sup>32</sup> A qualifying master netting agreement may identify a single QMNA netting set (for which the agreement creates a single net payment obligation and for which collection and posting of margin applies on an aggregate net basis) or it may establish multiple QMNA netting sets, each of which would be separate from and exclusive of any other QMNA netting set or derivative transaction covered by the qualifying master netting agreement.

<sup>26</sup> See section II.D and II.C of this **SUPPLEMENTARY INFORMATION** section for discussion of assignment of RSF and ASF factors, respectively.

<sup>27</sup> See 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), and 12 CFR 324.2 (FDIC).

covered company's own credit risk? If so, why?

#### E. Effective Dates

As noted, the proposed NSFR requirement would be effective as of January 1, 2018. This effective date should provide covered companies with sufficient time to adjust to the requirements of the proposal, including to make any changes to ensure their assets, derivative exposures, and commitments are stably funded and to adjust information systems to calculate and monitor their NSFR. The NSFR is a balance-sheet metric, and its calculations would generally be based on the carrying value, as determined under GAAP, of a covered company's assets, liabilities, and equity. As a result, covered companies should be able to leverage current financial reporting systems to comply with the NSFR requirement.

The revisions to definitions currently used in the LCR rule and that would be used in the proposed rule, as discussed in section I.D.1 of this **SUPPLEMENTARY INFORMATION** section, would become effective for purposes of the LCR rule at the beginning of the calendar quarter after finalization of the proposed rule, instead of on January 1, 2018. Because these revisions would enhance the clarity of certain definitions used in the LCR rule, the agencies are proposing that they become effective sooner than the proposed NSFR effective date.

*Question 10: Would the proposed effective date provide sufficient time for covered companies to make any needed adjustments to their systems for compliance with the proposed rule's requirements and to ensure that their assets, derivative exposures, and commitments are stably funded? What alternative effective date, if any, would be more appropriate for the proposed NSFR requirement and why? What would be the benefits of providing covered companies with a longer or shorter period of time to comply with the proposed rule?*

*Question 11: What alternative effective date, if any, would be more appropriate for the proposed revisions to the existing definitions used in the LCR rule, and why?*

## II. Minimum Net Stable Funding Ratio

As noted above, a covered company would calculate its NSFR by dividing its ASF amount by its RSF amount. The proposed rule would require a covered company to maintain an NSFR equal to or greater than 1.0 on an ongoing basis. As a result, while the proposed rule would require a covered company that is a depository institution holding

company to calculate its NSFR on a quarterly basis in order to comply with the proposed rule's public disclosure requirements (as discussed in section V of this **SUPPLEMENTARY INFORMATION** section), a covered company would need to monitor its funding profile on an ongoing basis to ensure compliance with the NSFR requirement. If a covered company's funding profile materially changes intra-quarter, the agencies expect the company to be able to calculate its NSFR to determine whether it remains compliant with the NSFR requirement, consistent with the notification requirements under § \_\_\_\_.110(a) and discussed in section III of this **SUPPLEMENTARY INFORMATION** section.

The following discussion describes the calculation of a covered company's ASF amount and RSF amount.

#### A. Rules of Construction

The proposed rule would include rules of construction in § \_\_\_\_.102 relating to how items recorded on a covered company's balance sheet would be reflected in the covered company's ASF and RSF amounts.

##### 1. Balance-Sheet Metric

As noted above, a covered company would generally determine its ASF and RSF amounts based on the carrying values of its assets, NSFR regulatory capital elements, and NSFR liabilities as determined under GAAP. Under GAAP, certain transactions and exposures are not recorded on the covered company's balance sheet. The proposed rule would include a rule of construction in § \_\_\_\_.102(a) specifying that, unless otherwise provided, a transaction or exposure that is not recorded on the balance sheet of a covered company would not be assigned an ASF or RSF factor and, conversely, a transaction or exposure that is recorded on the balance sheet of the covered company would be assigned an ASF or RSF factor. While the proposed rule would generally rely on balance sheet carrying values, it would differ in some cases, such as with respect to determination of a covered company's stable funding requirements relating to derivative transactions, as described in section II.E of this **SUPPLEMENTARY INFORMATION** section, and the undrawn amount of commitments, as described in section II.D.3 of this **SUPPLEMENTARY INFORMATION** section.

##### 2. Netting of Certain Transactions

The proposed rule would include a rule of construction in § \_\_\_\_.102(b) that describes the treatment of receivables and payables that are associated with

secured funding transactions, secured lending transactions, and asset exchanges with the same counterparty that the covered company has netted against each other. For purposes of determining the carrying value of these transactions, GAAP permits a covered company, when the relevant accounting criteria are met, to offset the gross value of receivables due from a counterparty under secured lending transactions by the amount of payments due to the same counterparty under secured funding transactions (GAAP offset treatment). The proposed rule would require a covered company to satisfy both these accounting criteria and the criteria applied in § \_\_\_\_.102(b) before it could treat the applicable receivables and payables on a net basis for the purposes of the NSFR requirement.

Section § \_\_\_\_.102(b) would apply the netting criteria specified in the agencies' supplementary leverage ratio rule (SLR rule).<sup>33</sup> These criteria require, first, that the offsetting transactions have the same explicit final settlement date under their governing agreements. Second, the criteria require that the right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding. Third, the criteria require that under the governing agreements, the counterparties intended to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where the transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of the transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

If a covered company entered into secured funding and secured lending transactions with the same counterparty and applied the GAAP offset treatment when recording the carrying value of these transactions, but the transactions did not meet the criteria in § \_\_\_\_.102(b), the covered company would be required to assign the appropriate RSF and ASF factors to the gross value of the receivables and payables associated with these

<sup>33</sup> 12 CFR 3.10(c)(4)(ii)(E)(1) through (3) (OCC), 12 CFR 217.10(c)(4)(ii)(E)(1) through (3) (Board), and 12 CFR 324.10(c)(4)(ii)(E)(1) through (3) (FDIC).

transactions, rather than to the net value. Thus, the gross value of these receivables or payables would be treated as if they were included on the balance sheet of the covered company. If the criteria in § \_\_\_\_ .102(b) are not met, the cash flows associated with the maturities of these secured lending and secured funding transactions may not align and, therefore, the proposed rule would treat these transactions on an individual basis when assigning them RSF and ASF factors. The proposed rule's incorporation of these netting criteria would also maintain consistency with covered companies' treatment of offset receivables and payables under the SLR rule.

### 3. Treatment of Securities Received in an Asset Exchange by a Securities Lender

The proposed rule would include a rule of construction in § \_\_\_\_ .102(c) specifying that when a covered company, acting as a securities lender, receives a security in an asset exchange and has not rehypothecated the security received, the covered company is not required to assign an RSF factor to the security it has received and is not permitted to assign an ASF factor to any liability to return the security. The requirements of § \_\_\_\_ .102(c), which would be consistent with the treatment of security-for-security transactions under the SLR rule,<sup>34</sup> are intended to neutralize differences across different accounting frameworks and maintain consistency across covered companies. Because the proposed rule would not require stable funding for the securities received, it would not treat the covered company's obligation to return these securities as stable funding and would not assign an ASF factor to this obligation. If, however, the covered company, acting as the securities lender, sells or rehypothecates the securities received, the proposed rule would require the covered company to assign the appropriate RSF factor or factors under § \_\_\_\_ .106 to the proceeds of the sale or, in the case of a pledge or rehypothecation, to the securities themselves if they remain on the covered company's balance sheet.<sup>35</sup>

<sup>34</sup> 12 CFR 3.10(c)(4)(ii)(A) (OCC), 12 CFR 217.10(c)(4)(ii)(A) (Board), and 12 CFR 324.10(c)(4)(ii)(A) (FDIC).

<sup>35</sup> See sections II.D.3.c and II.D.3.d of this Supplementary Information section. If the collateral securities received by the securities lender have been rehypothecated but remain on the covered company's balance sheet, the collateral securities would be assigned an RSF factor under § \_\_\_\_ .106(c) to reflect the encumbrance. If the collateral securities have been rehypothecated but do not remain on the covered company's balance sheet, the covered company may be required to

Similarly, the covered company would assign a corresponding ASF factor to the NSFR liability associated with the asset exchange, for example, an obligation to return the security received.

### B. Determining Maturity

Under the proposed rule, the ASF and RSF factors assigned to a covered company's NSFR liabilities and assets would depend in part on the maturity of each NSFR liability or asset. The proposed rule would incorporate the maturity assumptions in § \_\_\_\_ .31(a)(1) and (2) of the LCR rule to determine the maturities of a covered company's NSFR liabilities and assets. These LCR rule provisions generally require a covered company to identify the most conservative maturity date when calculating inflow and outflow amounts—that is, the earliest possible date for an outflow from a covered company and the latest possible date for an inflow to a covered company. These provisions also generally require covered companies to take the most conservative approach when determining maturity with respect to any notice periods and with respect to any options, either explicit or embedded, that may modify maturity dates.

Because the proposed rule would incorporate the LCR rule's maturity assumptions, it would similarly require a covered company to identify the maturity date of its NSFR liabilities and assets in the most conservative manner. Specifically, the proposed rule would require a covered company to apply the earliest possible maturity date to an NSFR liability (which would be assigned an ASF factor) and the latest possible maturity date to an asset (which would be assigned an RSF factor). The proposed rule would also require a covered company to take the most conservative approach when determining maturity with respect to any notice periods and with respect to any options, either explicit or embedded, that may modify maturity dates. For example, a covered company would be required to assume that an option to reduce the maturity of an NSFR liability and an option to extend the maturity of an asset will be exercised.

The proposed rule would treat an NSFR liability that has an "open" maturity (*i.e.*, the NSFR liability has no maturity date and may be closed out on demand) as maturing on the day after the calculation date. For example, an

apply an additional encumbrance to the asset it has provided in the asset exchange, pursuant to § \_\_\_\_ .106(d).

"open" repurchase transaction or a demand deposit placed at a covered company would be treated as maturing on the day after the calculation date. To ensure consistent use of terms in the proposed rule and LCR rule and to avoid ambiguity between perpetual instruments and transactions (*i.e.*, the instrument or transaction has no contractual maturity date and may not be closed out on demand) and open instruments and transactions, the proposed rule would amend the LCR rule to use the term "open" instead of using the phrase "has no maturity date." This proposed change would have no substantive impact on the LCR rule. The proposed rule would treat a perpetual NSFR liability (such as perpetual securities issued by a covered company) as maturing one year or more after the calculation date.

The proposed rule would treat each principal amount due under a transaction, such as separate principal payments due under an amortizing loan, as a separate transaction for which the covered company would be required to identify the date when the payment is contractually due and apply the appropriate ASF or RSF factor based on that maturity date. This proposed treatment would ensure that a covered company's ASF and RSF amounts reflect the actual timing of a company's cash flows and obligations, rather than treating all principal payments for a transaction as though each were due on the same date (*e.g.*, the last contractual principal payment date of the transaction). For example, if a loan from a counterparty to a covered company requires two contractual principal payments, the first due less than six months from the calculation date and the second due one year or more from the calculation date, only the principal amount that is due one year or more from the calculation date would be assigned a 100 percent ASF factor, which is the factor assigned to liabilities that have a maturity of one year or more from the calculation date. The liability arising from the principal payment due within six months represents a less stable source of funding and would therefore be assigned a lower ASF factor (for example, a zero percent ASF factor if the loan is from a financial sector entity, as discussed in section II.C.3.e of this **SUPPLEMENTARY INFORMATION** section).

For deferred tax liabilities that have no maturity date, the maturity date under the proposed rule would be the first calendar day after the date on which the deferred tax liability could be realized.

The proposed rule would not apply the LCR rule's maturity assumptions to a covered company's NSFR regulatory capital elements. Unlike NSFR liabilities, which have varying maturities, NSFR regulatory capital elements are longer-term by definition, and as such, the proposed rule would assign a 100 percent ASF factor to all NSFR regulatory capital elements.

### C. Available Stable Funding

Under the proposed rule, a covered company's ASF amount would measure the stability of its equity and liabilities. An ASF amount that equals or exceeds a covered company's RSF amount would be indicative of a stable funding profile over the NSFR's one-year time horizon.

#### 1. Calculation of ASF Amount

Under § \_\_\_\_ .103 of the proposed rule, a covered company's ASF amount would equal the sum of the carrying values of the covered company's NSFR regulatory capital elements and NSFR liabilities, each multiplied by the ASF factor assigned in § \_\_\_\_ .104 or § \_\_\_\_ .107(c). As described below, these ASF factors would be assigned based on the stability of each category of NSFR liability or NSFR regulatory capital element over the NSFR's one-year time horizon.

As discussed in section II.E of this **SUPPLEMENTARY INFORMATION** section, certain NSFR liabilities relating to derivative transactions are not considered stable funding for purposes of a covered company's NSFR calculation and are assigned a zero percent ASF factor under § \_\_\_\_ .107(c). In addition, pursuant to § \_\_\_\_ .108 of the proposed rule, a covered company may include in its ASF amount the available stable funding of a consolidated subsidiary only to the extent that the funding of the subsidiary supports the RSF amount associated with the subsidiary's own assets or is readily available to support RSF amounts associated with the assets of the covered company outside the consolidated subsidiary. This restriction is discussed in more detail in section II.F of this **SUPPLEMENTARY INFORMATION** section.

#### 2. ASF Factor Framework

The proposed rule would use a set of standardized weightings, or ASF factors, to measure the relative stability of a covered company's NSFR liabilities and NSFR regulatory capital elements over a one-year time horizon. ASF factors would be scaled from zero to 100 percent, with a zero percent weighting representing the lowest stability and a

100 percent weighting representing the highest stability. The proposed rule would consider funding to be less stable if there is a greater likelihood that a covered company will need to replace or repay it during the NSFR's one-year time horizon—for example, if the funding matures and the counterparty declines to roll it over. The proposed rule would categorize NSFR liabilities and NSFR regulatory capital elements and assign an ASF factor based on three characteristics relating to the stability of the funding: (1) Funding tenor, (2) funding type, and (3) counterparty type.

**Funding tenor.** For purposes of assigning ASF factors, the proposed rule would generally treat funding that has a longer effective maturity (or tenor) as more stable than shorter-term funding. All else being equal, funding that by its terms has a longer remaining tenor should be less susceptible to rollover risk, meaning there is a lower risk that a firm would need to replace maturing funds with less stable funding or potentially monetize less liquid positions at a loss to meet obligations, which could cause a firm's liquidity position to deteriorate. Longer-term funding, therefore, should provide greater stability across all market conditions, but especially during periods of stress. The proposed rule would group the maturities of NSFR liabilities and NSFR regulatory capital elements into one of three categories: Less than six months, six months or more but less than one year, and one year or more. The proposed rule would generally treat funding with a remaining maturity of one year or more as the most stable, because a covered company would not need to roll it over during the NSFR's one-year time horizon. Funding with a remaining maturity of less than six months or an open maturity would generally be treated as the least stable, because a covered company would need to roll it over in the short term. The proposed rule would generally treat funding that matures in six months or more but less than one year as partially stable, because a covered company would not need to roll it over in the shorter term, but would still need to roll it over before the end of the NSFR's one-year time horizon.

As described further below and in section II.C.3 of this **SUPPLEMENTARY INFORMATION** section, funding tenor matters more for the stability of some categories of funding than for others. For example, with respect to stable retail deposits,<sup>36</sup> contractual maturity

generally has less effect on the stability of the funding relative to wholesale deposits.

**Funding type.** The proposed rule would recognize that certain types of funding are inherently more stable than others, independent of the remaining tenor. For example, as described in section II.C.3.b of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would assign a higher ASF factor to stable retail deposits relative to other retail deposits, due in large part to the presence of full deposit insurance coverage and other stabilizing features that reduce the likelihood of a counterparty discontinuing the funding across a broad range of market conditions. Similarly, the proposed rule would assign a higher ASF factor to operational deposits than to certain other forms of short-term, wholesale deposits, based on the provision of services linked to an operational deposit, as discussed in section II.C.3.d of this **SUPPLEMENTARY INFORMATION** section. Likewise, the proposed rule would assign different ASF factors to different categories of retail brokered deposits, based on features that tend to make these forms of deposit more or less stable, as described in sections II.C.3.c, II.C.3.d, and II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.

**Counterparty type.** The proposed rule's assignment of ASF factors would also take into account the type of counterparty providing funding, using the same counterparty type classifications as the LCR rule: (1) Retail customers or counterparties, (2) wholesale customers or counterparties that are not financial sector entities, and (3) financial sector entities.<sup>37</sup> As

by the depositor in a transactional account or (2) the depositor that holds the account has another established relationship with the covered company such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the covered company demonstrates, to the satisfaction of the appropriate Federal banking agency, would make the withdrawal of the deposit highly unlikely during a liquidity stress event. "Deposit insurance" is defined in § \_\_\_\_ .3 as deposit insurance provided by the FDIC under the FDI Act (12 U.S.C. 1811 *et seq.*).

<sup>37</sup> Under § \_\_\_\_ .3 of the LCR rule, the term "retail customer or counterparty" includes individuals, certain small businesses, and certain living or testamentary trusts. The term "wholesale customer or counterparty" refers to any customer or counterparty that is not a retail customer or counterparty. The term "financial sector entity" refers to a regulated financial company, identified company, investment advisor, investment company, pension fund, or non-regulated fund, as such terms are defined in § \_\_\_\_ .3. The proposed rule would incorporate these definitions. For purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an

<sup>36</sup> Section \_\_\_\_ .3 of the LCR rule defines a "stable retail deposit" as a retail deposit that is entirely covered by deposit insurance and either (1) is held

described below and in section II.C.3 of this **SUPPLEMENTARY INFORMATION** section, within the NSFR's one-year time horizon, and all other things being equal, the proposed rule would treat most types of deposit funding provided by retail customers or counterparties as more stable than similar types of funding provided by wholesale customers or counterparties. It would also treat most types of funding that matures within six months and that is provided by financial sector entities as less stable than funding of a similar tenor provided by non-financial wholesale customers or counterparties.

Different types of counterparties may respond to events and market conditions in different ways. For example, differences in business models and liability structures tend to make short-term funding provided by financial sector entities less stable than similar funding provided by non-financial wholesale customers or counterparties. Financial sector entities typically have less stable liability structures than non-financial wholesale customers or counterparties, due to their financial intermediation activities. They tend to be more sensitive to market fluctuations and more susceptible to sudden cash outflows that could cause them to rapidly withdraw funding from a covered company. In contrast, wholesale customers and counterparties that are not financial sector entities typically maintain balances with covered companies to support their non-financial activities, such as production and physical investment, which tend to be impacted by financial market fluctuations to a lesser degree than activities of financial sector entities. In addition, non-financial wholesale customers or counterparties generally rely less on funding that is short-term or that can be withdrawn on demand. Therefore, these non-financial wholesale customers or counterparties may be less likely than financial sector entities to rapidly withdraw funding from a covered company. The proposed rule would accordingly treat most short-term funding provided by financial sector entities as less stable than similar funding provided by non-financial wholesale customers or counterparties.

The proposed rule's assignment of ASF factors would also account for differences in funding provided by retail and wholesale customers or counterparties. For example, retail customers and counterparties typically place deposits at a bank to safeguard their money and access the payments

system, which makes them less likely to withdraw these deposits purely as a result of market stress, especially when covered by deposit insurance.

Wholesale customers or counterparties, while often motivated by similar considerations, may also be motivated to a greater degree by the return and risk of an investment. In addition, as compared to retail customers or counterparties, wholesale customers or counterparties tend to be more sophisticated and responsive to changing market conditions, and often employ personnel who specialize in the financial management of the company. Therefore, the proposed rule would treat most types of deposit funding provided by retail customers or counterparties as more stable than similar funding provided by wholesale customers or counterparties.

While comprehensive data on the funding of covered companies by counterparty type is limited, the agencies' analysis of available data was consistent with the expectation of funding stability differences across counterparty types.<sup>38</sup> The agencies reviewed information collected on the Consolidated Reports of Condition and Income (Call Report), Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Securities and Exchange Commission (SEC) Financial and Operational Combined Uniform Single Report (FOCUS Report) over the period beginning December 31, 2007, and ending December 31, 2008, in combination with more recent FR 2052a report data and supervisory information collected in connection with the LCR rule. In addition, the agencies reviewed supervisory information collected from depository institutions that the FDIC placed into receivership in 2008 and 2009. Although the NSFR requirement is designed to measure the stability of a covered company's funding profile across all market conditions and would not be specifically based on a market stress environment, the agencies focused on a period of stress for purposes of evaluating the relative effects of counterparty type on funding stability. Because a covered company may under normal conditions adjust funding across counterparty types for any number of reasons, focusing on

periods of stress allowed the agencies to better measure differences in stability by counterparty type. During these periods of stress, a covered company will generally be trying to roll over its funding, so differences in funding behavior may reasonably be more attributed to its counterparties than business decisions of the covered company.

The agencies' analysis of available public and supervisory information found that, during 2008, funding from financial sector entities exhibited less stability than funding provided by non-financial wholesale counterparties, which in turn exhibited less stability than retail deposits. For example, Call Report data on insured deposits, deposit data from the FFIEC 002, and broker-dealer liability data reported on the SEC FOCUS Report showed higher withdrawals in wholesale funding than retail deposits over this period. The agencies' analysis of supervisory data from a sample of large depository institutions that the FDIC placed into receivership in 2008 and 2009 also indicated that, during the periods leading up to receivership, funding provided by wholesale counterparties can be significantly less stable, showing higher average total withdrawals, than funding provided by retail customers and counterparties.

*Question 12: The agencies invite comment regarding the foregoing framework. Are funding tenor, funding type, and counterparty type appropriate indicators of funding stability for purposes of the proposed rule? Why or why not? What other funding characteristics should the proposed rule take into account for purposes of assigning ASF factors? Please provide data and analysis to support your conclusions.*

### 3. ASF Factors

#### a. 100 Percent ASF Factor

NSFR Regulatory Capital Elements and Long-Term NSFR Liabilities

Section \_\_\_\_.104(a) of the proposed rule would assign a 100 percent ASF factor to NSFR regulatory capital elements, as defined in § \_\_\_\_.3 and described in section I.D of this **SUPPLEMENTARY INFORMATION** section, and to NSFR liabilities that mature one year or more from the calculation date, other than funding provided by retail customers or counterparties. Because NSFR regulatory capital elements and these long-term liabilities do not mature during the NSFR's one-year time horizon, they are not susceptible to rollover risk during this time frame and represent the most stable form of

<sup>38</sup> Prior to the 2007–2009 financial crisis, covered companies did not consistently report or disclose detailed liquidity information. On November 17, 2015, the Board adopted the revised FR 2052a Complex Institutions Liquidity Monitoring Report (FR 2052a report) to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

unconsolidated affiliate of a covered company as a financial sector entity.

funding under the proposed rule. This category would include securities issued by a covered company that have a remaining maturity of one year or more. Therefore, the proposed rule would assign the highest possible ASF factor of 100 percent to NSFR regulatory capital elements and most long-term NSFR liabilities. As described in sections II.C.3.b through II.C.3.e of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would assign different ASF factors to retail deposits and other forms of NSFR liabilities provided by retail customers or counterparties.

*Question 13: Which, if any, NSFR regulatory capital elements should be assigned an ASF factor of other than 100 percent, and why?*

*Question 14: Should long-term debt securities issued by a covered company where the company is the primary market maker of such securities be assigned an ASF factor other than 100 percent (such as between 95 and 99 percent) to address the risk of a covered company buying back these debt securities? Please provide supporting data for such alternative factors.*

#### b. 95 Percent ASF Factor

##### Stable Retail Deposits

Section \_\_\_\_.104(b) of the proposed rule would assign a 95 percent ASF factor to stable retail deposits held at a covered company.<sup>39</sup> The proposed rule would assign a 95 percent ASF factor to stable retail deposits to reflect the fact that such deposits are a highly stable source of funding for covered companies. Specifically, the combination of full deposit insurance coverage, the depositor's relationship with the covered company, and the costs of moving transactional or multiple accounts to another institution substantially reduce the likelihood that retail depositors will withdraw these deposits in significant amounts over a one-year time horizon.<sup>40</sup> Because stable retail deposits are nearly as stable over the NSFR's one-year time horizon as NSFR regulatory capital elements and long-term NSFR liabilities under § \_\_\_\_.104(a) of the proposed rule (described above in section II.C.3.a), the proposed rule would assign to stable deposits an ASF factor that is only slightly lower than that assigned to NSFR regulatory capital elements and long-term NSFR liabilities.

As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section,

<sup>39</sup> The proposed rule would incorporate the LCR rule's definition of "stable retail deposit." See *supra* note 36.

<sup>40</sup> See *supra* section II.C.2 of this **SUPPLEMENTARY INFORMATION** section.

insured retail deposits would be treated as more stable than similar funding from wholesale customers or counterparties, and would therefore be assigned a higher ASF factor.

Consistent with the LCR rule, the maturity and collateralization of stable retail deposits would not affect their treatment under the proposed rule, because the stability of retail deposits is more closely linked to the combination of deposit insurance, the other stabilizing features included in the definition of "stable retail deposit," and the retail nature of the depositor, rather than maturity or any underlying collateral. Maturity is less relevant, for example, because a covered company may repay a retail term deposit for business and reputational reasons in the event of an early withdrawal request by the depositor despite the absence of a contractual requirement to provide such a repayment within the NSFR's one-year time horizon.

#### c. 90 Percent ASF Factor

##### Other Retail Deposits

Section \_\_\_\_.104(c) of the proposed rule would assign a 90 percent ASF factor to retail deposits that are neither stable retail deposits nor retail brokered deposits, which includes retail deposits that are not fully insured by the FDIC or are insured under non-FDIC deposit insurance regimes.

The proposed rule would assign a lower ASF factor to deposits that are not entirely covered by deposit insurance relative to that assigned to stable retail deposits because of the elevated risk of depositors withdrawing funds if they become concerned about the condition of the bank, in part, because the depositor will have no guarantee that uninsured funds will promptly be made available through established and timely intervention and resolution protocols. Supervisory experience has demonstrated that retail depositors whose deposits exceed the FDIC's insurance limit have tended to withdraw not only the uninsured portion of the deposit, but the entire deposit under these circumstances. In addition, deposits that are neither transactional deposits nor deposits of a customer that has another relationship with a covered company tend to be less stable than deposits that have such characteristics because the depositor is less reliant on the bank. Therefore, the proposed rule would assign an ASF factor of 90 percent to these deposits, slightly lower than the ASF factor it would assign to stable retail deposits.

Retail customers and counterparties tend to provide deposits that are more

stable than funding provided by other types of counterparties, as discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section above, and, thus, retail deposits would be assigned a higher ASF factor than all but the most stable forms of long-term funding from wholesale customers. For the same reasons as discussed above in relation to stable retail deposits, the maturity and collateralization of these other retail deposits would not affect the ASF factor they would be assigned under the proposed rule.

Retail funding that is not in the form of a deposit, such as payables owed to small business service providers, would not be treated as stable funding and would be assigned a zero percent ASF factor, as described in section II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.

#### Fully Insured Affiliate, Reciprocal, and Certain Longer-Term Retail Brokered Deposits

Section \_\_\_\_.104(c) of the proposed rule would assign a relatively high 90 percent ASF factor to three categories of brokered deposits<sup>41</sup> provided by retail customers or counterparties that include certain stabilizing features that tend to make them more stable forms of funding than other brokered deposits, as discussed in sections II.C.3.d and II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.<sup>42</sup> Retail brokered deposits that would be assigned a 90 percent ASF factor include (1) a reciprocal brokered deposit where the entire amount is covered by deposit insurance;<sup>43</sup> (2) a brokered sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty and the

<sup>41</sup> Under § \_\_\_\_.3 of the LCR rule, a brokered deposit is a deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)).

<sup>42</sup> The agencies note that the ASF factors assigned to retail brokered deposits are based solely on the stable funding characteristics of these deposits over a one-year time horizon. The assignment of ASF factors is not intended to reflect the impact of these deposits on a covered company, such as their effect on a company's probability of failure or loss given default, franchise value, or asset growth rate or lending practices. In addition, the assignment of ASF factors does not affect the determination of deposits as brokered, which is addressed under other regulations and guidance.

<sup>43</sup> A "reciprocal brokered deposit" is defined in § \_\_\_\_.3 of the LCR rule as a brokered deposit that the covered company receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the covered company (as agent for the depositors) places the same amount with other depository institutions through the network and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

covered company, a controlled subsidiary of the covered company, or a company that is a controlled subsidiary of the same top-tier company of which the covered company is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance;<sup>44</sup> and (3) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more. By assigning a 90 percent ASF factor, the proposed rule would treat these brokered deposits as more stable than most other categories of brokered deposits, less stable than stable retail deposits, and comparably stable to retail deposits other than stable retail deposits.

First, § \_\_\_\_ .104(c)(2) of the proposed rule would assign a 90 percent ASF factor to a reciprocal brokered deposit provided by a retail customer or counterparty, where the entire amount of the deposit is covered by deposit insurance. The reciprocal nature of the brokered deposit means that a deposit placement network contractually provides a covered company with the same amount of deposits that it places with other depository institutions. As a result, and because the deposit is fully insured, the retail customers or counterparties providing the deposit tend to be less likely to withdraw it than other types of brokered deposits.

Second, § \_\_\_\_ .104(c)(3) of the proposed rule would assign a 90 percent ASF factor to a brokered sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty that provides the deposit and the covered company or an affiliate of the covered company, where the entire amount of the deposit is covered by deposit insurance. A typical brokered sweep deposit arrangement places deposits, usually those in excess of deposit insurance caps, at different banking organizations, with each banking organization receiving the maximum amount that is covered by deposit insurance, according to a priority “waterfall.” Within the waterfall structure, affiliates of the deposit broker tend to be the first to receive deposits and the last from which

deposits are withdrawn. With this affiliate relationship, a covered company is more likely to receive and maintain a steady stream of brokered sweep deposits. Based on the reliability of this stream of brokered sweep deposits and the enhanced stability associated with full deposit insurance coverage, the proposed rule would treat this type of brokered deposit, in the aggregate, as more stable than brokered sweep deposits received from unaffiliated institutions.

Third, § \_\_\_\_ .104(c)(4) of the proposed rule would assign a 90 percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more. The contractual term of this category of brokered deposit and the exclusion of accounts used by a customer for transactional purposes make this category of brokered deposit more stable than other types of brokered deposits that would be assigned a lower ASF factor. Like other types of retail deposits with a remaining maturity of one year or more, however, these deposits would not be assigned a 100 percent ASF factor, because a covered company may be more likely to repay retail brokered deposits, in the event of an early withdrawal request by the depositor, for reputational or franchise reasons even without a contractual requirement to make such repayment. In addition, the brokered nature of these deposits makes them no more stable than stable retail deposits, which are assigned a 95 percent ASF factor, or retail deposits other than stable retail deposits and brokered deposits, which are assigned a 90 percent ASF factor, even if the deposit is fully covered by deposit insurance.

The proposed rule would assign lower ASF factors to brokered deposits that do not include these stabilizing factors, as discussed in sections II.C.3.d and II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.

*Question 15: To what extent should the proposed rule consider the contractual term of a retail deposit (in addition to considering it for some forms of brokered deposits) for purposes of assigning an ASF factor? What alternative ASF factors, if any, would be more appropriate, and under what circumstances?*

*Question 16: The agencies invite commenter views on the proposed 90, 50, and zero percent ASF factors assigned to retail brokered deposits. What, if any, alternative ASF factors*

*should be assigned to these deposits and why?*

#### d. 50 Percent ASF Factor

Section \_\_\_\_ .104(d) of the proposed rule would assign a 50 percent ASF factor to certain unsecured wholesale funding, and secured funding transactions, depending on the tenor of the transaction and the covered company’s counterparty; operational deposits that are placed at the covered company; and certain brokered deposits.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Counterparty That Is Not a Financial Sector Entity or Central Bank and With Remaining Maturity of Less Than One Year

Sections \_\_\_\_ .104(d)(1) and (2) of the proposed rule would assign a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding (including a wholesale deposit) that, in each case, matures less than one year from the calculation date and is provided by a wholesale customer or counterparty that is not a central bank or a financial sector entity (or a consolidated subsidiary thereof).

The proposed 50 percent ASF factor for this category would be lower than the 100 percent ASF factor assigned to funding from similar counterparties that matures more than a year from the calculation date because the need to roll over the funding during the NSFR’s one-year time horizon makes this category of funding less stable. The 50 percent ASF factor would also be lower than the factor assigned to the categories of retail deposits described above, which include features such as deposit insurance and retail counterparty relationships that make those categories of funding more stable, regardless of remaining contractual maturity.

The proposed rule would generally assign an ASF factor to secured funding transactions and unsecured wholesale funding on the basis of counterparty type and maturity, without regard to whether and what type of collateral secures the transaction. This treatment would differ from the LCR rule, which more closely considers the liquidity characteristics of the underlying collateral. This different treatment stems from the fact that the LCR rule considers the immediate liquidity of the underlying collateral and behavior of the counterparty during a 30-calendar day period of significant stress, whereas the proposed rule focuses on the stability of funding over a one-year time horizon, which is less influenced by the underlying collateral.

<sup>44</sup> Under § \_\_\_\_ .3 of the LCR rule, a “brokered sweep deposit” is a deposit held at a covered company by a customer or counterparty through a contractual feature that automatically transfers to the covered company from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred. Typically, these transactions involve securities firms or investment companies that transfer (“sweep”) idle customer funds into deposit accounts at one or more banks.



Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Financial Sector Entity or Central Bank With Remaining Maturity of Six Months or More, But Less Than One Year

Sections \_\_\_\_ .104(d)(3) and (4) of the proposed rule would assign a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding that matures six months or more but less than one year from the calculation date and is provided by a financial sector entity or a consolidated subsidiary thereof, or a central bank.<sup>45</sup> As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, to account for the less stable nature of funding from these financial counterparties, the proposed rule would treat this funding more conservatively than funding from other types of wholesale customers or counterparties. If the funding from these counterparties has a maturity of less than six months, the proposed rule would assign a zero percent ASF factor, as described below, which would reflect the higher rollover risk of the funding resulting from the short remaining maturity and the financial nature of the counterparty.

The proposed rule would treat funding from central banks consistently with funding from financial sector entities (*i.e.*, as a less stable form of funding) to discourage potential overreliance on funding from central banks, consistent with the proposed rule's focus on stable funding raised from market sources. In the United States, the Federal Reserve does not currently offer funding arrangements of this term.

Securities Issued by a Covered Company With Remaining Maturity of Six Months or More, But Less Than One Year

Section \_\_\_\_ .104(d)(5) of the proposed rule would assign a 50 percent ASF factor to securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date. As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, in general, the proposed rule would consider funding that has a longer maturity to be more stable. These securities would represent less stable funding than securities issued by a covered company that are perpetual or mature one year or more from the calculation date (which would

be assigned an ASF factor of 100 percent, as discussed above), but more stable funding than securities that mature within six months from the calculation date (which would be assigned a zero percent ASF factor, as discussed below).

Unlike other NSFR liabilities for which the proposed rule considers the counterparty type when assigning an ASF factor, the proposed rule would not consider the identities of the holders of the securities issued by a covered company. Because securities may actively trade on secondary markets and may be purchased by a variety of investors including financial sector entities, the identities of current security holders would not be an accurate or consistent factor that affects the stability of this type of funding. In addition, a covered company may not know or be able to track the identities of the holders of its securities that are traded. The proposed rule would therefore treat securities issued by a covered company equivalently to funding provided by a financial sector entity, rather than assuming greater stability based on a different type of counterparty. Therefore, similar to funding provided by a financial sector entity, securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date would be assigned a 50 percent ASF factor.

#### Operational Deposits

Operational deposits are unsecured wholesale funding in the form of deposits or collateralized deposits that are necessary for the provision of operational services, such as clearing, custody, or cash management services.<sup>46</sup> In the LCR rule, such funds are assumed to have a lower outflow rate than other types of unsecured wholesale funding during a period of stress based on legal or operational limitations that make significant withdrawals from these accounts within 30 calendar days less likely. For example, an entity that relies on the cash management services of a covered company would find it more difficult to terminate its deposit agreement because it might be subject to early termination fees and might also incur start-up costs to establish a similar

operational account with another financial institution.

As noted, a key operating assumption of the NSFR is a one-year time horizon. Under this longer time horizon, it is more reasonable to assume that a counterparty could successfully restructure its operational deposits and place them with another financial institution. Therefore, as compared with the treatment in the LCR rule, the treatment of operational deposits in the proposed rule is closer to that of non-operational deposits, but reflects that there may still be some difficulty and cost associated with switching operational service providers. Accordingly, § \_\_\_\_ .104(d)(6) of the proposed rule would also treat operational deposits, including those from financial sector entities, as more stable than other forms of short-term wholesale funding and assign them a 50 percent ASF factor.

#### Other Retail Brokered Deposits

Section \_\_\_\_ .104(d)(7) of the proposed rule would assign a 50 percent ASF factor to most categories of brokered deposits provided by retail customers or counterparties that do not include the additional stabilizing features required under § \_\_\_\_ .104(c) and summarized in section II.C.3.c of this **SUPPLEMENTARY INFORMATION** section. Brokered deposits tend to be less stable and exhibit greater volatility than stable retail deposits, even in cases where the deposits are fully or partially insured, as customers can more easily move brokered deposits among institutions. In addition, intermediation by a deposit broker may result in a higher likelihood of withdrawal compared to a non-brokered retail deposit where a direct relationship exists between the depositor and the covered company. Statutory restrictions on certain brokered deposits can also make this form of funding less stable than other deposit types. Specifically, a covered company that becomes less than "well capitalized"<sup>47</sup> is subject to restrictions on accepting, renewing, or rolling over funds obtained directly or indirectly through a deposit broker.<sup>48</sup> Thus, as a general matter, the proposed rule would assign a 50 percent ASF factor to most categories of brokered deposits.

Retail brokered deposits that would be assigned a 50 percent ASF factor include (1) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit and that is held in a transactional account; (2) a

<sup>45</sup> As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

<sup>46</sup> The agencies note that the methodology that a covered company uses to determine whether and to what extent a deposit is operational for the purposes of the proposed rule must be consistent with the methodology used for the purposes of the LCR rule. See § \_\_\_\_ .3 of the LCR rule for the full list of services that qualify as operational services and § \_\_\_\_ .4(b) of the LCR rule for additional requirements for operational deposits.

<sup>47</sup> As defined in section 38 of the FDI Act, 12 U.S.C. 1831f.

<sup>48</sup> See 12 U.S.C. 1831f.

brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures in six months or more, but less than one year, from the calculation date; (3) a reciprocal brokered deposit or brokered affiliate sweep deposit where less than the entire amount of the deposit is covered by deposit insurance; and (4) a brokered non-affiliate sweep deposit, regardless of deposit insurance coverage.

Retail brokered deposits to which the proposed rule would assign a 50 percent ASF factor do not have the same combination of stabilizing attributes, such as a combination of being fully covered by deposit insurance, being an affiliated brokered sweep deposit, or having a longer-term maturity, as brokered deposits assigned a 90 percent ASF factor, as discussed in section II.C.3.c of this **SUPPLEMENTARY INFORMATION** section. However, these types of brokered deposits are more stable than brokered deposits that mature in less than six months from the calculation date and are not reciprocal brokered deposits or brokered sweep deposits or held in a transactional account, which are assigned a zero percent ASF factor, as discussed in section II.C.3.e of this **SUPPLEMENTARY INFORMATION** section.

#### All Other NSFR Liabilities With Remaining Maturity of Six Months or More, But Less Than One Year

Section \_\_\_\_ .104(d)(8) of the proposed rule would assign a 50 percent ASF factor to all other NSFR liabilities that have a remaining maturity of six months or more, but less than one year. As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, a covered company would not need to roll over a liability of this maturity in the shorter-term, but would still need to roll it over before the end of the NSFR's one-year time horizon.

#### e. Zero Percent ASF Factor

Section \_\_\_\_ .104(e) of the proposed rule would assign a zero percent ASF factor to NSFR liabilities that demonstrate the least stable funding characteristics, including trade date payables, certain short-term retail brokered deposits, non-deposit retail funding, certain short-term funding from financial sector entities, and any other NSFR liability that matures in less than six months and is not described above.

#### Trade Date Payables

Section \_\_\_\_ .104(e)(1) of the proposed rule would assign a zero percent ASF factor to trade date payables that result

from purchases by a covered company of financial instruments, foreign currencies, and commodities that are required to settle within the lesser of the market standard settlement period for the particular transactions and five business days from the date of the sale. Trade date payables are established when a covered company buys financial instruments, foreign currencies, and commodities, but the transactions have not yet settled. These payables, which are liabilities, should result in an outflow from a covered company at the settlement date, which varies depending on the specific market, but generally occurs within five business days, so the proposed rule does not treat the liability as stable funding. The failure of a trade date payable to settle within the required settlement period for the transaction would not affect the ASF factor assigned to the transaction under the proposed rule because a trade date payable that has failed to settle also does not represent stable funding. Consistent with the definition of "derivative transaction" in § \_\_\_\_ .3, the proposed rule would treat a payable with a contractual settlement period that is longer than the lesser of the market standard for the particular instrument or five business days as a derivative transaction under § \_\_\_\_ .107, rather than as a trade date payable.

#### Certain Brokered Deposits

Section \_\_\_\_ .104(e)(2) of the proposed rule would assign a zero percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date. In addition to the reasons discussed in section II.C.3.d above, this type of brokered deposit tends to be less stable than other types of brokered deposits because of the absence of incrementally stabilizing features such as being a transactional account or reciprocal or brokered sweep arrangement. As a result, retail customers or counterparties that provide this type of brokered deposit face low costs associated with withdrawing the funding. For example, a retail customer or counterparty providing this type of brokered deposit may seek to deposit funds with the banking organization that offers the highest interest rates, which may not be the covered company.

#### Non-Deposit Retail Funding

Section \_\_\_\_ .104(e)(3) of the proposed rule would assign a zero percent ASF factor to retail funding that is not in the form of a deposit. Given that non-

deposit retail liabilities are not regular sources of funding or commonly utilized funding arrangements, the proposed rule would not treat any portion of them as stable funding. As noted above, a security issued by the covered company that is held by a retail customer or counterparty would not take into account counterparty type and therefore would not fall within this category.

#### Short-Term Funding From a Financial Sector Entity or Central Bank

Section \_\_\_\_ .104(e)(5) of the proposed rule would apply a zero percent ASF factor to funding (other than operational deposits) for which the counterparty is a financial sector entity or a consolidated subsidiary thereof and the transaction matures less than six months from the calculation date.<sup>49</sup> Financial sector entities and their consolidated subsidiaries are generally the most likely to withdraw funding from a covered company, regardless of whether the funding is secured or unsecured or the nature of any collateral securing the funding, as described in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section.

Short-term funding from central banks is also assigned a zero percent ASF factor to discourage overreliance on funding from central banks, consistent with the proposed rule's focus on stable funding from market sources, as noted in section II.C.3.d of this **SUPPLEMENTARY INFORMATION** section above. For example, overnight funding from the Federal Reserve's discount window would be assigned a zero percent ASF factor.

#### Securities Issued by a Covered Company With Remaining Maturity of Less Than Six Months

Section \_\_\_\_ .104(e)(4) of the proposed rule would assign a zero percent ASF factor to securities that are issued by a covered company and that have a remaining maturity of less than six months. As discussed above, the proposed rule generally treats as less stable those instruments that have shorter tenors and have to be paid within the NSFR's one-year time horizon. Because these liabilities may be actively traded, also as discussed above, the counterparty holding the securities may not be reflective of the stability of the covered company's funding under the securities. As a result, the proposed rule would treat these NSFR liabilities

<sup>49</sup> As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

equivalently to funding with a similar maturity provided by a financial sector entity, rather than assuming greater stability based on a particular type of counterparty.

#### All Other NSFR Liabilities With Remaining Maturity of Less Than Six Months or an Open Maturity

Section \_\_\_\_ .104(e)(6) of the proposed rule would assign a zero percent ASF factor to all other NSFR liabilities, including those that mature less than six months from the calculation date and those that have an open maturity. NSFR liabilities that do not fall into one of the categories described above would not represent a regular or reliable source of funding and, therefore, the proposed rule would not treat any portion as stable funding.

*Question 17: What, if any, liabilities are not, but should be, specifically addressed in the proposed rule and what ASF factors should be assigned to those liabilities?*

*Question 18: What, if any, additional ASF factors should be included and to which NSFR liabilities or NSFR regulatory capital elements should they be assigned? Would adding such ASF factors provide for a better calibrated ASF amount and, if so, why?*

*Question 19: What, if any, liabilities owed to retail customers or counterparties not in the form of a deposit should be assigned an ASF factor greater than zero percent, and why?*

#### D. Required Stable Funding

Under the proposed rule, a covered company would be required to maintain an ASF amount that equals or exceeds its RSF amount. As described below, a covered company's RSF amount would be based on the liquidity characteristics of its assets, derivative exposures, and commitments. In general, the less liquid an asset over the NSFR's one-year time horizon, the greater extent to which the proposed rule would require it to be supported by stable funding. By requiring a covered company to maintain more stable funding to support less liquid assets, the proposed rule would reduce the risk that the covered company may not be able to readily monetize the assets at a reasonable cost or could be required to monetize the assets at fire sale prices or in a manner that contributes to disorderly market conditions.

##### 1. Calculation of the RSF Amount

The proposed rule would require a covered company to calculate its RSF amount as set forth in § \_\_\_\_ .105. A covered company's RSF amount would

equal the sum of two components: (i) The carrying values of a covered company's assets (other than assets included in the calculation of the covered company's derivatives RSF amount) and the undrawn amounts of its commitments, each multiplied by an RSF factor assigned under § \_\_\_\_ .106 and described in section II.D.3 of this **SUPPLEMENTARY INFORMATION** section; and (ii) the covered company's derivatives RSF amount, as calculated under § \_\_\_\_ .107 and described in section II.E of this **SUPPLEMENTARY INFORMATION** section.

##### 2. RSF Factor Framework

The proposed rule would use a set of standardized weightings, or RSF factors, to determine the amount of stable funding a covered company must maintain. Specifically, a covered company would calculate its RSF amount by multiplying the carrying values of its assets, the undrawn amounts of its commitments, and its measures of derivative exposures (as discussed in section II.E of this **SUPPLEMENTARY INFORMATION** section) by the assigned RSF factors. This approach would promote consistency of the proposed NSFR measure across covered companies.

RSF factors would be scaled from zero percent to 100 percent based on the liquidity characteristics of an asset, derivative exposure, or commitment. A zero percent RSF factor means that the proposed rule would not require the asset, derivative exposure, or commitment to be supported by available stable funding, and a 100 percent RSF factor means that the proposed rule would require the asset, derivative exposure, or commitment to be fully supported by available stable funding. Accordingly, the proposed rule would generally assign a lower RSF factor to more liquid assets, exposures, and commitments and a higher RSF factor to less liquid assets, exposures, and commitments.

The proposed rule would categorize assets, derivatives exposures, and commitments and assign an RSF factor based on the following characteristics relating to their liquidity over the NSFR's one-year time horizon: (1) Credit quality, (2) tenor, (3) type of counterparty, (4) market characteristics, and (5) encumbrance.

*Credit quality.* Credit quality is a factor in an asset's liquidity because market participants tend to be more willing to purchase higher credit quality assets across a range of market and economic conditions, but especially in a stressed environment (sometimes called "flight to quality"). The demand for

higher credit quality assets, therefore, is more likely to persist and such assets are more likely to have resilient values, allowing a covered company to monetize them more readily. Assets of lower credit quality, in contrast, are more likely to become delinquent, and that increased credit risk makes these assets less likely to hold their value, particularly in times of market stress. As a result, the proposed rule would generally require assets of lower credit quality to be supported by more stable funding, to reduce the risk that a covered company may have to monetize the lower credit quality asset at a discount.

*Tenor.* In general, the proposed rule would require a covered company to maintain more stable funding to support assets that have a longer tenor because of the greater time remaining before the covered company will realize inflows associated with the asset. In addition, assets with a longer tenor may liquidate at a discount because of the increased market and credit risks associated with cash flows occurring further in the future. Assets with a shorter tenor, in contrast, would require a smaller amount of stable funding under the proposed rule because a covered company would have access to the inflows under these assets sooner. Thus, the proposed rule would generally require less stable funding for shorter-term assets compared to longer-term assets. The proposed rule would divide maturities into three categories for purposes of a covered company's RSF amount calculation: less than six months, six months or more but less than one year, and one year or more.

*Counterparty type.* A covered company may face pressure to roll over some portion of its assets in order to maintain its franchise value with customers and because a failure to roll over such assets could be perceived by market participants as an indicator of financial distress at the covered company. Typically, these risks are driven by the type of counterparty to the asset. For example, covered companies often consider their lending relationships with a wholesale, non-financial borrower to be important to maintain current business and generate additional business in the future. As a result, a covered company may have concerns about damaging future business prospects if it declines to roll over lending to such a customer for reasons other than a change in the financial condition of the borrower. More broadly, because market participants generally expect a covered company to roll over lending to wholesale, non-financial counterparties

based on relationships, a covered company's failure to do so could be perceived as a sign of liquidity stress at the company, which could itself cause such a liquidity stress.

These concerns are less likely to be a factor with respect to financial counterparties because financial counterparties typically have a wider range of alternate funding sources already in place and face lower transaction costs associated with arranging alternate funding and less expectation of stable lending relationships with any single provider of credit. Therefore, market participants are less likely to assume the covered company is under financial distress if the covered company declines to roll over funding to a financial sector counterparty. In light of these business and reputational considerations, the proposed rule would require a covered company to more stably fund lending to non-financial counterparties than lending to financial counterparties, all else being equal.<sup>50</sup>

*Market characteristics.* Assets that are traded in transparent, standardized markets with large numbers of participants and dedicated intermediaries tend to exhibit a higher degree of reliable liquidity. The proposed rule would, therefore, require less stable funding to support such assets than those traded in markets characterized by information asymmetry and relatively few participants.

Depending on the asset class and the market, relevant measures of liquidity may include bid-ask spreads, market size, average trading volume, and price volatility.<sup>51</sup> While no single metric is likely to provide for a complete assessment of market liquidity, multiple indicators taken together provide relevant information about the extent to which a liquid market exists for a particular asset class. For example, market data reviewed by the agencies show that securities that meet the criteria to qualify as HQLA typically trade with tighter bid-ask spreads than non-HQLA securities and in markets

with significantly higher average daily trading volumes, both of which tend to indicate greater liquidity in the markets for HQLA securities.

*Encumbrance.* As described in section II.D.3 of this **SUPPLEMENTARY INFORMATION** section, whether and the degree to which an asset is encumbered will dictate the amount of stable funding the proposed rule would require a covered company to maintain to support the particular asset, as encumbered assets cannot be monetized during the period over which they are encumbered. For example, securities that a covered company has encumbered for a period of greater than one year in order to provide collateral for its longer-term borrowings are not available for the covered company to monetize in the shorter term. In general, the longer an asset is encumbered, the more stable funding the proposed rule would require.

*Question 20: The agencies invite comment regarding the foregoing framework. Are the characteristics described above appropriate indicators of the liquidity of a covered company's assets, derivative exposures, and commitments for purposes of the proposed rule? Why or why not? What other characteristics should the proposed rule take into account for purposes of assigning RSF factors? Please provide data and analysis to support your conclusions.*

### 3. RSF Factors

Section \_\_\_\_.106 of the proposed rule would assign RSF factors to a covered company's assets and commitments, other than certain assets relating to derivative transactions that are assigned an RSF factor under § \_\_\_\_.107. Section \_\_\_\_.106 would also set forth specific treatment for nonperforming assets, encumbered assets, assets held in certain segregated accounts, and certain assets relating to secured lending transactions and asset exchanges.

#### a. Treatment of Unencumbered Assets

##### i. Zero Percent RSF Factor

As noted above, a covered company's RSF amount reflects the liquidity characteristics of its assets, derivative exposures, and commitments. Section \_\_\_\_.106(a)(1) of the proposed rule would assign a zero percent RSF factor to certain assets that can be directly used to meet financial obligations, such as cash, or that are expected, based on contractual terms, to be converted to assets that can be directly used to meet financial obligations over the immediate term. By assigning a zero percent RSF factor to these assets, the proposed rule

would not require a covered company to support them with stable funding.

#### Currency and Coin

Section \_\_\_\_.106(a)(1)(i) of the proposed rule would assign a zero percent RSF factor to currency and coin because they can be directly used to meet financial obligations. Currency and coin include U.S. and foreign currency and coin owned and held in all offices of a covered company; currency and coin in transit to a Federal Reserve Bank or to any other depository institution for which the covered company's subsidiaries have not yet received credit; and currency and coin in transit from a Federal Reserve Bank or from any other depository institution for which the accounts of the subsidiaries of the covered company have already been charged.<sup>52</sup>

#### Cash Items in the Process of Collection

Section \_\_\_\_.106(a)(1)(ii) of the proposed rule would assign a zero percent RSF factor to cash items in the process of collection. These items would include: (1) Checks or drafts in process of collection that are drawn on another depository institution (or a Federal Reserve Bank) and that are payable immediately upon presentation in the country where the covered company's office that is clearing or collecting the check or draft is located, including checks or drafts drawn on other institutions that have already been forwarded for collection but for which the covered company has not yet been given credit (known as cash letters), and checks or drafts on hand that will be presented for payment or forwarded for collection on the following business day; (2) government checks drawn on the Treasury of the United States or any other government agency that are payable immediately upon presentation and that are in process of collection; and (3) such other items in process of collection that are payable immediately upon presentation and that are customarily cleared or collected as cash items by depository institutions in the country where the covered company's office which is clearing or collecting the item is located.<sup>53</sup> Despite not being in a form that can be directly used to meet financial obligations at the calculation date, cash items in the process of collection will be in such a form in the immediate term. The proposed rule

<sup>52</sup> This description of currency and coin is consistent with the treatment of currency and coin in Federal Reserve form FR Y-9C.

<sup>53</sup> This description of cash items in the process of collection is consistent with the treatment of cash items in process of collection in Federal Reserve Form FR Y-9C.

<sup>50</sup> As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, an unconsolidated affiliate of a covered company would be treated as a financial sector entity.

<sup>51</sup> In general, tighter bid-ask spreads, larger market sizes, higher trading volumes, and more consistent pricing tend to indicate greater market liquidity. The agencies reviewed market data discussed in this section II.D of this **SUPPLEMENTARY INFORMATION** section from the following sources: Bloomberg Finance L.P., Financial Industry Regulatory Authority (FINRA) Trade Reporting and Compliance Engine (TRACE), and Securities Industry and Financial Market Association statistics (<http://www.sifma.org/research/statistics.aspx>).

would therefore not require these assets to be supported by stable funding.

#### Reserve Bank Balances and Other Claims on a Reserve Bank That Mature in Less Than Six Months

Section \_\_\_\_ .106(a)(1)(iii) of the proposed rule would assign a zero percent RSF factor to a Reserve Bank balance or other claim on a Reserve Bank that matures in less than six months from the calculation date. The term “Reserve Bank balances” is defined in § \_\_\_\_ .3 of the LCR rule and includes required reserve balances and excess reserves, but not other balances that a covered company maintains on behalf of another institution, such as balances it maintains on behalf of a respondent for which it acts as a pass-through correspondent<sup>54</sup> or on behalf of an excess balance account participant.<sup>55</sup>

The proposed rule would assign a zero percent RSF factor to Reserve Bank balances because these assets can be directly used to meet financial obligations through the Federal Reserve’s payment system. The proposed rule would also assign a zero percent RSF factor to a claim on a Reserve Bank that does not meet the definition of a Reserve Bank balance if the claim matures in less than six months. In these cases, while the asset cannot be directly used to meet financial obligations of a covered company, a covered company faces little risk of a counterparty default or harm to its franchise value if it does not roll over the lending and it may therefore realize cash flows associated with the asset in the near term.

#### Claims on a Foreign Central Bank That Matures in Less Than Six Months

Section \_\_\_\_ .106(a)(1)(iv) of the proposed rule would assign a zero percent RSF factor to claims on a foreign central bank that mature in less than six months. Similar to claims on a Reserve Bank, claims on a foreign central bank in this category may generally either be directly used to meet financial obligations or will be available for such use in the near term, and a covered company faces little risk of a counterparty default or harm to its franchise value if it does not roll over the lending. The proposed rule would therefore not require that they be supported by stable funding.

#### Trade Date Receivables

Similar to cash items in the process of collection, a covered company can reasonably expect that certain

contractual “trade date” receivables will settle in the near term. These trade date receivables are limited to those due to the covered company that result from the sales of financial instruments, foreign currencies, or commodities that (1) are required to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale; and (2) have not failed to settle within the required settlement period.<sup>56</sup> Section \_\_\_\_ .106(a)(1)(v) of the proposed rule would assign a zero percent RSF to these receivables because they are generally reliable, with standardized, widely used settlement procedures and standardized settlement periods that are no longer than five business days. Thus, a covered company will realize inflows from these receivables in the very near term.

*Question 21: Given the one-year time horizon of the NSFR, the proposed rule would not require a covered company to support its current reserve balance requirement with stable funding. Because balances that meet reserve balance requirements are not immediately available to be used to directly meet financial obligations, what, if any, RSF factor (such as 100 percent) should be assigned to a covered company’s reserve balance requirement and why?*

*Question 22: Should the proposed rule treat as a trade date receivable (instead of a derivative transaction) any transaction involving the sale of financial instruments, foreign currencies, or commodities, that has a market standard settlement period of greater than five business days from the date of the sale, and if so, why?*

<sup>56</sup> Consistent with the definition of “derivative transaction” under § \_\_\_\_ .3 of the LCR rule, the proposed rule would treat a trade date receivable that has a contractual settlement or delivery lag beyond this period as a derivative transaction under § \_\_\_\_ .107. (The definition of “derivative transaction” under § \_\_\_\_ .3 of the LCR rule includes “unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.”) The proposed rule would not treat as a derivative transaction a trade date receivable that has a contractual settlement or delivery lag within the lesser of the market standard settlement period and five business days, but which fails to settle within this period; instead, the proposed rule would assign a 100 percent RSF factor to the trade date receivable under § \_\_\_\_ .106(a)(8) as an asset not otherwise assigned an RSF factor under § \_\_\_\_ .106(a)(1) through (7) or § \_\_\_\_ .107.

#### ii. 5 Percent RSF Factor

##### Unencumbered Level 1 Liquid Assets

Section \_\_\_\_ .106(a)(2)(i) of the proposed rule would assign a 5 percent RSF factor to level 1 liquid assets that would not be assigned a zero percent RSF factor. The proposed rule would incorporate the definition of “level 1 liquid assets” set forth in § \_\_\_\_ .20(a) of the LCR rule, which does not take into consideration the requirements under § \_\_\_\_ .22. The following level 1 liquid assets would be assigned a 5 percent RSF factor: (1) Securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (2) liquid and readily-marketable securities, as defined in § \_\_\_\_ .3 of the LCR rule, issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government); (3) certain liquid and readily-marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (4) certain liquid and readily-marketable debt securities issued by sovereign entities.

Section \_\_\_\_ .106(a)(2)(i) of the proposed rule would assign a relatively low RSF factor of 5 percent to these level 1 liquid assets based on their high credit quality and favorable market liquidity characteristics, which reflect their ability to serve as reliable sources of liquidity. For example, U.S. Treasury securities (a form of level 1 liquid assets) have among the highest credit quality of assets because they are backed by the full faith and credit of the U.S. government. In addition, the market for U.S. Treasury securities has a high average daily trading volume, large market size, and low bid-ask spreads relative to the markets in which other asset classes trade. Assignment of a 5 percent RSF factor would recognize that there are modest transaction costs related to selling U.S. Treasury securities and other level 1 liquid assets but that, other than assets that a covered company can use directly to meet financial obligations (or will be able to use within a matter of days), level 1 liquid assets generally represent the most readily monetizable asset types for a covered company.

<sup>54</sup> See 12 CFR 204.5(a)(1)(ii).

<sup>55</sup> See 12 CFR 204.10(d).

## Credit and Liquidity Facilities

Section \_\_\_\_ .106(a)(2)(ii) of the proposed rule would assign a 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities that a covered company provides to its customers and counterparties. The proposed rule would require a covered company to support these facilities with stable funding, even though they are generally not included on its balance sheet, because of their widespread use and associated material liquidity risk based on the possibility of drawdowns across a range of economic environments. Research conducted by Board staff found increases in drawdowns of as much as 10 percent of committed amounts over a 12-month period from 2006–2011.<sup>57</sup> Given the proposed rule's application across all counterparties and economic environments, assignment of a 5 percent RSF factor would be appropriate based on the observed drawdowns during this period.

The terms "credit facility" and "liquidity facility" are defined in § \_\_\_\_ .3 of the LCR rule and, as described in section I.D of this Supplementary Information section, the proposed rule would modify the definition of "committed" that is currently in the LCR rule to describe credit and liquidity facilities that cannot be unconditionally canceled by a covered company. Under § \_\_\_\_ .106(a)(2) of the proposed rule, the undrawn amount is the amount that could be drawn upon within one year of the calculation date, whereas under § \_\_\_\_ .32(e) of the LCR rule, the undrawn amount is the amount that could be drawn upon within 30 calendar days. When determining the undrawn amount over the proposed rule's one-year time horizon, a covered company would not include amounts that are contingent on the occurrence of a contractual milestone or other event that cannot be reasonably expected to be reached or occur within one year. For example, if a construction company can draw a certain amount from a credit facility only upon meeting a construction milestone that cannot reasonably be expected to be reached within one year, such as entering the final stage of a multi-year project that has just begun, then the undrawn amount would not include the amount

that would become available only upon entering the final stage of the project.

Similarly, a letter of credit that meets the definition of credit or liquidity facility may entitle a seller to obtain funds from a covered company if a buyer fails to pay the seller. If, under the terms of the letter of credit, the seller is not legally entitled to obtain funds from the covered company as of the calculation date because the buyer has not failed to perform under the agreement with the seller, and the covered company does not reasonably expect nonperformance within the NSFR's one-year time horizon, then the funds potentially available under the letter of credit are not undrawn amounts. If the seller is legally entitled to obtain the funds available under the letter of credit as of the calculation date (because the buyer has defaulted) or if the buyer should reasonably be expected to default within the NSFR's one-year time horizon, then the funds available under the letter of credit are undrawn amounts.

Unlike the LCR rule, which permits covered companies to net certain level 1 and level 2A liquid assets that secure a committed credit or liquidity facility against the undrawn amount of the facility, the proposed rule would not allow netting of such assets because any draw upon a credit or liquidity facility would become an asset on a covered company's balance sheet regardless of the underlying collateral and would require stable funding.

*Question 23: The agencies invite comment on the proposed assignment of a 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities. What, if any, additional factors should be considered in determining the treatment of unfunded commitments under the proposed rule?*

*Question 24: What, if any, modifications to the definitions of "credit facility" and "liquidity facility" or the description of the "undrawn amount" for purposes of the proposed rule should the agencies consider?*

*Question 25: If required to be posted as collateral upon a draw on a committed credit or liquidity facility, should certain level 1 and level 2A liquid assets be netted against the undrawn amount of the facility, and if so, why? Provide detailed explanations and supporting data.*

## iii. 10 Percent RSF Factor

Secured Lending Transactions With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months and Are Secured by Rehypothecatable Level 1 Liquid Assets

Section \_\_\_\_ .106(a)(3) of the proposed rule would assign a 10 percent RSF factor to a secured lending transaction<sup>58</sup> with a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date and is secured by level 1 liquid assets that are rehypothecatable for the duration of the secured lending transaction.

The proposed rule would require a covered company to support short-term lending between financial institutions, where the transaction is secured by rehypothecatable level 1 liquid assets, with a lower amount of available stable funding, relative to most other asset classes, because of a covered company's ability to monetize the level 1 liquid asset collateral for the duration of the transaction. Because of the financial nature of the counterparty, a transaction of this type also presents relatively lower reputational risk to a covered company if it chooses not to roll over the transaction when it matures, as discussed in section II.D.2 of this Supplementary Information section.

As provided in § \_\_\_\_ .106(d) of the proposed rule and discussed in section II.D.3.d of this **SUPPLEMENTARY INFORMATION** section, the RSF factor applicable to a transaction in this category may increase if the covered company rehypothecates the level 1 liquid asset collateral securing the transaction for a period with more than six months remaining from the calculation date.

## iv. 15 Percent RSF Factor

Unencumbered Level 2A Liquid Assets

Section \_\_\_\_ .106(a)(4)(i) of the proposed rule would assign a 15 percent RSF factor to level 2A liquid assets, as set forth in § \_\_\_\_ .20(b) of the LCR rule, but would not take into consideration the requirements in § \_\_\_\_ .22 or the level 2 cap in § \_\_\_\_ .21. As set forth in the LCR rule, level 2A liquid assets include certain obligations issued or guaranteed by a U.S. government-sponsored enterprise (GSE) and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank. The LCR rule requires these securities to be liquid and

<sup>57</sup> See Jose M. Berrospide, Ralf R. Meisenzahl, and Briana D. Sullivan, "Credit Line Use and Availability in the Financial Crisis: The Importance of Hedging," Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series 2012–27 (2012).

<sup>58</sup> The proposed rule would modify the definition of "secured lending transaction" that is currently in the LCR rule, as described in section I.D of this **SUPPLEMENTARY INFORMATION** section.

readily-marketable, as defined in § \_\_\_\_\_.3, to qualify as level 2A liquid assets.

The proposed rule would assign a 15 percent RSF factor to level 2A liquid assets based on the characteristics of these assets, including their high credit quality. This factor would reflect the relatively high level of liquidity of these assets compared to most other asset classes, but lower liquidity than level 1 liquid assets. For example, mortgage-backed securities issued by U.S. GSEs (a widely held form of level 2A liquid assets) have a higher credit quality, higher average daily trading volume, and lower bid-ask spreads relative to corporate debt securities.

#### Secured Lending Transactions and Unsecured Wholesale Lending With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months

Section \_\_\_\_\_.106(a)(4)(ii) of the proposed rule would assign a 15 percent RSF factor to a secured lending transaction with a financial sector entity or a consolidated subsidiary thereof that is secured by assets other than rehypothecatable level 1 liquid assets and matures within six months of the calculation date. It would assign the same RSF factor to unsecured wholesale lending to a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date.<sup>59</sup> Such transactions present relatively lower liquidity risk because of their shorter tenors relative to loans with a longer remaining maturity, providing for cash inflows upon repayment of the loan, and generally present lower reputational risk if a covered company chooses not to roll over the transaction because of the financial nature of the counterparties, as discussed in section II.D.2 above. Therefore, the proposed rule would assign a lower RSF factor to these assets than it would to longer-term loans to similar counterparties or to similar-term loans to non-financial counterparties, as described in sections II.D.3.a.v through II.D.3.a.vii below.

The proposed rule would assign a higher RSF factor to these transactions, however, than it would to a secured lending transaction with a similar maturity and similar counterparty type that is secured by level 1 liquid assets that are rehypothecatable for the duration of the transaction. As described in section II.D.3.a.iii above,

<sup>59</sup> As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

the proposed rule would not require a covered company to fund a transaction secured by rehypothecatable level 1 liquid assets with the same level of available stable funding because of the increased liquidity benefit to the covered company from its ability to monetize the level 1 liquid assets securing the transaction for the duration of the transaction.

#### v. 50 Percent RSF Factor Unencumbered Level 2B Liquid Assets

Section \_\_\_\_\_.106(a)(5)(i) of the proposed rule would assign a 50 percent RSF factor to level 2B liquid assets, as set forth in § \_\_\_\_\_.20(c) of the LCR rule, but would not take into consideration the requirements in § \_\_\_\_\_.22 or the level 2 caps in § \_\_\_\_\_.21. Level 2B liquid assets include certain publicly traded corporate debt securities and certain publicly traded common equity shares that are liquid and readily-marketable.<sup>60</sup>

Section \_\_\_\_\_.20 of the LCR rule requires an asset to meet certain criteria to qualify as a level 2B liquid asset. For example, equity securities must be part of a major index and corporate debt securities must be “investment grade” under 12 CFR part 1.<sup>61</sup> Therefore, the proposed rule would assign a lower RSF factor to these assets than it would assign to non-HQLA. The proposed rule would assign a higher RSF factor to level 2B liquid assets, however, than it would to level 1 and level 2A liquid assets, based on level 2B liquid assets’ relatively higher credit risk, lower trading volumes, and elevated price volatility. For example, Russell 1000 equities, as a class, have lower average daily trading volume and higher price volatility than U.S. Treasury securities and mortgage-backed securities issued by U.S. GSEs. Similarly, investment grade corporate bonds have higher credit risk and lower average daily trading volume relative to level 1 and level 2A liquid assets. At the same time, the market for level 2B liquid assets is more liquid than the secondary market for longer-term loans, in terms of, for example, average daily trading volume. Accordingly, the proposed rule would assign a 50 percent RSF factor to a

<sup>60</sup> The agencies note that nothing in the proposed rule would grant a covered company the authority to engage in activities relating to debt securities and equities not otherwise permitted by applicable law.

<sup>61</sup> 12 CFR 1.2(d). In accordance with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1887 (2010) § 939A, codified at 15 U.S.C. 78o–7, the LCR rule does not rely on credit ratings as a standard of creditworthiness. Rather, the LCR rule relies on an assessment by the covered company of the capacity of the issuer of the corporate debt security to meet its financial commitments.

covered company’s level 2B liquid assets.

#### Secured Lending Transactions and Unsecured Wholesale Lending to a Financial Sector Entity or a Subsidiary Thereof or a Central Bank That Mature in Six Months or More, but Less Than One Year

Section \_\_\_\_\_.106(a)(5)(ii) of the proposed rule would assign a 50 percent RSF factor to a secured lending transaction or unsecured wholesale lending that matures in six months or more, but less than one year from the calculation date, where the counterparty is a financial sector entity or a consolidated subsidiary thereof or the counterparty is a central bank.<sup>62</sup> As discussed above, a covered company faces lower reputational risk if it chooses not to roll over these loans to financial counterparties or claims on a central bank than it would with loans to non-financial counterparties. However, these loans have longer terms—beyond six months—which means that liquidity from principal repayments will not be available in the near term. Therefore, these loans require more stable funding than shorter-term loans, which would be assigned a lower RSF factor, as discussed above. At the same time, given that these loans mature within the NSFR’s one-year time horizon, the proposed rule would not require them to be fully supported by stable funding and would assign them a 50 percent RSF factor.

#### Operational Deposits Held at Financial Sector Entities.

Section \_\_\_\_\_.106(a)(5)(iii) of the proposed rule would assign a 50 percent RSF factor to an operational deposit, as defined in § \_\_\_\_\_.3, placed by the covered company at another financial sector entity. Consistent with the reasoning for the ASF factor assigned to operational deposits held at a covered company, described in section II.C of this Supplementary Information section, such operational deposits placed by a covered company are less readily monetizable by the covered company. These deposits are placed for operational purposes, and a covered company would face legal or operational limitations to making significant withdrawals during the NSFR’s one-year time horizon. Thus, the proposed rule would assign a 50 percent RSF factor to these operational deposits.

<sup>62</sup> As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.



### General Obligation Securities Issued by a Public Sector Entity

Section \_\_\_\_ .106(a)(5)(iv) of the proposed rule would assign a 50 percent RSF factor to general obligation securities issued by, or guaranteed as to the timely payment of principal and interest by, a public sector entity.<sup>63</sup> Consistent with the definition of “general obligation” in the agencies’ risk-based capital rules, a general obligation security is a bond or similar obligation backed by the full faith and credit of a public sector entity.<sup>64</sup> Securities that are not backed by the full faith and credit of a public sector entity, including revenue bonds, would not be considered general obligation securities.

U.S. general obligation securities issued by a public sector entity,<sup>65</sup> which are backed by the general taxing authority of the issuer, are assigned a risk weight of 20 percent under subpart D of the agencies’ risk-based capital rules.<sup>66</sup> These securities have more favorable credit risk characteristics than exposures that would receive a risk weight greater than 20 percent under the agencies’ risk-based capital rules, such as revenue bonds, which are assigned a 50 percent risk weight.<sup>67</sup> Revenue bonds depend on revenue from a single source, or a limited number of sources, and therefore present greater credit risk relative to a U.S. general obligation security issued by a public sector entity. As discussed in section II.D.2 of this **SUPPLEMENTARY INFORMATION** section, high credit quality generally indicates that an asset will maintain liquidity, as market participants tend to be more willing to purchase higher credit quality assets across a range of market and economic conditions. Accordingly, the proposed rule would only assign a 50 percent RSF factor to those securities issued by a U.S. public sector entity with sufficiently high credit quality, which is reflected by the fact that they

are assigned a risk weight of no greater than 20 percent under the standardized approach in the agencies’ risk-based capital rules. Because the agencies expect that covered companies will be able to at least partially monetize these securities within the proposed rule’s one-year time horizon, the proposed rule would not require a covered company to fully support these securities with stable funding.

### Secured Lending Transactions and Unsecured Wholesale Lending to Counterparties That Are Not Financial Sector Entities and Are Not Central Banks and That Mature in Less Than One Year

Section \_\_\_\_ .106(a)(5)(v) of the proposed rule would assign a 50 percent RSF factor to lending to a wholesale customer or counterparty that is not a financial sector entity or central bank, including a non-financial corporate, sovereign, or public sector entity, that matures in less than one year from the calculation date. Unlike with lending to financial sector entities and central banks, the proposed rule would assign the same RSF factor to lending with a remaining maturity of less than six months as it would assign to lending with a remaining maturity of six months or more, but less than one year. This treatment reflects the fact that a covered company is likely to have stronger incentives to continue to lend to these counterparties due to reputational risk and a covered company’s need to maintain its franchise value, even when the lending is scheduled to mature in the nearer term, as discussed in section II.D.2 of this **SUPPLEMENTARY INFORMATION** section. Because of that need to continue lending for reputational reasons or the longer term of certain of these loans, the proposed rule would require significant stable funding to support such lending. However, the proposed rule would not require this lending to be fully supported by stable funding, based on its maturity within the NSFR’s one-year time horizon and the assumption that a covered company may be able to reduce its lending to some degree over the NSFR’s one-year time horizon. Thus, the proposed rule would assign an RSF factor of 50 percent to lending in this category.

### Lending to Retail Customers and Counterparties That Matures in Less Than One Year

Section \_\_\_\_ .106(a)(5)(v) of the proposed rule would assign a 50 percent RSF factor to lending to retail customers or counterparties (including certain small businesses), as defined in § \_\_\_\_ .3

of the LCR rule, for the same reputational and franchise value maintenance reasons for which it would assign a 50 percent RSF factor to lending to wholesale customers and counterparties that are not financial sector entities or central banks, as discussed in section II.D.2 of this **SUPPLEMENTARY INFORMATION** section.

### All Other Assets That Mature in Less Than One Year

Section \_\_\_\_ .106(a)(5)(v) of the proposed rule would assign a 50 percent RSF factor to all other assets that mature within one year of the calculation date but are not described in the categories above. The shorter maturity of an asset in this category reduces its liquidity risk, since it provides for cash inflows upon repayment during the NSFR’s one-year time horizon. However, a covered company may not be able to readily monetize assets that are not part of one of the identified asset classes addressed in the other provisions of the proposed rule. Thus, the proposed rule would require stable funding to support these assets by assigning a 50 percent RSF factor.

#### vi. 65 Percent RSF Factor

### Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 50 Percent

Section \_\_\_\_ .106(a)(6)(i) of the proposed rule would assign a 65 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of no greater than 50 percent under subpart D of the agencies’ risk-based capital rules. Under the agencies’ risk-based capital rules, residential mortgage exposures secured by a first lien on a one-to-four family property that are prudently underwritten, are not 90 days or more past due or carried in nonaccrual status, and that are neither restructured nor modified generally receive a 50 percent risk weight.<sup>68</sup> These mortgage loans should be easier to monetize because of their less risky nature compared to mortgage loans that have a risk weight greater than 50 percent, but generally are not as liquid as lending that matures within the NSFR’s one-year time horizon. Thus, the proposed rule would require a

<sup>63</sup> On April 1, 2016, the Board finalized an amendment to the Board’s LCR rule to include certain municipal securities as level 2B liquid assets. 81 FR 21223 (April 11, 2016). As a result of this amendment, certain municipal securities held by covered companies that are Board-regulated institutions would be assigned the 50 percent RSF factor as level 2B liquid assets, notwithstanding this proposed treatment for all general obligation municipal securities.

<sup>64</sup> See 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), and 12 CFR 324.2 (FDIC).

<sup>65</sup> Section \_\_\_\_ .3 of the LCR rule defines a “public sector entity” as a state, local authority, or other governmental subdivision below the U.S. sovereign entity level.

<sup>66</sup> See 12 CFR 3.32(e)(1)(i) (OCC), 12 CFR 217.32(e)(1)(i) (Board), and 12 CFR 324.32(e)(1)(i) (FDIC).

<sup>67</sup> See 12 CFR 3.32(e)(1)(ii) (OCC), 12 CFR 217.32(e)(1)(ii) (Board), and 12 CFR 324.32(e)(1)(ii) (FDIC).

<sup>68</sup> See 12 CFR 3.32(g) (OCC), 12 CFR 217.32(g) (Board), and 12 CFR 324.32(g) (FDIC). The proposed rule would be consistent with the Basel III NSFR, which assigns a 65 percent RSF factor to residential mortgages that receive a 35 percent risk weight under the Basel II standardized approach for credit risk, because the agencies’ risk-based capital rules assign a 50 percent risk weight to residential mortgage exposures that meet the same criteria as those that receive a 35 percent risk weight under the Basel II standardized approach for credit risk.

substantial amount of stable funding to support these assets by assigning a 65 percent RSF factor to them.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 20 Percent

Section \_\_\_\_ .106(a)(6)(ii) of the proposed rule would assign a 65 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor, that mature one year or more from the calculation date, that are assigned a risk weight of no greater than 20 percent under subpart D of the agencies' risk-based capital rules, and where the borrower is not a financial sector entity or a consolidated subsidiary thereof.<sup>69</sup> These loans have more favorable liquidity characteristics because of their less risky nature compared to similar loans that have a risk weight greater than 20 percent. However, more stable funding would be required than for lending that matures and provides liquidity within the NSFR's one-year time horizon.

#### vii. 85 Percent RSF Factor

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 50 Percent

Section \_\_\_\_ .106(a)(7)(i) of the proposed rule would assign an 85 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of greater than 50 percent under subpart D of the agencies' risk-based capital rules. As noted above, under subpart D of the agencies' risk-based capital rules, a retail mortgage is assigned a risk weight of 50 percent if it is secured by a first lien on a one-to-four family property, prudently underwritten, not 90 days or more past due or carried in nonaccrual status, and has not been restructured or modified.<sup>70</sup> Mortgages that do not meet these criteria are assigned a risk weight of greater than 50 percent.<sup>71</sup> Because these exposures

are generally riskier than mortgages that receive a risk weight of 50 percent or less and may, as a result, be more difficult to monetize, the proposed rule would require that they be supported by more stable funding and would assign an 85 percent RSF factor to them.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 20 Percent

Section \_\_\_\_ .106(a)(7)(ii) of the proposed rule would assign an 85 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor (such as retail mortgages), that mature one year or more from the calculation date, that are assigned a risk weight greater than 20 percent under subpart D of the agencies' risk-based capital rules, and for which the borrower is not a financial sector entity or consolidated subsidiary thereof. These loans involve riskier exposures than similar loans with lower risk weights, and thus, have less favorable liquidity characteristics. Accordingly, the proposed rule would require a covered company to support this lending with more stable funding relative to loans that have lower risk weights or that are shorter term.

Publicly Traded Common Equity Shares That Are Not HQLA and Other Securities That Mature in One Year or More That Are Not HQLA

Sections \_\_\_\_ .106(a)(7)(iii) and (iv) of the proposed rule would assign an 85 percent RSF factor to publicly traded common equity shares that are not HQLA and other non-HQLA securities that mature one year or more from the calculation date, which includes, for example, certain corporate debt securities, as well as private-label mortgage-backed securities, other asset-backed securities, and covered bonds. Relative to securities that are HQLA, these securities have less favorable credit and liquidity characteristics, as they do not meet the criteria required by the LCR rule to be treated as HQLA, such as the requirement that they be investment grade and liquid and readily-marketable. For example, high yield corporate debt securities that do not meet the investment grade criterion

in the LCR rule to be treated as HQLA generally have a higher price volatility than other corporate bonds that qualify as HQLA. Despite the less liquid nature of these securities, however, they are tradable and can to some degree be monetized in the secondary market, so the proposed rule would assign an RSF factor of 85 percent to these assets.

Commodities

Section \_\_\_\_ .106(a)(7)(v) of the proposed rule would assign an 85 percent RSF factor to commodities held by a covered company for which a liquid market exists, as indicated by whether derivative transactions for the commodity are traded on a U.S. board of trade or trading facility designated as a contract market (DCM) under sections 5 and 6 of the Commodity Exchange Act<sup>72</sup> or on a U.S. swap execution facility (SEF) registered under section 5h of the Commodity Exchange Act.<sup>73</sup> The proposal would assign a 100 percent RSF factor to all other commodities held by a covered company. In general, commodities as an asset class have historically experienced greater price volatility than other asset classes. As such, the proposed rule would require a covered company to support its commodities positions with a substantial amount of stable funding.

The proposed rule would assign an 85 percent RSF factor, rather than a 100 percent RSF factor, to commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF because the exchange trading of derivatives on a commodity tends to indicate a greater degree of standardization, fungibility, and liquidity in the market for the commodity.<sup>74</sup> For instance, a market for a commodity for which a derivative transaction is traded on a U.S. DCM or U.S. SEF is more likely to have established standards (for example, with respect to different grades of commodities) that are relied upon in determining the commodities that can be provided to effect physical settlement under a derivative transaction. In addition, the exchange-traded market for a commodity derivative transaction generally increases price transparency for the underlying commodity. A covered company could therefore more easily monetize a commodity that meets this requirement than a commodity that does not, either through the spot market or through derivative transactions based on the commodity. The proposed rule

<sup>69</sup> See 12 CFR 3.32 (OCC), 12 CFR 217.32 (Board), and 12 CFR 324.32 (FDIC). The proposed rule would be consistent with the Basel III NSFR, which assigns a 65 percent RSF factor to loans that receive a 35 percent or lower risk weight under the Basel II standardized approach for credit risk, because the standardized approach in the agencies' risk-based capital rules does not assign a risk weight that is between 20 and 35 percent to such loans.

<sup>70</sup> See *supra* note 68.

<sup>71</sup> Under the agencies' risk-based capital rules, the risk weight on mortgages may be reduced to less than 50 percent if certain conditions are satisfied.

In these cases, the proposed rule would assign an RSF factor of 65 percent, which is the RSF factor assigned to retail mortgages that mature in one year or more and are assigned a risk weight of no greater than 50 percent. See 12 CFR 3.36 (OCC), 12 CFR 217.36 (Board), and 12 CFR 324.36 (FDIC).

<sup>72</sup> 7 U.S.C. 7 and 7 U.S.C. 8.

<sup>73</sup> 7 U.S.C. 7b-3.

<sup>74</sup> Examples of commodities that currently meet this requirement are gold, oil, natural gas, and various agricultural products.

would accordingly require less stable funding to support holdings of commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF than it would require for other commodities, which a covered company may not be able to monetize as easily.

The agencies note that nothing in the proposed rule would grant a covered company the authority to engage in any activities relating to commodities not otherwise permitted by applicable law.

Commodities that would be assigned an 85 percent RSF factor do not include commodity derivatives, which would be included with other derivatives under § \_\_\_\_ .107 of the proposed rule.

*Question 26: What, if any, commodities are traded in a liquid market, but for which there is not a derivative transaction traded on a U.S. DCM or U.S. SEF, such that the commodity should qualify for an 85 percent RSF factor, rather than a 100 percent RSF factor?*

*Question 27: What, if any, commodities would be assigned an 85 percent RSF factor under the proposed rule that should instead be assigned a 100 percent RSF factor?*

*Question 28: The Basel III NSFR assigns an RSF factor of 85 percent to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that mature in one year or more and are assigned a risk weight of greater than 35 percent, whereas the proposed rule would assign an 85 percent RSF factor to the set of these transactions that are assigned a risk weight of greater than 20 percent. What assets, if any, receive a risk weight between 20 and 35 percent under the standardized approach in the agencies' risk-based capital rules and should be assigned a 65 percent RSF factor, instead of an 85 percent RSF factor?*

#### viii. 100 Percent RSF Factor

##### All Other Assets Not Described Above

Section \_\_\_\_ .106(a)(8) of the proposed rule would assign a 100 percent RSF factor to all other assets not otherwise assigned an RSF factor under § \_\_\_\_ .106 or § \_\_\_\_ .107. These assets include, but are not limited to, loans to financial institutions (including to an unconsolidated affiliate) that mature in one year or more; assets deducted from regulatory capital;<sup>75</sup> common equity

shares that are not traded on a public exchange; unposted debits; and trade date receivables that have failed to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale. All assets that are not otherwise assigned an RSF factor of less than 100 percent may not consistently exhibit liquidity characteristics that would suggest a covered company should support them with anything less than full stable funding.

*Question 29: The agencies invite comment on all aspects of the RSF calculation and the assignment of RSF factors to various assets, derivative exposures, and commitments. For example, what issues of domestic and international competitive equity, if any, might be raised by the proposed assignment of RSF factors? Is the proposed RSF amount calculation adequate to meet the agencies' goal of ensuring covered companies maintain appropriate amounts of stable funding? Why or why not? Provide detailed explanations and supporting data.*

#### b. Nonperforming Assets

Section \_\_\_\_ .106(b) of the proposed rule would assign a 100 percent RSF factor to any asset on a covered company's balance sheet that is past due by more than 90 days or nonaccrual.<sup>76</sup> Because cash inflows from these assets have an elevated risk of non-payment, these assets tend to be illiquid. The proposed rule would therefore require a covered company to fully support them with stable funding, in order to reduce its risk of having to liquidate them at a discount.

#### c. Treatment of Encumbered Assets

Under the proposed rule, the RSF factor assigned to an asset would depend on whether or not the asset is encumbered. As discussed in section I.D of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would define "encumbered" (a newly defined term under § \_\_\_\_ .3), as the converse of the term "unencumbered" currently used in the LCR rule.

Encumbered assets generally cannot be monetized during the period in which they are encumbered. Thus, the proposed rule would require encumbered assets to be supported by stable funding depending on the tenor

of the encumbrance. An asset that is encumbered for less than six months from the calculation date would be assigned the same RSF factor as would be assigned to the asset if it were unencumbered. Because a covered company will have access to the asset and the ability to monetize it in the near term (*i.e.*, within six months), the proposed rule would not require additional stable funding to support it as a result of the encumbrance.

An asset that is encumbered for a period of six months or more, but less than one year, would be assigned an RSF factor equal to the greater of 50 percent and the RSF factor the asset would be assigned if it were not encumbered. This treatment would reflect a covered company's more limited ability to monetize an asset that is subject to an encumbrance period of this length and the corresponding need to support the asset with additional stable funding. For an asset that would receive an RSF factor of less than 50 percent if it were unencumbered, an RSF factor of 50 percent reflects the covered company's reduced ability to monetize the asset in the near term. For example, a security issued by a U.S. GSE that a covered company has encumbered for a remaining period of six months or more, but less than one year, would be assigned a 50 percent RSF factor, rather than the 15 percent RSF factor that would be assigned if the security were unencumbered. For an asset that would receive an RSF factor of greater than 50 percent if it were unencumbered, the proposed rule's treatment would reflect the less liquid nature of the asset, which an encumbrance period of less than one year would only marginally make less liquid. For example, a non-HQLA security would continue to be assigned an 85 percent RSF factor if it is encumbered for a remaining period of six months or more, but less than one year.

The proposed rule would assign a 100 percent RSF factor to an asset that is encumbered for a remaining period of one year or more because the asset would be unavailable to the covered company for the entirety of the NSFR's one-year time horizon, so it should be fully supported by stable funding. Table 1 sets forth the RSF factors for assets that are encumbered.

<sup>75</sup> Assets deducted from regulatory capital include, but are not limited to, goodwill, deferred tax assets, mortgage servicing assets, and defined benefit pension fund net assets. 12 CFR 3.22 (OCC),

12 CFR 217.22 (Board), and 12 CFR 324.22 (FDIC). These assets, as a class, tend to be difficult for a covered company to readily monetize.

<sup>76</sup> The proposed rule's description of nonperforming assets in § \_\_\_\_ .106(b) would be consistent with the definition of "nonperforming exposure" in § \_\_\_\_ .3 of the LCR rule.

TABLE 1—RSF FACTORS FOR ENCUMBERED ASSETS

Asset encumbered <6 months	Asset encumbered ≥6 months <1 year	Asset encumbered ≥1 year (percent)
If RSF factor for unencumbered asset is ≤50 percent: RSF factor for the asset as if it were unencumbered .....	50 percent .....	100
If RSF factor for unencumbered asset is > 50 percent: RSF factor for the asset as if it were unencumbered .....	RSF factor for the asset as if it were unencumbered .....	100

Under the proposed rule, the duration of an encumbrance of an asset may exceed the maturity of that asset, as short-dated assets may provide support for longer-dated transactions where the short-dated asset would have to be replaced upon its maturity. Because of this required replacement, a covered company would have to continue funding an eligible asset for the entirety of the encumbrance period. In these cases, although the maturity of the asset is short-term, because the asset provides support for a longer-dated transaction, the encumbrance period more accurately represents the duration of the covered company’s funding requirement. For example, a U.S. Treasury security that matures in three months that is used as collateral in a one-year repurchase agreement would need to be replaced upon the maturity of the security with an asset that meets the requirements of the repurchase agreement. Thus, even though the collateral is short-dated, a covered company would need to fully support an asset with stable funding for the duration of the one-year repurchase agreement, so the required stable funding would be based on a one-year encumbrance period.

**Assets Held in Certain Customer Protection Segregated Accounts**

Section \_\_\_\_ .106(c)(3) of the proposed rule specifies how a covered company would determine the RSF amount associated with an asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets. Specifically, the proposed rule would require a covered company to assign an RSF factor to an asset held in a segregated account of this type equal to the RSF factor that would be assigned to the asset under § \_\_\_\_ .106 as if it were not held in a segregated account. For example, the proposed rule would not consider an asset held pursuant to the SEC’s Rule 15c3–3<sup>77</sup> or the Commodity Futures Trading Commission’s Rule 1.20 or Part 22<sup>78</sup> to be encumbered

solely because it is held in a segregated account. Because the inability to monetize the assets in a segregated account is primarily based on the decisions and behaviors of a customer relating to the purpose for which the customer holds the account, the proposed rule would not treat the restriction as a longer-term encumbrance. For example, customer free credits, which are customer funds held prior to their investment, must be segregated until the customer decides to invest or withdraw the funds, so the duration of the restriction is solely based on the behavior of the customer. Accordingly, the proposed rule would treat cash that a covered company places on deposit with a third-party depository institution in accordance with segregation requirements as a short-term loan to a financial sector entity, which would be assigned a 15 percent RSF factor. Similarly, U.S. Treasury securities held by a covered company in a segregated account pursuant to applicable customer protection requirements would be assigned a 5 percent RSF factor.

**d. Treatment of Rehypothecated Off-Balance Sheet Assets**

Section \_\_\_\_ .106(d) of the proposed rule specifies how a covered company would determine the RSF amount for a transaction involving either an off-balance sheet asset that secures an NSFR liability or the sale of an off-balance sheet asset that results in an NSFR liability (for instance, in the case of a short sale). For example, a covered company may obtain a security as collateral in a lending transaction (such as a reverse repurchase agreement) with rehypothecation rights and subsequently pledge the security in a borrowing transaction (such as a repurchase agreement). Under this arrangement, it may be the case that the asset obtained and pledged by the covered company is not included on the covered company’s balance sheet under GAAP, in which case the asset would not have a carrying value that would be assigned an RSF factor under

§ \_\_\_\_ .106(a) of the proposed rule.<sup>79</sup> Nevertheless, such arrangements still affect a covered company’s liquidity risk profile. In cases where a covered company has rehypothecated the off-balance sheet collateral, it has reduced its ability to monetize or recognize inflows from the lending transaction for the duration of the rehypothecation.

For example, if a covered company obtains a security as collateral in a lending transaction and rehypothecates the security as collateral in a borrowing transaction, the covered company may need to roll over the lending transaction if it matures before the borrowing transaction. Alternatively, the covered company would need to obtain a replacement asset for the rehypothecated collateral to return to the counterparty under the lending transaction. At the same time, the NSFR liability generated by the borrowing transaction could increase the covered company’s ASF amount, depending on the maturity and other characteristics of the NSFR liability and, absent the proposed treatment in § \_\_\_\_ .106(d), the proposed rule would not properly account for the covered company’s increased funding risk.

Section \_\_\_\_ .106(d) of the proposed rule would address these considerations based on the manner in which the covered company obtained the off-balance sheet asset: Through a lending transaction, asset exchange, or other transaction.

Under § \_\_\_\_ .106(d)(1) of the proposed rule, if a covered company has obtained the off-balance sheet asset under a lending transaction, the proposed rule would treat the lending transaction as encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by the off-balance sheet asset or resulting from the sale of the off-balance asset, as the case may be, and (2) any other encumbrance period already applicable to the lending transaction. For example, § \_\_\_\_ .106(d)(1) would apply if a covered company obtains a level 2A

<sup>77</sup> 17 CFR 240.15c3–3.

<sup>78</sup> 17 CFR 1.20; 17 CFR part 22.

<sup>79</sup> See § \_\_\_\_ .102(a) of the proposed rule (rules of construction), as described in section II.A.1 of this SUPPLEMENTARY INFORMATION section.

liquid asset as collateral under an overnight reverse repurchase agreement with a financial counterparty, and subsequently pledges the level 2A liquid asset as collateral in a repurchase transaction with a maturity of one year or more, but does not include the level 2A liquid asset on its balance sheet. In this case, the proposed rule would treat the balance-sheet receivable associated with the reverse repurchase agreement as encumbered for a period of one year or more, since the remaining maturity of the repurchase agreement secured by the rehypothecated level 2A liquid is one year or more. Accordingly, the proposed rule would assign the reverse repurchase agreement an RSF factor of 100 percent instead of 15 percent. Under this example, the proposed rule would require the covered company to maintain additional stable funding to account for its need to roll over the overnight reverse repurchase agreement for the duration of the repurchase agreement's maturity or obtain an alternative level 2A liquid asset to return to the counterparty under the reverse repurchase agreement.

Under § \_\_\_\_.106(d)(2) of the proposed rule, if a covered company has obtained the off-balance sheet asset under an asset exchange, the proposed rule would treat the asset provided by the covered company in the asset exchange as encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by the off-balance sheet asset or resulting from the sale of the off-balance asset, as the case may be, and (2) any encumbrance period already applicable to the provided asset. For example, § \_\_\_\_.106(d)(2) of the proposed rule would apply if a covered company, acting as a securities borrower, provides a level 2A liquid asset and obtains a level 1 liquid asset under an asset exchange with a remaining maturity of six months, and subsequently provides the level 1 liquid asset as collateral to secure a repurchase agreement that matures in one year or more without including the level 1 liquid asset on its balance sheet.<sup>80</sup> In this case, under

<sup>80</sup> Where a covered company engages in an asset exchange, acting as a securities borrower, under GAAP, the asset provided by the covered company typically remains on the covered company's balance sheet while the received asset, if not rehypothecated, would not be on the covered company's balance sheet. To the extent a covered company includes on its balance sheet an asset received in an asset exchange that the covered company uses as collateral to secure a separate NSFR liability, § \_\_\_\_.106(d) would not apply. Instead, the asset used as collateral would be assigned an RSF factor in the same manner as other assets on the covered company's balance sheet (including by taking into account that the asset

§ \_\_\_\_.106(d)(2), the proposed rule would treat the level 2A liquid asset provided by the covered company as encumbered for a period of one year or more (equal to the remaining maturity of the repurchase agreement secured by the rehypothecated level 1 liquid asset) instead of six months (equal to the remaining maturity of the asset exchange) and would assign an RSF factor of 100 percent instead of 50 percent to the level 2A liquid asset. In this case, the proposed rule would require the covered company to maintain additional stable funding to account for its need to roll over the asset exchange for the duration of the secured funding transaction's maturity or obtain an alternative level 1 liquid asset to return to the counterparty under the asset exchange.

If a covered company has an encumbered off-balance sheet asset that it did not obtain under either a lending transaction or an asset exchange, § \_\_\_\_.106(d)(3) of the proposed rule would require the covered company to treat the off-balance sheet asset as if it were on the covered company's balance sheet and encumbered for a period equal to the remaining maturity of the NSFR liability. This treatment would prevent a covered company from recognizing available stable funding amounts from the NSFR liability without recognizing corresponding required stable funding amounts associated with the encumbered off-balance sheet asset.

In cases where a covered company has provided an asset as collateral, and the company operationally could have provided either an off-balance sheet asset or an identical on-balance sheet asset from its inventory, the proposed rule would not restrict the covered company's ability to identify either the off-balance sheet asset or the identical on-balance sheet asset as the provided collateral, for purposes of determining encumbrance treatment under § \_\_\_\_.106(c) and (d). The covered company's identification for purposes of § \_\_\_\_.106(c) and (d) must be consistent with contractual and other applicable requirements and the rest of the covered company's NSFR calculations. For example, if a covered company receives a security in a reverse repurchase agreement that is identical to a security the covered company already owns, and the covered company provides one of these securities as collateral to secure a repurchase agreement, the proposed rule would not restrict the covered company from identifying, for purposes

would be encumbered) pursuant to § \_\_\_\_.106(a) through (c) or § \_\_\_\_.107, as applicable.

of determining encumbrance treatment under § \_\_\_\_.106(c) and (d), either the owned or borrowed security as the collateral for the repurchase agreement, provided that the covered company has the operational and legal capability to provide either one of the securities. If the covered company chooses to treat the off-balance sheet security received from the reverse repurchase agreement as the collateral securing the repurchase agreement, § \_\_\_\_.106(d)(1) would apply and the covered company would treat the reverse repurchase agreement as encumbered for purposes of assigning an RSF factor. If the covered company instead chooses to treat the owned security as the collateral encumbered by the repurchase agreement, the covered company would apply the appropriate RSF factor (reflecting the encumbrance) to the owned security under § \_\_\_\_.106(c) and no additional encumbrance would apply to the reverse repurchase agreement under § \_\_\_\_.106(d). The same treatment would apply for a covered company's sale of a security and the covered company's ability to identify whether it has sold a security from its inventory or an identical security received from a lending transaction, asset exchange, or other transaction.

*Question 30: The agencies invite comment on possible alternative approaches relating to off-balance sheet assets that secure NSFR liabilities of the covered company. Please include discussion as to whether and why any alternative approach would more accurately reflect a covered company's funding risk, provide greater consistency across transactional structures, or be more operationally efficient than the approach in § \_\_\_\_.106(d) of the proposed rule.*

*Question 31: The agencies request comment on a possible alternative that would, instead of applying an additional encumbrance to a related on-balance sheet asset, assign an RSF factor to the off-balance sheet asset and an ASF factor to an obligation to return the asset as if both the off-balance sheet asset and the obligation to return the asset were included on the covered company's balance sheet. If adopted, should such an alternative apply in all cases, or only where the covered company encumbers the asset for a period longer than the maturity of the obligation to return it?*

*Question 32: Should the approach in § \_\_\_\_.106(d) of the proposed rule be modified to more specifically describe how the encumbrance treatment would apply if a covered company has rehypothecated only a portion of the*

collateral received under a lending transaction or asset exchange?

*Question 33: To the extent a covered company encumbers off-balance sheet assets received under a lending transaction or asset exchange and the value of the assets exceeds the value of the lending transaction or asset provided by the covered company, should an RSF factor be assigned to the excess value of the off-balance sheet assets as if they were included on the balance sheet of the covered company?*

*Question 34: Is it appropriate to apply any encumbrance treatment to transactions involving off-balance sheet collateral? Would the proposed approach in § \_\_\_\_ .106(d) present operational difficulties, and if so, what modifications could be made to reduce such difficulties? To what extent would operational ease or difficulties vary based on the type of transactions involved, such as whether a covered company has obtained an off-balance sheet asset from a lending transaction or an asset exchange?*

#### E. Derivative Transactions

Under the proposed rule, a covered company would calculate its required stable funding relating to its derivative transactions<sup>81</sup> (its derivatives RSF amount) separately from its other assets and commitments.<sup>82</sup> This calculation would be separate based on the generally more complex features of derivative transactions and variable nature of derivative exposures. For similar reasons, the proposed rule would not separately treat derivatives liabilities as available stable funding, as described below. A covered company's derivatives RSF amount would reflect three components: (1) The current value

<sup>81</sup> As defined in § \_\_\_\_ .3 of the LCR rule, "derivative transaction" means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, forward contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

<sup>82</sup> The proposed rule would include mortgage commitments that are derivative transactions in the general derivative transactions treatment, in contrast to the LCR rule, which excludes those transactions and applies a separate, self-contained mortgage treatment. See § \_\_\_\_ .32(c) and (d) of the LCR rule.

of a covered company's derivatives assets and liabilities, (2) initial margin provided by a covered company pursuant to derivative transactions and assets contributed by a covered company to a CCP's mutualized loss sharing arrangement in connection with cleared derivative transactions, and (3) potential future changes in the value of a covered company's derivatives portfolio. Section I.E.7 of this **SUPPLEMENTARY INFORMATION** section below includes an example of a derivatives RSF amount calculation.

#### 1. NSFR Derivatives Asset or Liability Amount

Under the proposed rule, the stable funding requirement for the current value of a covered company's derivative assets and liabilities would be based on an aggregated measure of the covered company's derivatives portfolio. As described below, a covered company would sum its derivative asset and liability positions across transactions, taking into account variation margin.<sup>83</sup> A covered company would then net the derivative asset and liability totals against each other to determine whether its portfolio has an overall asset or liability position (an NSFR derivatives asset amount or NSFR derivatives liability amount, respectively). By netting across different counterparties and different derivative transactions (including different types of derivative transactions), the proposed rule would estimate the overall current position and funding needs associated with a covered company's derivatives portfolio in a manner that offers operational and administrative efficiencies relative to other approaches. In addition, use of a standardized measure would promote greater consistency and comparability across covered companies.

A covered company would determine its NSFR derivatives asset amount or NSFR derivatives liability amount, whichever the case may be, by the following calculation steps, which are set forth in § \_\_\_\_ .107 of the proposed rule:

<sup>83</sup> As discussed in section I.E.5 of this **SUPPLEMENTARY INFORMATION** section below, § \_\_\_\_ .107(b)(5) of the proposed rule would require a covered company, when it calculates its required stable funding amount associated with potential future derivatives portfolio valuation changes, to disregard settlement payments based on changes in the value of its derivative transactions. This adjustment would apply only for purposes of the calculation under § \_\_\_\_ .107(b)(5). Accordingly, a covered company would not exclude these settlement payments for purposes of calculating its required stable funding amount associated with the current value of its derivative transactions under § \_\_\_\_ .107(b)(1) and (d) through (f).

#### Step 1: Calculation of Derivatives Asset and Liability Values

Under § \_\_\_\_ .107(f) of the proposed rule, a covered company would calculate the asset and liability values of its derivative transactions after netting certain variation margin received and provided. For each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set of a covered company, the derivatives asset value would equal the asset value to the covered company after netting any cash variation margin received by the covered company that meets the conditions of § \_\_\_\_ .10(c)(4)(ii)(C)(1) through (7) of the SLR rule,<sup>84</sup> or the derivatives liability value would equal the liability value to the covered company after netting any variation margin provided by the covered company. (Each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set would have either a derivatives asset value or derivatives liability value.)

The proposed rule would restrict netting of variation margin received by a covered company but not variation margin provided by a covered company for purposes of this calculation in order to prevent understatement of the covered company's derivatives RSF amount. For variation margin received by a covered company, the proposed rule would recognize only netting of cash variation margin because other forms of variation margin, such as securities, may have associated risks, such as market risk, that are not present with cash. The proposed rule would also require variation margin received to meet the conditions of § \_\_\_\_ .10(c)(4)(ii)(C)(1) through (7) the SLR rule in order to be recognized as netting the asset value of a derivative transaction.<sup>85</sup> The regular and timely

<sup>84</sup> 12 CFR 3.10(c)(4)(ii)(C) (OCC), 12 CFR 217.10(c)(4)(ii)(C) (Board), and 12 CFR 324.10(c)(4)(ii)(C) (FDIC). See *infra* note 85.

<sup>85</sup> *Id.* These conditions are: (1) Cash collateral received is not segregated; (2) variation margin is calculated on a daily basis based on mark-to-fair value of the derivative contract; (3) variation margin transferred is the full amount necessary to fully extinguish the net current credit exposure to the counterparty, subject to the applicable threshold and minimum transfer amounts; (4) variation margin is cash in the same currency as the settlement currency in the contract; (5) the derivative contract and the variation margin are governed by a qualifying master netting agreement between the counterparties to the contract, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided; (6) variation margin is used to reduce the current credit exposure of the derivative contract and not the PFE (as that term is defined in the SLR rule);

exchange of cash variation margin that meets these conditions helps to protect a covered company from the effects of a counterparty default.

In contrast to the treatment of variation margin received by a covered company, the proposed rule would recognize netting of all forms of variation margin provided by a covered company. As described in step 3 below, a covered company's derivatives liability values would ultimately be netted against its derivatives asset values, which are assigned a 100 percent RSF factor. Because variation margin provided by a covered company reduces its derivatives liability values, a limitation on netting variation margin provided would lower a covered company's derivatives RSF amount, which would be the opposite effect of the proposed rule's limitation on netting variation margin received and could lead to an understatement of a covered company's stable funding requirement. For this reason, all forms of variation margin provided by a covered company would be netted against its derivatives liabilities.

The proposed rule would not permit a covered company to net initial margin provided or received against its derivatives liability or asset values as part of its calculation of its NSFR derivatives asset or liability amount. Unlike variation margin, which the parties to a derivative transaction exchange to account for valuation changes of the transaction, initial margin is meant to cover a party's potential losses in connection with a counterparty's default (e.g., the cost a party would incur to replace the defaulted transaction with a new, equivalent transaction with a different counterparty). Therefore, while variation margin is relevant to the calculation of the current value of a covered company's derivatives portfolio, initial margin would not factor into the proposed rule's measure of the current value of a covered company's derivatives portfolio. Initial margin would be subject to a separate treatment under the proposed rule, as described in further detail below.

#### Step 2: Calculation of Total Derivatives Asset and Liability Amounts

Under § \_\_\_\_ .107(e) of the proposed rule, a covered company would sum all of its derivatives asset values, as calculated under § \_\_\_\_ .107(f)(1), to arrive at its "total derivatives asset

and (7) variation margin may not reduce net or gross credit exposure for purposes of calculating the Net-to-gross Ratio (as that term is defined in the SLR rule).

amount" and sum all of its derivatives liability values, as calculated under § \_\_\_\_ .107(f)(2), to arrive at its "total derivatives liability amount." These amounts would represent the covered company's aggregated derivatives assets and liabilities, inclusive of netting certain variation margin.

#### Step 3: Calculation of NSFR Derivatives Asset or Liability Amount

Under § \_\_\_\_ .107(d) of the proposed rule, a covered company would net its total derivatives asset amount against its total derivatives liability amount, each as calculated under § \_\_\_\_ .107(e). If a covered company's total derivatives asset amount exceeds its total derivatives liability amount, the covered company would have an "NSFR derivatives asset amount." Conversely, if the total derivatives liability amount exceeds the total derivatives asset amount, the covered company would have an "NSFR derivatives liability amount."

Section \_\_\_\_ .107(b)(1) of the proposed rule would assign a 100 percent RSF factor to a covered company's NSFR derivatives asset amount because, as an asset class, derivative assets have a wide range of risk and volatility, and, therefore, a covered company should have full stable funding for such assets. Section \_\_\_\_ .107(c)(1) of the proposed rule would assign a zero percent ASF factor to a covered company's NSFR derivatives liability amount. Because of the variable nature of such liabilities, this amount would not represent stable funding.

*Question 35: What changes, if any, should be made to the proposed rule's mechanics for calculating a covered company's RSF and ASF amounts associated with its current exposures under derivative transactions and why? What alternative approach, if any, would be more appropriate? For example, should ASF and RSF factors be assigned to the current asset or liability values of each separate derivative transaction or QMNA netting set using the frameworks specified in §§ \_\_\_\_ .104 and \_\_\_\_ .106?*

#### 2. Variation Margin Provided and Received and Initial Margin Received

As described in section II.E.1 above of this **SUPPLEMENTARY INFORMATION** section, a covered company's calculation of its current derivative transaction values would take into account netting due to variation margin received and provided by the covered company. The proposed rule would, in addition, require a covered company to maintain stable funding for assets on its balance sheet that it has received as

variation margin and certain assets that it has provided as variation margin in connection with derivative transactions.

*Variation margin provided by a covered company.* Sections \_\_\_\_ .107(b)(2) and (3) of the proposed rule would assign an RSF factor to variation margin provided by a covered company based on whether the variation margin reduces the covered company's derivatives liability value under the relevant derivative transaction or QMNA netting set or whether it is "excess" variation margin. If the variation margin reduces a covered company's derivatives liability value for a particular QMNA netting set or derivative transaction not subject to a qualifying master netting agreement, the proposed rule would assign the carrying value of such variation margin a zero percent RSF factor. As described above, such variation margin provided already reduces the covered company's derivatives liabilities that are able to net against its derivatives assets.

To the extent a covered company provides "excess" variation margin with respect to a derivative transaction or QMNA netting set—meaning, an amount of variation margin that does not reduce the covered company's derivatives liability value—and includes the excess variation margin asset on its balance sheet, the proposed rule would assign such excess variation margin an RSF factor under § \_\_\_\_ .106, according to the characteristics of the asset or balance sheet receivable associated with the asset, as applicable. Because excess variation margin does not reduce a covered company's derivatives liabilities that are able to net against its derivatives assets, the covered company's NSFR derivatives asset or liability amount would not already account for these assets. The proposed rule would therefore assign RSF factors to excess variation margin remaining on a covered company's balance sheet to reflect the required stable funding appropriate for the assets.

*Variation margin received by a covered company.* Section \_\_\_\_ .107(b)(4) of the proposed rule would require all variation margin received by a covered company that is on the covered company's balance sheet to be assigned an RSF factor under § \_\_\_\_ .106, according to the characteristics of each asset received. Cash variation margin received, for example, would be assigned an RSF factor of zero percent. If that cash is used to purchase another asset, the new asset would be assigned the appropriate RSF factor under § \_\_\_\_ .106.

The proposed rule would assign a zero percent ASF factor to any NSFR



liability that arises from an obligation to return initial margin or variation margin received by a covered company related to its derivative transactions. Given that these liabilities can change based on the underlying derivative transactions and remain, at most, only for the duration of the associated derivative transactions, they do not represent stable funding for a covered company. This treatment would apply regardless of the form of the initial margin or variation margin, whether securities or cash, because the liability is dependent on the underlying derivative transactions in either case.

*Question 36: What changes, if any, should be made to the proposed rule's treatment of variation margin, including the RSF factors that are assigned to variation margin received or provided by a covered company?*

*Question 37: Are there alternative RSF factors that should be applied to variation margin received by a covered company that does not meet the conditions of § \_\_\_\_\_.10(c)(4)(ii)(C)(1) through (7) of the SLR rule and is not excess variation margin and, if so, why would the alternative RSF factor be more appropriate?*

*Question 38: Are there any liabilities associated with the obligation to return variation margin that should be assigned an alternative ASF factor and why? For example, the Basel III NSFR does not explicitly exclude assigning an ASF factor to obligations to return variation margin that meet the conditions of § \_\_\_\_\_.10(c)(4)(ii)(C)(1) through (7) of the SLR rule. Are there any liabilities associated with the obligations to return this variation margin that would have a sufficiently long maturity to be assigned an alternative ASF factor (i.e., six months or greater)?*

### 3. Customer Cleared Derivative Transactions

For a covered company that is a clearing member of a CCP, the covered company's NSFR derivatives asset amount or NSFR derivatives liability amount would not include the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to the CCP on behalf of the covered company's customer, including when the covered company has provided a guarantee to the CCP for the performance of the customer. These derivative transactions are assets or liabilities of a covered company's customer, and the proposed rule would not include them as derivative assets or liabilities of the covered company. Similarly, because variation margin provided or received in connection with customer derivative transactions would

not impact the current value of the covered company's derivative transactions, these amounts would also not be included in the covered company's calculations under § \_\_\_\_\_.107.

To the extent a covered company includes on its balance sheet under GAAP a derivative asset or liability value (as opposed to a receivable or payable in connection with a derivative transaction, as discussed below) associated with a customer cleared derivative transaction, the derivative transaction would constitute a derivative transaction of the covered company for purposes of § \_\_\_\_\_.107 of the proposed rule. For example, if the covered company must perform according to a guarantee to the CCP of the performance of the customer such that the transaction becomes a derivative transaction of the covered company (e.g., following a default by a covered company's customer), such transaction would typically be included on the balance sheet of the covered company and would fall within the proposed rule's derivatives treatment under § \_\_\_\_\_.107.

To the extent a covered company has an asset or liability on its balance sheet associated with a customer derivative transaction that is not a derivative asset or liability—for example, if a covered company has extended credit on behalf of a customer to cover a variation margin payment or a covered company holds customer funds relating to derivative transactions in a customer protection segregated account discussed in section II.D.3.c of this **SUPPLEMENTARY INFORMATION** section—such asset or liability of the covered company would be assigned an RSF factor under § \_\_\_\_\_.106 or an ASF factor under § \_\_\_\_\_.104, respectively. Accordingly, to the extent a covered company's balance sheet includes a receivable asset owed by a CCP or payable liability owed to a CCP in connection with customer receipts and payments under derivative transactions, this asset or liability would not constitute a derivative asset or liability of the covered company and would not be included in the covered company's calculations under § \_\_\_\_\_.107 of the proposed rule.

A covered company's NSFR derivatives asset amount or NSFR derivatives liability amount would include the asset or liability values of derivative transactions between a CCP and a covered company where the covered company has entered into an offsetting transaction (commonly known as a "back-to-back" transaction). Because a covered company would have obligations as a principal under both

derivative transactions comprising the back-to-back transaction, any asset or liability values arising from these transactions, or any variation margin provided or received in connection with these transactions, would be included in the covered company's calculations under § \_\_\_\_\_.107.

*Question 39: Under what circumstances, if any, should the asset or liability values of a covered company's customer's cleared derivative transactions be included in the calculation of a covered company's NSFR derivatives asset amount or NSFR derivatives liability amount?*

*Question 40: Other than in connection with a default by a covered company's customer, under what circumstances, if any, would the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to a CCP on behalf of the covered company's customer, appear on a covered company's balance sheet? If there are such circumstances, should these derivative assets or liabilities be excluded from a covered company's calculation of its derivatives RSF amount under § \_\_\_\_\_.107 of the proposed rule, and why?*

### 4. Assets Contributed to a CCP's Mutualized Loss Sharing Arrangement and Initial Margin

Section \_\_\_\_\_.107(b)(6) of the proposed rule would assign an 85 percent RSF factor to the fair value of assets contributed by a covered company to a CCP's mutualized loss sharing arrangement. Similarly, § \_\_\_\_\_.107(b)(7) of the proposed rule would assign to the fair value of initial margin provided by a covered company the higher of an 85 percent RSF factor or the RSF factor assigned to the initial margin asset pursuant to § \_\_\_\_\_.106. The proposed rule would assign an RSF factor of at least 85 percent to these forms of collateral based on the assumption that a covered company generally must maintain its initial margin or CCP mutualized loss sharing arrangement contributions in order to maintain its derivatives activities. The proposed rule would not set the RSF factor at 100 percent, however, because a covered company, to some degree, may be able to reduce or otherwise adjust its derivatives activities such that they require a smaller amount of contributions to CCP mutualized loss sharing arrangements or initial margin.

In cases where a covered company provides as initial margin an asset that would be assigned an RSF factor of greater than 85 percent if it were not provided as initial margin, the covered company would assign the normally

applicable RSF factor to the asset rather than reducing the RSF factor to 85 percent. For example, if a covered company provides as initial margin an asset that would otherwise be assigned a 100 percent RSF factor under § \_\_\_\_ .106 of the proposed rule, the covered company's act of providing the asset as initial margin would not enhance the asset's liquidity such that the applicable RSF factor should be reduced to 85 percent. Instead, the asset would continue to be assigned an RSF factor of 100 percent.

The proposed rule would assign an RSF factor to the fair value of a covered company's contributions to a CCP's mutualized loss sharing arrangement or initial margin provided by a covered company regardless of whether the contribution or initial margin is included on the covered company's balance sheet. A covered company would face the same funding requirements and risks associated with these assets regardless of whether or not it includes the assets on its balance sheet. To the extent a covered company includes on its balance sheet a receivable for an asset contributed to a CCP's mutualized loss sharing arrangement or provided as initial margin, rather than the asset itself, the proposed rule would assign an RSF factor to the fair value of the asset, ignoring the receivable, in order to avoid double counting.

The proposed rule would not assign an RSF factor under § \_\_\_\_ .107 of the proposed rule to initial margin provided by a covered company acting as an agent for a customer's cleared derivative transactions where the covered company does not provide a guarantee to the customer with respect to the return of the initial margin to the customer. A covered company would not include this form of initial margin in its derivatives RSF amount because the customer is obligated to fund the initial margin under the customer transaction for the duration of the transaction, so the covered company faces limited liquidity risk. To the extent a covered company includes on its balance sheet any such initial margin, this initial margin would instead be assigned an RSF factor pursuant to § \_\_\_\_ .106 of the proposed rule and any corresponding liability would be assigned an ASF factor pursuant to § \_\_\_\_ .104.

*Question 41: What other RSF factor, if any, would be more appropriate for initial margin and assets contributed to a mutualized loss sharing arrangement? For example, would it be more appropriate to apply a 100 percent RSF factor, based on an assumption that a*

*covered company would generally maintain its derivatives activities at current levels, such that the covered company should be required to fully support these obligations with stable funding?*

*Question 42: Should assets contributed by a covered company to a CCP's mutualized loss sharing arrangement be treated differently than initial margin provided by a covered company? If so, how should these assets be treated and why?*

#### 5. Derivatives Portfolio Potential Valuation Changes

As the value of a company's derivative transactions decline, the company may be required to provide variation margin or make settlement payments to its counterparty. The proposed rule would therefore require a covered company to maintain available stable funding to support these potential variation margin and settlement payment outflows. Specifically, a covered company's derivatives RSF amount would include an additional component that is intended to address liquidity risk associated with potential changes in the value of the covered company's derivative transactions.

Under § \_\_\_\_ .107(b)(5) of the proposed rule, this additional component would equal 20 percent of the sum of a covered company's "gross derivative values" that are liabilities under each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, multiplied by an RSF factor of 100 percent.<sup>86</sup> For purposes of this calculation, the "gross derivative value" of a derivative transaction not subject to a qualifying master netting agreement or of a QMNA netting set would equal the value to the covered company, calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the values of the derivative transaction or QMNA netting set.<sup>87</sup> A covered company would

<sup>86</sup> As discussed in section ILE.3 of this SUPPLEMENTARY INFORMATION section, for a covered company that is a clearing member of a CCP, the company's calculation of its RSF measure for potential derivatives future valuation changes would generally not include gross derivative values of the covered company's customers' cleared derivative transactions where the covered company acts as agent for the customers. As with other components of a covered company's derivatives RSF amount calculation, however, the RSF measure for potential future valuation changes would include such derivative transactions that the covered company includes on its balance sheet under GAAP.

<sup>87</sup> Other payments made under a derivative transaction, such as periodic fixed-for-floating payments under an interest rate swap, would not

not include in the sum any gross derivative values that are assets.

For example, if a covered company has a derivative transaction not subject to a qualifying master netting agreement whose value on day 1 is \$0, and the value moves to -\$10 on day 2 and the covered company provides \$10 of variation margin, the covered company's gross derivative value on day 2 (if day 2 is an NSFR calculation date) attributable to the derivative transaction for purposes of this calculation would be a liability of \$10. If the value subsequently moves to -\$8 on day 3 and the covered company receives \$2 of variation margin returned (resulting in a net of \$8 of variation margin provided by the covered company), the covered company's gross derivative value on day 3 (if day 3 is an NSFR calculation date) attributable to the derivative transaction for purposes of this calculation would be a liability of \$8. The gross derivative values on day 2 and day 3 for purposes of this calculation would be the same if the covered company had provided a net of \$10 and \$8 in settlement payments, respectively, over the life of the same derivative transaction instead of \$10 and \$8 of variation margin.

In considering the appropriate measure to account for these risks in the NSFR calculation, the agencies reviewed public and supervisory information on the volatility of derivatives assets and liabilities and the associated value of collateral received and provided, including the fair value of derivatives assets and liabilities as reported on GAAP financial statements, the fair value of derivatives assets and liabilities excluding collateral received or provided, the proportion of collateralized and uncollateralized derivatives assets and liabilities, and the fair value of collateral provided and received. Over the periods reviewed, collateral inflows and outflows associated with derivative valuation changes—and consequent liquidity risks—exhibited material volatility. The proposed 20 percent factor falls within the range of observed volatility when measured relative to derivatives liabilities excluding collateral received or provided.

The proposed rule would treat variation margin and settlement payments based on changes in the value of a derivative transaction similarly because both variation margin and these settlement payments are intended to reduce a party's current exposure under a derivative transaction or QMNA

be considered settlement payments based on changes in the value of a derivative transaction for purposes of this calculation.

netting set. This RSF measure for potential valuation changes would account for the different liquidity risks faced by a covered company that has little or no derivatives activity versus the liquidity risks of a covered company that has a significant amount of derivative transactions, but that has to date covered all changes in the value of derivative transactions with variation margin or settlement payments.

*Question 43: The agencies are considering alternative methodologies for capturing the potential volatility of a covered company's derivatives portfolio, and associated funding needs, within the NSFR framework. One alternative to the proposed treatment would be to require an RSF amount based on a covered company's historical experience. Under such an alternative, a factor could be based on the historical changes in a covered company's aggregate derivatives position, such as the largest, 99th, or 95th percentile annual change in the value of a covered company's derivative transactions over the prior two or five years. Another alternative could be to require an RSF amount based on modeled estimates of potential future exposure. Commenters are encouraged to provide feedback on methodologies, both those discussed and other potential alternatives, that best capture the funding risk associated with potential valuation changes in a covered company's derivatives portfolio, are conceptually sound, and are supported by data.*

*Question 44: What operational challenges, if any, arise from the proposed measurement of gross derivatives liabilities?*

*Question 45: Is it appropriate to treat variation margin payments and settlement payments identically for purposes of the RSF measure for derivative portfolio potential future valuation changes? Should the agencies distinguish between variation margin payments that are treated as collateral and payments that settle an outstanding derivatives liability, and if so, why? If it is appropriate to distinguish between these types of payments, what legal, accounting, or other criteria should be used to distinguish between them?*

## 6. Derivatives RSF Amount

Under the proposed rule, a covered company would sum the required stable funding amounts calculated under § \_\_\_\_\_.107 to determine the company's derivatives RSF amount. As described in section II.D.1 of this Supplementary Information section, a covered company would add its derivatives RSF amount to its other required stable funding amounts calculated under § \_\_\_\_\_.105(a)

of the proposed rule to determine its overall RSF amount, which would be the denominator of its NSFR.

A covered company's derivatives RSF amount would include the following components under § \_\_\_\_\_.107(b) of the proposed rule:

(1) The required stable funding amount for the current value of a covered company's derivatives assets and liabilities, which, as described in section II.E.1 of this **SUPPLEMENTARY INFORMATION** section, is equal to the covered company's NSFR derivatives asset amount, multiplied by an RSF factor of 100 percent;

(2) The required stable funding amount for non-excess variation margin provided by the covered company, which, as described in section II.E.2 of this **SUPPLEMENTARY INFORMATION** section, equals the carrying value of variation margin provided by the covered company under each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets that reduces the covered company's derivatives liability value of the relevant derivative transaction or QMNA netting set, multiplied by an RSF factor of zero percent;

(3) The required stable funding amount for excess variation margin provided by the covered company, which, as described in section II.E.2 of this **SUPPLEMENTARY INFORMATION** section, equals the sum of the carrying values of each excess variation margin asset provided by the covered company, multiplied by the RSF factor assigned to the asset pursuant to § \_\_\_\_\_.106;

(4) The required stable funding amount for variation margin received by the covered company, which, as described in section II.E.2 of this **SUPPLEMENTARY INFORMATION** section, equals the sum carrying values of each variation margin asset received by the covered company, multiplied by the RSF factor assigned to the asset pursuant to § \_\_\_\_\_.106;

(5) The required stable funding amount for potential future valuation changes of the covered company's derivatives portfolio, which, as described in section II.E.5 of this **SUPPLEMENTARY INFORMATION** section, equals 20 percent of the sum of the covered company's gross derivatives liabilities, when calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the values of the derivative transactions, multiplied by an RSF factor of 100 percent;

(6) The required stable funding amount for the covered company's contributions to CCP mutualized loss

sharing arrangements, which, as described in section II.E.4 of this **SUPPLEMENTARY INFORMATION** section, equals the sum of the fair values of the covered company's contributions to CCPs' mutualized loss sharing arrangements (regardless of whether a contribution is included on the covered company's balance sheet), multiplied by an RSF factor of 85 percent; and

(7) The required stable funding amount for initial margin provided by the covered company, which, as described in section II.E.4 of this **SUPPLEMENTARY INFORMATION** section, equals the sum of fair values of each initial margin asset provided by the covered company for derivative transactions (regardless of whether it is included on the covered company's balance sheet), multiplied by the higher of an RSF factor of 85 percent and the RSF factor assigned to the initial margin asset pursuant to § \_\_\_\_\_.106. As noted above, the covered company would not include as part of its derivatives RSF amount under § \_\_\_\_\_.107 initial margin provided for a derivative transaction under which the covered company acts as agent for a customer and does not guarantee the obligations of the customer's counterparty, such as a CCP, to the customer under the derivative transaction. (Such initial margin would instead be assigned an RSF factor pursuant to § \_\_\_\_\_.106 of the proposed rule, as described in section II.E.4 of this Supplementary Information section.)

*Question 46: The agencies invite comment regarding the proposed rule's approach for determining RSF and ASF amounts with respect to derivative transactions. What alternative approach, if any, would be more appropriate?*

## 7. Derivatives RSF Amount Numerical Example

The following is a numerical example illustrating the calculation of a covered company's derivatives RSF amount under the proposed rule. Table 2 sets forth the facts of the example, which assumes that: (1) A qualifying master netting agreement exists between each of the counterparties and each of the transactions thereunder are part of a single QMNA netting set, (2) any variation margin received is in the form of cash and meets the conditions of § \_\_\_\_\_.10(c)(4)(ii)(C)(1) through (7) of the SLR rule,<sup>88</sup> (3) no variation margin provided by the covered company remains on the covered company's balance sheet, (4) the covered company

<sup>88</sup> 12 CFR 3.10(c)(4)(ii)(C)(1)–(7) (OCC), 12 CFR 217.10(c)(4)(ii)(C)(1)–(7) (Board), and 12 CFR 324.10(c)(4)(ii)(C)(1)–(7) (FDIC).

has provided U.S. Treasuries as initial margin to its counterparties, and (5) the derivative transactions are not cleared

through a CCP (*i.e.*, the covered company has not contributed any assets

to a CCP's mutualized loss sharing arrangement).

TABLE 2—DERIVATIVE TRANSACTIONS NUMERICAL EXAMPLE FACT PATTERN

	Asset (liability) value for the covered company, prior to netting variation margin	Variation margin provided (received) by the covered company	Initial margin provided by the covered company
Counterparty A:			
Derivative 1A .....	10	(2)	2
Derivative 2A .....	(2)		
Counterparty B:			
Derivative 1B .....	(10)	3	1
Derivative 2B .....	5		
Counterparty C:			
Derivative 1C .....	(2)	0	0

*Calculation of derivatives assets and liabilities.*

(1) The derivatives asset value for counterparty A = (10 - 2) - 2 = 6.

(2) The derivatives liability value for counterparty B = (10 - 5) - 3 = 2.

The derivatives liability value for counterparty C = 2.

*Calculation of total derivatives asset and liability amounts.*

(1) The covered company's total derivatives asset amount = 6.

(2) The covered company's total derivatives liability amount = 2 + 2 = 4.

*Calculation of NSFR derivatives asset or liability amount.*

(1) The covered company's NSFR derivatives asset amount = max (0, 6 - 4) = 2.

(2) The covered company's NSFR derivatives liability amount = max (0, 4 - 6) = 0.

*Required stable funding relating to derivative transactions.*

The covered company's derivatives RSF amount is equal to the sum of the following:

(1) NSFR derivatives asset amount × 100% = 2 × 1.0 = 2;

(2) Non-excess variation margin provided × 0% = 3 × 0.0 = 0;

(3) Excess variation provided × applicable RSF factor(s) = 0;

(4) Variation margin received × applicable RSF factor(s) = 2 × 0.0 = 0;

(5) Gross derivatives liabilities × 20% × 100% = (5 + 2) × 0.2 × 1.0 = 1.4;

(6) Contributions to CCP mutualized loss-sharing arrangements × 85% = 0 × 0.85 = 0; and

(7) Initial margin provided × higher of 85% or applicable RSF factor(s) = (2 + 1) × max (0.85, 0.05) = 2.55.

The covered company's derivatives RSF amount = 2 + 0 + 0 + 0 + 1.4 + 0 + 2.55 = 5.95.

*F. NSFR Consolidation Limitations*

In general, the proposed rule would require a covered company to calculate its NSFR on a consolidated basis. When calculating ASF amounts from a consolidated subsidiary, however, the proposed rule would require a covered company to take into account restrictions on the availability of stable funding of the consolidated subsidiary to support assets, derivative exposures, and commitments of the covered company held at entities other than the subsidiary. Specifically, to the extent a covered company has an ASF amount associated with a consolidated subsidiary that exceeds the RSF amount associated with the subsidiary (each as calculated by the covered company for purposes of the covered company's NSFR),<sup>89</sup> the proposed rule would permit the covered company to include such "excess" ASF amounts in its consolidated ASF amount only to the extent the consolidated subsidiary may transfer assets to the top-tier entity of the covered company, taking into account statutory, regulatory, contractual, or supervisory restrictions.

For example, if a covered company calculates a required stable funding amount of \$90 based on the assets, derivative exposures, and commitments of a consolidated subsidiary and an available stable funding amount of \$100

<sup>89</sup> ASF amounts associated with a consolidated subsidiary, in this context, refer to those amounts that would be calculated from the perspective of the covered company (*e.g.*, in calculating the ASF amount of a consolidated subsidiary that can be included in the covered company's consolidated ASF amount, the covered company would not include certain transactions between consolidated subsidiaries that are netted under GAAP). For this reason, an ASF amount of a consolidated subsidiary that is included in a covered company's consolidated NSFR calculation may not be equal to the ASF amount of the consolidated subsidiary when calculated on a standalone basis if the consolidated subsidiary is itself a covered company.

based on the NSFR regulatory capital elements and NSFR liabilities of the consolidated subsidiary, the consolidated subsidiary would have an "excess" ASF amount of \$10 for purposes of this consolidation restriction. The covered company may only include any of this \$10 excess available stable funding in its consolidated ASF amount to the extent the consolidated subsidiary may transfer assets to the top-tier entity of the covered company (for example, through a loan from the subsidiary to the top-tier covered company), taking into account statutory, regulatory, contractual, or supervisory restrictions. Examples of restrictions on transfers of assets that a covered company would be required to take into account in calculating its NSFR include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c-1); the Board's Regulation W (12 CFR part 223); any restrictions imposed on a consolidated subsidiary by state or Federal law, such as restrictions imposed by a state banking or insurance supervisor; and any restrictions imposed on a consolidated subsidiary or branches of a U.S. entity domiciled outside the United States by a foreign regulatory authority, such as a foreign banking supervisor. This limitation on the ASF amount of a consolidated subsidiary includable in a covered company's NSFR would apply to both U.S. and non-U.S. consolidated subsidiaries.

The proposed rule would permit a covered company's ASF amount to include any portion of the ASF amount of a consolidated subsidiary that is less than or equal to the subsidiary's RSF amount because the subsidiary's NSFR liabilities and NSFR regulatory capital elements generating that ASF amount are available to stably fund the subsidiary's assets. The proposed rule

would limit inclusion of excess ASF amounts, however, because the proceeds of stable funding at one entity of the covered company may not always be available to support liquidity needs at another entity. Even though it may be consistent with sound risk management practices for a subsidiary to maintain an excess ASF amount, the proposed rule would not permit the excess ASF amount to count towards the covered company's consolidated NSFR if the subsidiary is unable to transfer assets to its parent. This approach to calculating a covered company's consolidated ASF amount would be similar to the approach taken in the LCR rule to calculate a covered company's HQLA amount.

The proposed rule would require a covered company that includes a consolidated subsidiary's excess ASF amount in its consolidated NSFR to implement and maintain written procedures to identify and monitor restrictions on transferring assets from its consolidated subsidiaries. In this case, the covered company would be required to document the types of transactions, such as loans or dividends, a covered company's consolidated subsidiary could use to transfer assets and how the transactions comply with applicable restrictions. The covered company should be able to demonstrate to the satisfaction of its appropriate Federal banking agency that such excess amounts may be transferred freely in compliance with statutory, regulatory, contractual, or supervisory restrictions that may apply in any relevant jurisdiction. A covered company that does not include any excess ASF amount from its consolidated subsidiaries in its NSFR would not be required to have such procedures in place.

*Question 47: What alternative approaches, if any, should the agencies consider regarding the treatment of the excess ASF amount of a consolidated subsidiary of a covered company to appropriately reflect constraints on the ability of stable funding at one entity to support the assets of a different entity? Does the proposed rule's approach sufficiently reflect restrictions on transfers of assets between entities of a covered company, given that these constraints may vary, and why? For example, would the proposed rule's approach adequately address a situation in which, during an idiosyncratic or systemic liquidity stress event, one or more entities of a covered company becomes subject to more stringent restrictions on transferring assets than they might face during normal times, and why?*

*Question 48: What operational burdens would covered companies face from the proposed approach with respect to excess ASF amounts of consolidated subsidiaries?*

*Question 49: Should this approach regarding the treatment of the excess ASF amount of a consolidated subsidiary be limited to a certain set of covered companies, such as GSIBs? If so, please provide reasoning as to why the proposed consolidation provisions would be more appropriate for these covered companies as opposed to others.*

#### *G. Interdependent Assets and Liabilities*

The Basel III NSFR provides that, in limited circumstances, it may be appropriate for an interdependent asset and liability to be assigned a zero percent RSF factor and a zero percent ASF factor, respectively, if they meet strict conditions. Currently, it does not appear that U.S. banking organizations engage in transactions that would meet these conditions in the Basel III NSFR. The proposed rule therefore does not include a framework for interdependent assets and liabilities.

In order for an asset and liability to be considered interdependent, the Basel III NSFR would require the following conditions to be met: (1) The interdependence of the asset and liability must be established on the basis of contractual arrangements, (2) the liability cannot fall due while the asset remains on the balance sheet, (3) the principal payment flows from the asset cannot be used for purposes other than repaying the liability, (4) the liability cannot be used to fund other assets, (5) the individual interdependent asset and liability must be clearly identifiable, (6) the maturity and principal amount of both the interdependent liability and asset must be the same, (7) the bank must be acting solely as a pass-through unit to channel the funding received from the liability into the corresponding interdependent asset, and (8) the counterparties for each pair of interdependent liabilities and assets must not be the same.<sup>90</sup>

The Basel III NSFR conditions for establishing interdependence are intended to ensure that the specific liability will, under all circumstances, remain for the life of the asset and all cash flows during the life of the asset and at maturity are perfectly matched with cash flows of the liability. Under such conditions, a covered company would face no funding risk or benefit arising from the interdependent asset or liability. For example, if a sovereign

entity establishes a program where it provides funding through financial institutions that act as pass-through entities to make loans to third parties, and all the conditions set forth in the Basel III NSFR are met, the liquidity profile of a financial institution would not be affected by its participation in the program. As such, the assets of the financial institution created through such a program could be considered interdependent with the liabilities that would also be created through the program, and the assets and liabilities could be assigned a zero percent RSF factor and a zero percent ASF factor, respectively. Currently, no such programs exist in the United States.

Other transactional structures of covered companies reviewed by the agencies do not appear to meet the Basel III NSFR conditions for interdependent asset and liability treatment and present liquidity risks such that zero percent RSF and ASF factors would not be warranted. For example, a covered company may have a short position under an equity total return swap (TRS) with a customer that the covered company has hedged with a long position in the equity securities underlying the TRS. This set of transactions would not appear to meet the Basel III NSFR conditions for interdependent treatment on several bases, including: the liability funding the equity position could fall due while the equity position remains on the covered company's balance sheet; the maturity of the equity position and the liability funding the equity position would not be the same (the equity is perpetual and the liability could have a short-term maturity); and the covered company would not be acting solely as a pass-through unit to channel the funding received from the repurchase agreement.

As another example, a covered company might enter into a securities borrowing transaction to facilitate a customer short sale of securities. This set of transactions would also not appear to meet the Basel III NSFR conditions for interdependent treatment on several bases, including: The interdependence of the asset and liability may not be established on the basis of contractual arrangements; the liability could fall due while the asset remained on the balance sheet; and the maturity and principal amount of both the interdependent liability and asset may not be the same.

For the reasons described above, the proposed rule would not include a framework for interdependent assets and liabilities.

<sup>90</sup> Basel III NSFR, *supra* note 4 at para 45.

*Question 50: What assets and liabilities of covered companies, if any, meet the conditions for the interdependent treatment described by the Basel III NSFR and merit zero percent RSF and ASF factors?*

### III. Net Stable Funding Ratio Shortfall

As noted above, the proposed rule would require a covered company to maintain an NSFR of at least 1.0 on an ongoing basis. The agencies expect circumstances where a covered company has an NSFR below 1.0 to arise only rarely. However, given the range of reasons, both idiosyncratic and systemic, a covered company could have an NSFR below 1.0 (for example, a covered company's NSFR might temporarily fall below 1.0 during a period of extreme liquidity stress), the proposed rule would not prescribe a particular supervisory response to address a violation of the NSFR requirement. Instead, the proposed rule would provide flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case. Potential supervisory responses could include, for example, an informal supervisory action, a cease-and-desist order, or a civil money penalty.

The proposed rule would require a covered company to notify its appropriate Federal banking agency of an NSFR shortfall or potential shortfall. Specifically, a covered company would be required to notify its appropriate Federal banking agency no later than 10 business days, or such other period as the appropriate Federal banking agency may otherwise require by written notice, following the date that any event has occurred that has caused or would cause the covered company's NSFR to fall below the minimum requirement.

In addition, a covered company would be required to develop a plan for remediation in the event of an NSFR shortfall. The proposed rule would require a covered company to submit its remediation plan to its appropriate Federal banking agency no later than 10 business days, or such other period as the appropriate Federal banking agency may otherwise require by written notice, after: (1) The covered company's NSFR falls below, or is likely to fall below, the minimum requirement and the covered company has or should have notified the appropriate Federal banking agency, as required under the proposed rule; (2) the covered company's required NSFR disclosures or other regulatory reports or disclosures indicate that its NSFR is below the minimum requirement; or (3) the appropriate Federal banking agency notifies the covered company that it

must submit a plan for NSFR remediation and the agency provides a reason for requiring such a plan. As set forth in § \_\_\_\_ .110(b)(2), such a plan would be required to include an assessment of the covered company's liquidity profile, the actions the covered company has taken and will take to achieve full compliance with the proposed rule (including a plan for adjusting the covered company's liquidity profile to comply with the proposed rule's NSFR requirement and a plan for fixing any operational or management issues that may have contributed to the covered company's noncompliance), and an estimated time frame for achieving compliance.

Moreover, the covered company would be required to report to the appropriate Federal banking agency no less than monthly (or other frequency, as required by the agency) on its progress towards achieving full compliance with the proposed rule. These reports would be mandatory until the firm's NSFR is equal to or greater than 1.0.

Supervisors would retain the authority to take supervisory action against a covered company that fails to comply with the NSFR requirement.<sup>91</sup> Any action taken would depend on the circumstances surrounding the funding shortfall, including, but not limited to operational issues at a covered company, the frequency or magnitude of the noncompliance, the nature of the event that caused a shortfall, and whether such an event was temporary or unusual.

The proposed rule's framework would be similar to the shortfall framework in the LCR rule, which does not prescribe a particular supervisory response to address an LCR shortfall, and provides flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case.

*Question 51: Is the proposed NSFR shortfall supervisory procedure appropriate to address instances when a covered company is out of compliance with the proposed NSFR requirement? Why or why not? If not, please provide justifications supporting that view as well as procedures that may be more appropriate.*

*Question 52: The agencies invite comment on all aspects of the proposed NSFR shortfall supervisory procedures. Should a de minimis exception to an NSFR shortfall be implemented, such that a covered company would not need to report such a shortfall, provided its*

*NSFR returns to the required minimum within a short grace period? If so, what de minimis amount would be appropriate and why? What duration of grace period would be appropriate and why?*

*Question 53: What amount of time would be most appropriate for a covered company that is noncompliant with the NSFR requirement to prepare a plan for working towards compliance? The proposed rule provides 10 business days (or such other period as the appropriate Federal banking agency may require), but would a longer period, such as 20 business days, be more appropriate and, if so, why?*

### IV. Modified Net Stable Funding Ratio Applicable to Certain Covered Depository Institution Holding Companies

#### A. Overview and Applicability

The Board is proposing a modified NSFR requirement that would be tailored for modified NSFR holding companies and would be less stringent than the proposed NSFR requirement that would apply to covered companies. A modified NSFR holding company would be required to maintain a lower minimum amount of stable funding, equivalent to 70 percent of the amount that would be required for a covered company. As discussed in section I.A of this Supplementary Information section, a modified NSFR holding company would be a bank holding company or savings and loan holding company without significant insurance or commercial operations that, in either case, has \$50 billion or more, but less than \$250 billion, in total consolidated assets and less than \$10 billion in total on-balance sheet foreign exposure.<sup>92</sup>

Modified NSFR holding companies are large financial companies, and many have sizable operations in banking, brokerage, or other financial activities. Compared to covered companies, however, they are smaller in size and

<sup>92</sup> The proposed modified NSFR requirement would not apply to: (i) A grandfathered unitary savings and loan holding company (as described in section 10(c)(9)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(9)(A)) that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)); (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies. For purposes of (iii), the company must calculate its total consolidated assets in accordance with GAAP or estimate its total consolidated assets, subject to review and adjustment by the Board.

<sup>91</sup> See also the discussion of the agencies' reservation of authority in section I.C.2 of the Supplementary Information section.



generally less complex in structure, less interconnected with other financial companies, and less reliant on riskier forms of funding. Their activities tend to be more limited in scope and they tend to have fewer international activities. Modified NSFR holding companies also tend to have simpler balance sheets, which, in the event of disruptions to a company's regular sources of funding, better enables the company's management and its supervisors to identify risks and take corrective actions more quickly, as compared to covered companies. For many of these same reasons, modified NSFR holding companies also would likely not present as great a risk to U.S. financial stability as covered companies.

Nevertheless, modified NSFR holding companies do face more complex liquidity risk management challenges than smaller banking organizations and are important providers of credit in the U.S. economy. The failure or distress of one or more modified NSFR holding companies could still pose risks to U.S. financial stability, though to a lesser degree than the failure or distress of one or more covered companies. Therefore, the Board is proposing a minimum stable funding requirement for modified NSFR holding companies that would not be as stringent as the proposed NSFR requirement that would apply to covered companies.

A modified NSFR holding company that becomes subject to the proposed rule pursuant to § 249.1(b)(v) after the effective date would be required to comply with the proposed modified NSFR requirement one year after the date it meets the applicable thresholds. This one-year transition period would provide newly subject modified NSFR holding companies sufficient time to adjust to the requirements of the proposal.

Other than the lower RSF amount requirement and longer transition period, the proposed modified NSFR requirement would be identical to the proposed NSFR requirement for covered companies. Modified NSFR holding companies would also be subject to the public disclosure requirements under §§ \_\_\_\_\_.130 and \_\_\_\_\_.131 of the proposed rule, described in section V of this **SUPPLEMENTARY INFORMATION** section.

#### B. Available Stable Funding

A modified NSFR holding company would calculate its ASF amount in the same manner as a covered company, pursuant to § \_\_\_\_\_.103 of the proposed rule. The ASF amount would comprise the equity and liabilities held by a modified NSFR holding company

multiplied by the same standardized ASF factors as those that would be used by a covered company to determine the expected stability of its funding over a one-year time horizon. These ASF factors would be applicable to modified NSFR holding companies because they represent the proportionate amount of NSFR equity and liabilities that can be considered stable funding available to support assets, derivative exposures, and commitments.

#### C. Required Stable Funding

A modified NSFR holding company would calculate its RSF amount in the same manner as a covered company, pursuant to § \_\_\_\_\_.105 of the proposed rule, except that a modified NSFR holding company would multiply its RSF amount by 70 percent. As discussed above, the modified NSFR requirement would not require these firms to maintain as high an amount of stable funding as covered companies, based on the different risks of these firms.

*Question 54: What, if any, modifications to the modified NSFR requirement should the Board consider? Is the proposed 70 percent of the RSF amount appropriate for the modified NSFR holding companies based on their relative complexity and size? Please provide justification and supporting data.*

*Question 55: What operational burdens would modified NSFR holding companies face in complying with the proposed modified NSFR requirement?*

*Question 56: Should the rules for consolidation under § \_\_\_\_\_.108 of the proposed rule be limited to covered companies, rather than applying to both covered companies and modified NSFR holding companies, and, if so, why?*

### V. Disclosure Requirements

#### A. Proposed NSFR Disclosure Requirements

The disclosure requirements of the proposed rule would apply to covered companies that are bank holding companies and savings and loan holding companies and to modified NSFR holding companies. The disclosure requirements of the proposed rule would not apply to depository institutions that are subject to the proposed rule.<sup>93</sup>

The proposed rule would require public disclosures of a company's NSFR

and the components of its NSFR in a standardized tabular format (NSFR disclosure template). The proposed rule would also require sufficient discussion of certain qualitative features of a company's NSFR and its components to facilitate an understanding of the company's calculation and results. The NSFR disclosure template is similar to the common disclosure template published by the BCBS as part of the Basel III Disclosure Standards (BCBS common template). The proposed rule would require a company to provide timely public disclosures each calendar quarter of the information in the NSFR disclosure template and the qualitative disclosures in a direct and prominent manner on its public internet site or in a public financial report or other public regulatory report. Such disclosures would need to remain publicly available for at least five years after the date of the disclosure.

In order to reduce compliance costs and provide relevant information to the public about the funding profile of a company, the proposed rule's quantitative disclosures would reflect data that a company would be required to calculate in order to comply with the proposed rule.

*Question 57: The agencies invite comment on all aspects of the disclosure requirements of the proposed rule. Specifically, what changes, if any, could improve the clarity and utility of the disclosures?*

#### B. Quantitative Disclosure Requirements

The proposed rule would require a company subject to the proposed disclosure requirements to publicly disclose the company's NSFR and its components. By using a standardized tabular format that is similar to the BCBS common template, the NSFR disclosure template would enable market participants to compare funding characteristics of covered companies in the United States and other banking jurisdictions subject to similar stable funding requirements in other jurisdictions. However, the disclosure requirements of the proposed rule and the accompanying NSFR disclosure template also reflect differences between the proposed rule and the Basel III NSFR, as discussed below.

The NSFR disclosure template would include components of a company's ASF and RSF calculations (ASF components and RSF components, respectively), as well as the company's ASF amount, RSF amount, and NSFR. For most ASF and RSF components, the proposed rule would require disclosure of both "unweighted" and "weighted" amounts. The "unweighted" amount

<sup>93</sup> In the future, the agencies may develop a different or modified reporting form that would be required for both depository institutions and depository institution holding companies subject to the proposed rule. The agencies anticipate that they would solicit public comment on any such new reporting form.



generally refers to values of ASF or RSF components prior to applying the ASF or RSF factors assigned under §§ \_\_\_\_\_.104, \_\_\_\_\_.106, or \_\_\_\_\_.107, as applicable, whereas the “weighted” amount generally refers to the amounts resulting after applying the ASF or RSF factors. For certain line items in the proposed NSFR disclosure template relating to derivative transactions that include components of multi-step calculations before an ASF or RSF factor is applied, as described in section II.E of this Supplementary Information section, a company would only be required to disclose a single amount for the component.

For most ASF or RSF components, the proposed NSFR disclosure template would require the unweighted amount to be separated based on maturity categories relevant to the NSFR requirement: Open maturity; less than six months after the calculation date; six months or more, but less than one year after the calculation date; one year or more after the calculation date; and perpetual. For purposes of comparability of disclosures across jurisdictions, while the BCBS common template does not distinguish between the “open” and “perpetual” maturity categories (grouping them together under the heading “no maturity”), the proposed rule would require a company to disclose amounts in those two maturity categories separately because the categories are on opposite ends of the maturity spectrum for purposes of the proposed rule. As noted in section II.B of this **SUPPLEMENTARY INFORMATION** section, the “open” maturity category is meant to capture instruments that do not have a stated contractual maturity and may be closed out on demand, such as demand deposits. The “perpetual” category is intended to capture instruments that contractually never mature and may not be closed out on demand, such as equity securities. Separating these two categories into two disclosure columns improves the transparency and quality of the disclosure without undermining the ability to compare the NSFR component disclosures of banking organizations in other jurisdictions that utilize the BCBS common template, because these two columns can be summed for comparison purposes. For certain ASF and RSF components that represent calculations that do not depend on maturities, such as the NSFR derivatives asset or liability amount, the proposed NSFR disclosure template would not require a company to separate its disclosed amount by maturity category.

As described further below, the proposed rule identifies the ASF and

RSF components that a company must include in each row of the proposed NSFR disclosure template, including cross-references to the relevant sections of the proposed rule. The numbered rows of the proposed NSFR disclosure template do not always map on a one-to-one basis with provisions of the proposed rule relating to the calculation of a company’s NSFR. In some cases, the proposed NSFR disclosure template requires instruments that are assigned identical ASF or RSF factors to be disclosed in different rows or columns, and some rows and columns combine disclosure of instruments that are assigned different ASF or RSF factors. For example, the proposed NSFR disclosure template includes all level 1 liquid assets in a single row, even though the proposed rule would assign a zero percent, 5 percent, or higher RSF factor to various level 1 liquid assets under § \_\_\_\_\_.106(a)(1) (such as Reserve Bank balances), § \_\_\_\_\_.106(a)(2) (such as unencumbered U.S. Treasury securities), or § \_\_\_\_\_. 106(c) (if the level 1 liquid asset is encumbered), respectively.<sup>94</sup>

For consistency, the proposed NSFR disclosure template would require a company to clearly indicate the as-of date for disclosed amounts and report all amounts on a consolidated basis and expressed in millions of U.S. dollars or as a percentage, as applicable.

*Question 58: What, if any, unintended consequences might result from publicly disclosing a company’s NSFR and its components, particularly in terms of liquidity risk? What modifications should be made to the proposed disclosure requirements to address any unintended consequences?*

#### 1. Disclosure of ASF Components

The proposed rule would require a company to disclose its ASF components, separated into the following categories: (1) Capital and securities, which includes NSFR regulatory capital elements and other capital elements and securities; (2) retail funding, which includes stable retail deposits, less stable retail deposits, retail brokered deposits, and other retail funding; (3) wholesale funding, which includes operational deposits and other wholesale funding; and (4) other liabilities, which include the company’s NSFR derivatives liability amount and any other liabilities not included in other categories.

The proposed NSFR disclosure template would differ from the BCBS

common template by including some additional ASF categories that are not separately broken out under the Basel III NSFR, such as retail brokered deposits. The proposed template would also provide market participants with additional information relevant to understanding a company’s liquidity profile, such as the total derivatives liabilities amount (a component of the NSFR derivatives liabilities amount). These differences from the BCBS common template would provide greater public transparency without reducing comparability across jurisdictions, since the broken-out line items could simply be added back together to produce a comparable total and the extra line items can simply be ignored.

#### 2. Disclosure of RSF Components

The proposed disclosure requirements would require a company to disclose its RSF components, separated into the following categories: (1) Total HQLA and each of its component asset categories (*i.e.*, level 1, level 2A, and level 2B liquid assets); (2) assets other than HQLA that are assigned a zero percent RSF factor; (3) operational deposits; (4) loans and securities, separated into categories including retail mortgages and securities that are not HQLA; (5) other assets, which include commodities, certain components of the company’s derivatives RSF amount, and all other assets not included in another category (including nonperforming assets);<sup>95</sup> and (6) undrawn amounts of committed credit and liquidity facilities.

Similar to the proposed disclosure format with respect to ASF components, the proposed NSFR disclosure template would differ in some respects from the BCBS common template to provide more granular information regarding RSF components without undermining comparability across jurisdictions. For example, the proposed rule would require disclosure of a company’s level 1, level 2A, and level 2B liquid assets by maturity category, which is not required by the BCBS common template, to assist market participants and other parties in assessing the composition of a company’s HQLA.<sup>96</sup> Additionally, because some assets that would be assigned a zero percent RSF factor are not included as HQLA under the LCR rule, such as “currency and coin” and certain “trade date

<sup>95</sup> A company would be required to disclose nonperforming assets as part of the line item for other assets and nonperforming assets, rather than as part of a line item based on the type of asset that has become nonperforming.

<sup>96</sup> See § \_\_\_\_\_.20 of the LCR rule.

<sup>94</sup> See discussion in sections II.D.3.a.i, II.D.3.a.ii, and II.D.3.c of this **SUPPLEMENTARY INFORMATION** section.

receivables,” the proposed template includes a distinct category for “zero percent RSF assets that are not level 1 liquid assets” that the BCBS common template does not include. The proposed NSFR disclosure template also differs from the BCBS common template in its presentation of the components of a company’s derivatives RSF amount, generally to improve the clarity of disclosure by separating components into distinct rows and by including the total derivatives asset amount so that market participants can better understand a company’s NSFR derivatives calculation.

As discussed in sections II.D.3.c and d of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would assign RSF factors to encumbered assets under § \_\_\_\_.106(c) and (d). A company would be required to include encumbered assets in a cell of the NSFR disclosure template based on the asset category and asset maturity rather than based on the encumbrance period. For example, a level 2A liquid asset that matures in one year or more that is encumbered for a remaining period of nine months would be included in the level 2A liquid asset row and maturity of one year or more column, along with other level 2A liquid assets that have a similar maturity. This location in the NSFR disclosure template would not change the RSF factor assigned to the asset. In the preceding example, therefore, the covered company’s weighted amount for the row would reflect an RSF factor of 50 percent assigned to the encumbered level 2A liquid asset. Similar treatment would apply for an asset provided or received by a company as variation margin to which an RSF factor is assigned under § \_\_\_\_.107. Disclosure by asset category and maturity would provide market participants a better understanding of the actual assets of a company rather than having rows that combine asset categories.

#### C. Qualitative Disclosure Requirements

A covered company subject to the proposed disclosure requirements would be required to provide a qualitative discussion of the company’s NSFR and its components sufficient to facilitate an understanding of the calculation and results. This qualitative discussion would supplement the quantitative information disclosures in a company’s NSFR disclosure template described above and would enable market participants and other parties to better understand a company’s NSFR and its components. The proposed rule would not prescribe the content or format of a company’s qualitative disclosures; rather, it would allow

flexibility for discussion based on each company’s particular circumstances. The proposed rule would, however, provide guidance through examples of topics that a company may discuss. These examples include (1) the main drivers of the company’s NSFR; (2) changes in the company’s NSFR over time and the causes of such changes (for example, changes in strategies or circumstances); (3) concentrations of funding sources and changes in funding structure; (4) concentrations of available and required stable funding within a covered company’s corporate structure (for example, across legal entities); and (5) other sources of funding or other factors in the NSFR calculation that the company considers to be relevant to facilitate an understanding of its liquidity profile.

The Board recently proposed disclosure requirements under the LCR rule, which also include a qualitative disclosure section.<sup>97</sup> Given that the proposed rule and the LCR rule would be complementary quantitative liquidity requirements, a company subject to both disclosure requirements would be permitted to combine the two qualitative disclosures, as long as the specific qualitative disclosure requirements of each are satisfied by such a combined qualitative disclosure section.

#### D. Frequency and Timing of Disclosure

The proposed rule would require a company to provide timely public disclosures after each calendar quarter. Disclosure on a quarterly basis would provide market participants and other parties with information to help assess the liquidity risk profiles of companies making the disclosures, while reducing compliance costs that could result from more frequent public disclosure. A quarterly disclosure period would alleviate burden by aligning with the frequency of periodic public disclosures in other contexts, such as those required under Federal securities laws and regulations.

The purpose of the proposed rule’s public disclosure requirements would be to provide market participants and the public with periodic information regarding a company’s funding structure, rather than real-time information or event-driven disclosures regarding a company’s liquidity profile. The agencies will have access to other sources of information to enable ongoing monitoring of companies’

liquidity risk profiles and compliance with the proposed rule.

The proposed rule would recognize that the timing of disclosures required under the Federal banking laws may not always coincide with the timing of disclosures required under other Federal laws, including disclosures required under the Federal securities laws. For calendar quarters that do not correspond to a company’s fiscal year or quarter end, the agencies would consider those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the company’s first reporting period in which it is subject to the proposed rule’s disclosure requirements) as timely. In general, where a company’s fiscal year end coincides with the end of a calendar quarter, the agencies consider disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10-K annual report. In cases where a company’s fiscal year end does not coincide with the end of a calendar quarter, the agencies would consider the timeliness of disclosures on a case-by-case basis.

This approach to timely disclosures is consistent with the approach to public disclosures that the agencies have taken in the context of other regulatory reporting and disclosure requirements. For example, the agencies have used the same indicia of timeliness with respect to public disclosures required under the agencies’ risk-based capital rules and proposed under the LCR rule.<sup>98</sup>

As noted above, a company must publicly disclose, in a direct and prominent manner, the information required by the proposed rule on its public internet site or in its public financial or other public regulatory reports. The agencies are not proposing specific criteria for what it means for a disclosure to be “direct and prominent,” but the agencies expect that the disclosures should be readily accessible to the general public for a period of at least five years after the disclosure date.

The first reporting period for which a company would be required to disclose the company’s NSFR and its components is the calendar quarter that begins on the date the company becomes subject to the proposed NSFR requirement. For example, a company that becomes subject to the proposed NSFR requirement on January 1, 2018, would be required to commence providing the public disclosures for the calendar quarter that ends on March 31,

<sup>97</sup> “Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,” 80 FR 75010 (December 1, 2015).

<sup>98</sup> See 78 FR 62018, 62129 (October 11, 2013); 80 FR 75010, 75013 (December 1, 2015).

2018. Its disclosures for this period would then be required to remain publicly available until at least March 31, 2023.

*Question 59: Under what circumstances, if any, should the agencies require more frequent or less frequent public disclosures of a company's NSFR and its components? What benefits or negative effects may result if, in addition to required quarterly public disclosures, the agencies require a company to publicly disclose qualitative or quantitative information about the company's NSFR or its components with 30 days' prior written notice within a calendar quarter?*

*Question 60: Should the agencies issue any guidance regarding the term "direct and prominent?" If so, what factors should be included in such guidance?*

## VI. Impact Assessment

The agencies assessed the potential impact of the proposed rule<sup>99</sup> and, based on available information, expect the benefits to exceed the costs.<sup>100</sup> As discussed in section I of this **SUPPLEMENTARY INFORMATION** section, the proposed rule is designed to reduce the likelihood that disruptions to a covered company or modified NSFR holding company's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. By requiring covered companies and modified NSFR holding companies to maintain stable funding profiles, the proposed rule is intended to reduce liquidity risk in the financial sector and provide for a safer and more resilient financial system.

The potential costs considered by the agencies include the extent to which covered companies and modified NSFR holding companies would currently fall short of the proposed NSFR requirement and any costs associated with balance-sheet adjustments that would be necessary to come into compliance or future balance-sheet adjustments to

maintain compliance in the future;<sup>101</sup> ongoing operational and administrative costs related to the proposed rule's calculation, disclosure, and shortfall notification requirements; possible costs to customers in the form of increased borrowing costs; and the possibility of reduced financial intermediation or economic output in the United States.

The potential benefits considered include a reduction in the likelihood, relative to a banking system without an NSFR requirement, that a covered company or modified NSFR holding company would fail or experience material financial distress; the reduced likelihood of a financial crisis occurring and the reduced severity of a financial crisis if one were to occur; and the improved transparency and improved market discipline due to the proposed rule's public disclosure requirements.

### A. Analysis of Potential Costs

The agencies considered the extent to which any covered companies or modified NSFR holding companies would fall short of the proposed NSFR requirement or modified NSFR requirement, respectively, if they were currently in effect and would need to make balance-sheet adjustments, such as reducing short-term funding or increasing holdings of liquid assets, in order to come into compliance.

To estimate shortfall amounts, the agencies calculated ASF and RSF amounts at the consolidated level for depository institution holding companies that would be subject to the NSFR requirement or modified NSFR requirement. These estimates were based on information submitted by certain depository institution holding companies for inclusion in the most recent Basel III Quantitative Impact Study (QIS), as well as other available information, including data collected on the FR 2052a report and publicly available data.<sup>102</sup> In addition, for covered companies and modified NSFR holding companies that did not submit data through the QIS process, the estimates were based on information collected on Federal Reserve forms FR

Y-9C and FR 2052b, as well as other supervisory data.

As of December 2015, 15 depository institution holding companies would be covered companies under the proposed rule and 20 depository institution holding companies would be modified NSFR holding companies. Using the approach described above, the agencies estimate that nearly all of these companies would be in compliance with the proposed NSFR or modified NSFR requirement if those requirements were in effect today. In the aggregate, the agencies estimate that covered companies and modified NSFR holding companies would face a shortfall of approximately \$39 billion, equivalent to 0.5 percent of the aggregate RSF amount that would apply across all firms. For the limited number of firms that would have a shortfall, the \$39 billion shortfall would be equivalent to 4.3 percent of their total RSF amount.

Because nearly all covered companies and modified NSFR holding companies are estimated to be in compliance with the proposed NSFR requirement and modified NSFR requirement, respectively, and because the aggregated ASF shortfall amount is estimated to be small relative to the aggregate size of these companies, the agencies do not expect most companies to incur significant costs in connection with making changes to their funding structures, assets, commitments, or derivative exposures to comply with the proposed NSFR requirement.<sup>103</sup> If the companies with a shortfall elect to eliminate it by replacing liabilities that are assigned a lower ASF factor with liabilities that are assigned a higher ASF factor, they would likely incur a greater interest expense. If all companies with a shortfall were to take this approach, the agencies currently estimate an increase in those companies' interest expense of approximately \$519 million per year.<sup>104</sup> This \$519 million increase

<sup>103</sup> The agencies expect similar results for covered companies that are depository institutions, given the lack of a shortfall at these companies' parent holding companies; the extent to which the consolidated assets, liabilities, commitments, and exposures of the parent holding companies are attributable to the depository institution subsidiary; and the greater focus of depository institutions on traditional banking activities such as deposit-taking that tend to result in a higher NSFR than a consolidated NSFR that may also include non-bank entities and activities, such as broker-dealer or derivatives business lines.

<sup>104</sup> This approximate cost is based on an estimated difference in relative interest expense between funding from financial sector entities that matures in 90 days or less (assigned a zero percent ASF factor) and unsecured debt that matures in 3 years (assigned a 100 percent ASF factor) of approximately 1.33 percent, based on rates as of

<sup>99</sup> As discussed in section XI of this

**SUPPLEMENTARY INFORMATION** section, the OCC also analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

<sup>100</sup> The BCBS recently published a review of the literature on the costs and benefits of liquidity regulation and found that existing literature, although limited given that many liquidity requirements are relatively new, supports the view that the net social benefit of liquidity regulation is expected to be significantly positive. See Basel Committee on Banking Supervision, "Literature review on integration of regulatory capital and liquidity instruments" (March 2016), available at <https://www.bis.org/bcbs/publ/wp30.pdf> (BCBS literature review).

<sup>101</sup> Analysis of potential shortfalls focused on the consolidated level for covered companies that are depository institution holding companies and did not include separate shortfall analyses for covered companies that are depository institutions. See *infra* note 103. The OCC's impact analysis, discussed in section XI of this **SUPPLEMENTARY INFORMATION** section estimates the shortfall and costs for national banks and Federal savings associations.

<sup>102</sup> See <https://www.bis.org/bcbs/qis> for additional QIS information. Individual company submission data is confidential supervisory information. Shortfall analysis used QIS data as of June 30, 2015.

per year in interest expense is only 0.38 percent of the total net income of \$138 billion for all covered companies and modified NSFR holding companies, as reported for calendar year 2015 on form FR Y-9C. However, for the companies with a shortfall, it is a materially higher percentage of their total net income for calendar year 2015.

In addition, it is possible that covered companies and modified NSFR holding companies could incur marginal costs in the future if they must make balance-sheet adjustments that they would not otherwise make in order to maintain compliance with the proposed rule. For example, a company subject to the proposed rule may fund expansion of its balance sheet with more equity or long-term debt than it otherwise would have. On the margin, such equity or long-term debt could be more expensive than alternative, less stable forms of funding, such as short-term wholesale funding. At the same time, however, a company subject to the proposed rule may have lower funding costs due to a more stable funding profile, which could offset some of the increased funding costs. Thus, the agencies do not expect covered companies and modified NSFR holding companies to incur significant costs in connection with balance-sheet adjustments to maintain compliance with the proposed requirements; however, these costs may increase depending on a variety of factors, including future differences between the rates on short- and long-term liabilities.

As noted above in this **SUPPLEMENTARY INFORMATION** section, operational and administrative compliance costs in connection with the proposed rule are expected to be relatively modest. Calculation and disclosure requirements under the proposed rule would be based largely on the carrying values, as determined under GAAP, of the assets, liabilities, and equity of covered companies and modified NSFR holding companies. As a result, in most cases these firms should be able to leverage existing management information systems to comply with the proposed rule's calculation and disclosure requirements. The agencies therefore expect any additional operational costs associated with ongoing compliance with the proposed rule to be relatively minor.

Because most covered companies and modified NSFR holding companies are not expected to incur significant costs in connection with balance-sheet adjustments to comply with the

proposed requirements or manage operational compliance, the agencies do not expect the proposed rule to result in material costs being passed on to customers, for example in the form of higher interest rates or fees.<sup>105</sup> Similarly, the agencies do not expect covered companies or modified NSFR holding companies to materially alter their levels of lending as a result of the proposed rule. Accordingly, the agencies also do not expect the proposed rule to cause a material reduction in aggregate financial intermediation or economic output in the United States.

It is possible that the proposed rule could impose some macroeconomic costs. For example, it is possible that covered companies and modified NSFR holding companies could respond to the proposed requirements by "hoarding" liquidity to some degree rather than using it to relieve funding needs during a period of significant stress—possibly out of fear that dipping below a certain NSFR could project weakness to counterparties, investors, or market analysts. Incentives to hoard liquidity already exist in the market, even without the proposed requirement, as demonstrated by the hoarding of liquidity by financial firms during the 2007–2009 financial crisis.<sup>106</sup> Potential effects of the proposed rule on this dynamic are difficult to assess and quantify given the degree of uncertainty that exists during periods of significant stress, but there are factors that may mitigate or counter it. For example, existing market incentives to hoard liquidity may be lessened to some degree based on a covered company's or modified NSFR holding company's stronger funding position going into a period of significant stress based on

<sup>105</sup> The BCBS literature review reports that existing studies tend to show that, to the extent banking organizations incur costs in connection with liquidity requirements, these firms typically face market constraints on their ability to pass along these costs to customers in the form of higher lending charges. *See supra* note 100. The combination of these constraints and the fact that most covered companies and modified NSFR holding companies currently exceed the proposed rule's minimum stable funding requirement (meaning these companies in the aggregate are likely to face only relatively modest costs in connection with coming into compliance with the proposed NSFR requirement or modified NSFR requirement), suggest that the proposed rule should not result in significant costs being passed on to customers.

<sup>106</sup> *See* Markus Brunnermeier, "Deciphering the Liquidity and Credit Crunch 2007–2008," 23 *Journal of Economic Perspectives* 77 (2009); Mark Carlson, "Lessons from the Historical Use of Reserve Requirements in the United States to Promote Bank Liquidity," Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series 2013–11 (2013).

compliance with the proposed rule.<sup>107</sup> The proposed rule's supervisory response framework is also designed to mitigate incentives that would cause firms to hoard liquidity; as discussed in section III of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would provide flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case—for example, if a covered company's NSFR were to fall below 1.0 based on the company's use of liquidity during a period of market stress.

#### B. Analysis of Potential Benefits

The proposed rule is designed to reduce the likelihood that disruptions to a covered company's or a modified NSFR holding company's regular sources of funding will compromise its liquidity position and lead to or exacerbate an idiosyncratic or systemic stress. For example, the proposed NSFR requirement would limit overreliance on short-term wholesale funding from financial sector entities (which would be assigned a low ASF factor) to fund holdings of illiquid assets (which would be assigned high RSF factors). The proposed rule's quantitative requirements are also designed to facilitate better management of liquidity risks beyond the LCR rule's 30-calendar day period, complementing the LCR rule and other aspects of the agencies' liquidity risk regulatory framework, and provide a consistent and comparable metric to measure funding stability across covered companies, modified NSFR holding companies, and other banking organizations subject to similar stable funding requirements in other jurisdictions.

To estimate the potential macroeconomic benefits of the proposed rule, the agencies considered the extent to which the proposed rule could reduce the likelihood or severity of a financial crisis. A BCBS study entitled, "An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements" (the BCBS Economic Impact report) estimated that, prior to the regulatory reforms undertaken since 2009, the probability that a financial crisis could occur in a given year was between 3.5 percent and 5.2 percent and that the cumulative economic cost of any single crisis was between 20 percent and 100 percent of

<sup>107</sup> As discussed further below, a more resilient funding profile heading into a period of significant stress can alleviate pressure on a covered company or modified NSFR holding company to reduce credit availability in response to the stress. *See infra* note 111.

annual global economic output.<sup>108</sup> If the NSFR reduces the probability of a financial crisis even slightly, then the benefits of avoiding the costs of a crisis, specifically a decline in output, would outweigh the relatively modest aggregate cost of the rule.

As the 2007–2009 financial crisis demonstrated, unstable funding structures at major financial institutions can play a very large role in causing and deepening financial crises.<sup>109</sup> For example, a large banking organization that relies heavily on unstable funding may be forced to sell illiquid assets at fire sale prices to meet its current obligations, which could further contribute to the firm's liquidity deterioration, exacerbate fire sale conditions in the broader financial markets, and amplify stresses at other financial firms. Conversely, maintenance of a more resilient funding profile heading into a period of significant stress can lessen pressure on a covered company or modified NSFR holding company to sell illiquid assets or reduce credit availability in response to the stress.<sup>110</sup> The BCBS Economic Impact report estimated significant net benefits from the Basel III reforms, including the Basel III NSFR, in connection with reducing the likelihood and severity of financial crises.<sup>111</sup>

In addition, the proposed rule's public disclosure requirements are designed to improve transparency to the public and market participants regarding a covered company's or

modified NSFR holding company's funding profile, including with respect to drivers of a company's liquidity risk. As discussed in section V.B of this **SUPPLEMENTARY INFORMATION** section, the proposed rule's use of a consistent, quantitative metric across covered companies and a standardized disclosure format should enable market participants to better assess and compare funding characteristics of covered companies in the United States and other banking organizations subject to similar stable funding requirements in other jurisdictions.

*Question 61: The agencies invite comment on all aspects of the foregoing impact assessment associated with the proposed rule. What, if any, additional costs and benefits should be considered? Commenters are encouraged to submit data on potential shortfalls of covered companies or modified NSFR holding companies, as well as potential costs or benefits of the proposed rule that the agencies may not have considered.*

## VII. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite your comments on how to make this proposal easier to understand. For example:

- *Have the agencies organized the material to suit your needs? If not, how could this material be better organized?*
- *Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?*
- *Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (e.g., grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?*
- *What else could the agencies do to make the regulation easier to understand?*

## VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act<sup>112</sup> (RFA) requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which

general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to \$550 million). In accordance with section 3(a) of the RFA, the Board is publishing an initial regulatory flexibility analysis with respect to the proposed rule. The OCC and FDIC are certifying that the proposed rule will not have a significant economic impact on a substantial number of small entities.

## Board

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The proposed rule is intended to implement a quantitative liquidity requirement applicable for certain bank holding companies, savings and loan holding companies, and state member banks.

Under regulations issued by the Small Business Administration, a “small entity” includes firms within the “Finance and Insurance” sector with asset sizes that vary from \$7.5 million or less in assets to \$550 million or less in assets.<sup>113</sup> The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies, savings and loan holding companies, and state member banks with asset sizes of \$550 million or less are small entities for purposes of the RFA. As of December 31, 2015, there were approximately 606 small state member banks, 3,268 small bank holding companies, and 166 small savings and loan holding companies.

As discussed in section I.C.2 of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would generally apply to Board-regulated institutions with: (i) Consolidated total assets equal to \$250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to \$10 billion or more; or (iii) consolidated total assets equal to \$10 billion or more if that Board-regulated institution is a consolidated subsidiary of a company described in (i) or (ii). The

<sup>108</sup> Basel Committee on Bank Supervision, “An assessment of the long-term economic impact of stronger capital and liquidity requirements” (August 2010), available at <http://www.bis.org/publ/bcbst173.pdf>.

<sup>109</sup> See, e.g., Brunnermeier *supra* note 106; Gary Gorton and Andrew Metrick, “Securitized Banking and the Run on Repo,” National Bureau of Economic Research Working Paper 15223 (2009); and Marcin Kacperczyk and Philipp Schnabl, “When Safe Proved Risky: Commercial Paper during the Financial Crisis of 2007–2009,” 34 *Journal of Economic Perspectives* 29 (2010).

<sup>110</sup> The BCBS literature review discusses studies of lending by banking organizations in the United States and France during the 2007–2009 financial crisis, which showed that banking organizations with more stable funding profiles continued lending during the crisis to a greater degree than banking organizations that had weaker profiles. See BCBS literature review, *supra* note 100, pp. 26–27. See also Marcia Millon Cornett, Jamie John McNutt, Philip E. Strahan, and Hassan Tehrani, “Liquidity Risk Management and Credit Supply in the Financial Crisis,” 101 *Journal of Economic Surveys* 297 (2011), and Pierre Pessarossi and Frédéric Vinas, “The Supply of Long-Term Credit after a Funding Shock: Evidence from 2007–2009,” *Banque de France, Débat économiques et financiers* (2014, updated 2015).

<sup>111</sup> See BCBS Economic Impact report. While the BCBS Economic Impact report was based on an earlier version of the Basel III NSFR, its conclusions are also consistent with the final version issued by the BCBS.

<sup>112</sup> 5 U.S.C. 601 *et seq.*

<sup>113</sup> 13 CFR 121.201.

Board is also proposing to implement a modified NSFR requirement for top-tier bank holding companies and savings and loan holding companies that have consolidated total assets of \$50 billion or more, but less than \$250 billion, and that have less than \$10 billion of consolidated total on-balance sheet foreign exposure. Neither the proposed NSFR requirement nor the proposed modified NSFR requirement would apply to (i) a grandfathered unitary savings and loan holding company<sup>114</sup> that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act;<sup>115</sup> (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies.<sup>116</sup>

Companies that are subject to the proposed rule therefore substantially exceed the \$550 million asset threshold at which a banking entity is considered a “small entity” under SBA regulations. Because the proposed rule, if adopted in final form, would not apply to any company with assets of \$550 million or less, the proposed rule is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized.

#### OCC

The RFA requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities

<sup>114</sup> As described in section 10(c)(9)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(9)(A).

<sup>115</sup> 12 U.S.C. 1843(k).

<sup>116</sup> For purposes of (iii), the company must calculate its total consolidated assets in accordance with GAAP or estimate its total consolidated assets, subject to review and adjustment by the Board.

(defined for purposes of the RFA to include banking entities with total assets of \$550 million or less and trust companies with assets of \$38.5 million or less).

As discussed previously in this **SUPPLEMENTARY INFORMATION** section, the proposed rule generally would apply to national banks and Federal savings associations with: (i) Consolidated total assets equal to \$250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to \$10 billion or more; or (iii) consolidated total assets equal to \$10 billion or more if a national bank or Federal savings association is a consolidated subsidiary of a company subject to the proposed rule. As of March 25, 2016, the OCC supervises 1,032 small entities. Since the proposed rule would only apply to institutions that have consolidated total assets or consolidated total on-balance sheet foreign exposure equal to \$10 billion or more, the proposed rule would not have any impact on small banks and small Federal savings associations. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small OCC-supervised entities.

The OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

#### FDIC

The RFA requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify 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 banking entities with total assets of \$550 million or less).

As described in section I of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would establish a quantitative liquidity standard for large and internationally active banking organizations with \$250 billion or more in total assets or \$10 billion or more of on-balance sheet foreign exposure and their consolidated subsidiary depository institutions with \$10 billion or more in total consolidated assets. One FDIC-supervised institution satisfies the foregoing criteria, and it is not a small entity. As of December 31, 2015, based on a \$550 million threshold, 2 (out of 3,262) small FDIC-supervised institutions were subsidiaries of a covered company. Therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

#### IX. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>117</sup>

The agencies note that comment on these matters has been solicited in other sections of this **SUPPLEMENTARY INFORMATION** section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

#### X. Paperwork Reduction Act

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies 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 OMB control number for the Board is 7100–0367 and will be extended, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section

<sup>117</sup> 12 U.S.C. 4802.

1320.11 of the OMB's implementing regulations (5 CFR 1320). The OCC and FDIC are seeking a new control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies: by mail to U.S. Office of Management and Budget, 725 17th Street NW., # 10235, Washington, DC 20503; by facsimile to (202) 395-5806; or by email to: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention, Federal Banking Agency Desk Officer.

#### *Proposed Information Collection*

*Title of Information Collection:* Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements

*Frequency of Response:* Quarterly, monthly, and event generated.

*Affected Public:* Businesses or other for-profit.

#### *Respondents:*

*FDIC:* Insured state nonmember banks and state savings associations, insured state branches of foreign banks, and certain subsidiaries of these entities.

*OCC:* National banks, Federal savings associations, or, pursuant to 12 CFR 5.34(e)(3), an operating subsidiary thereof.

*Board:* Insured state member banks, bank holding companies, and savings and loan holding companies.

*Abstract:* The reporting requirements in the proposed rule are found in

§ \_\_\_\_ .110, the recordkeeping requirements are found in §§ \_\_\_\_ .108(b) and \_\_\_\_ .110(b), and the disclosure requirements are found in §§ \_\_\_\_ .130 and \_\_\_\_ .131. The disclosure requirements are only for Board supervised entities.

Section \_\_\_\_ .110 would require a covered company to take certain actions following any NSFR shortfall. A covered company would be required to notify its appropriate Federal banking agency of the shortfall no later than 10 business days (or such other period as the appropriate Federal banking agency may otherwise require by written notice) following the date that any event has occurred that would cause or has caused the covered company's NSFR to be less than 1.0. It must also submit to its appropriate Federal banking agency its plan for remediation of its NSFR to at least 1.0, and submit at least monthly reports on its progress to achieve compliance.

Section \_\_\_\_ .108(b) provides that if an institution includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, it must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from the consolidated subsidiaries. These procedures must document which types of transactions the institution could use to transfer assets from a consolidated subsidiary to the institution and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions. Section \_\_\_\_ .110(b) requires preparation of a plan for remediation to achieve an NSFR of at least equal to 1.0, as required under § \_\_\_\_ .100.

Section \_\_\_\_ .130 requires that a depository institution holding company subject to the proposed NSFR or modified NSFR requirements publicly disclose its NSFR calculated on the last business day of each calendar quarter, in a direct and prominent manner on its public internet site or in its public financial or other public regulatory reports. These disclosures must remain publicly available for at least five years after the date of disclosure. Section \_\_\_\_ .131 specifies the quantitative and qualitative disclosures required and provides the disclosure template to be used.

#### *PRA Burden Estimates*

*Estimated average hour per response:*

*Reporting Burden:*

§ \_\_\_\_ .110(a)—0.25 hours.

§ \_\_\_\_ .110(b)—0.50 hours.

*Recordkeeping Burden:*

§ \_\_\_\_ .108(b)—20 hours.

§ \_\_\_\_ .110(b)—100 hours.

*Disclosure Burden (Board only):*

§§ \_\_\_\_ .130 and \_\_\_\_ .131—24 hours.

#### OCC

*Number of Respondents:* 17 (17 for reporting requirements and § \_\_\_\_ .40(b) and § \_\_\_\_ .110(b) recordkeeping requirements; 17 for § \_\_\_\_ .22(a)(2), § \_\_\_\_ .22(a)(5), and § \_\_\_\_ .108(b) recordkeeping requirements).

*Total Estimated Annual Burden:* 2,112 hours.

#### Board

*Number of Respondents:* 39 (3 for reporting requirements and § \_\_\_\_ .40(b) and § \_\_\_\_ .110(b) recordkeeping requirements; 39 for § \_\_\_\_ .22(a)(2), § \_\_\_\_ .22(a)(5), and § \_\_\_\_ .108(b) recordkeeping requirements; 35 for disclosure requirements).

*Current Total Estimated Annual Burden:* 1,153 hours.

*Proposed Total Estimated Annual Burden:* 4,453 hours.

#### FDIC

*Number of Respondents:* 1 (1 for reporting requirements and § \_\_\_\_ .40(b) and § \_\_\_\_ .110(b) recordkeeping requirements; 1 for § \_\_\_\_ .22(a)(2), § \_\_\_\_ .22(a)(5), and § \_\_\_\_ .108(b) recordkeeping requirements).

*Total Estimated Annual Burden:* 124.25 hours.

#### **XI. OCC Unfunded Mandates Reform Act of 1995 Determination**

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of \$100 million or more in any one year (adjusted annually for inflation). The OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analysis will be available at: <http://www.regulations.gov>, Docket ID OCC-2014-0029.



**Text of Common Rule**

(All agencies)

**PART [INSERT PART]—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING****Subparts H, I, and J—Reserved****Subpart K—Net Stable Funding Ratio****§ \_\_\_\_ .100 Net stable funding ratio.**

(a) *Minimum net stable funding ratio requirement.* Beginning January 1, 2018, a [BANK] must maintain a net stable funding ratio that is equal to or greater than 1.0 on an ongoing basis in accordance with this subpart.

(b) *Calculation of the net stable funding ratio.* For purposes of this part, a [BANK]'s net stable funding ratio equals:

(1) The [BANK]'s ASF amount, calculated pursuant to § \_\_\_\_ .103 of this part, as of the calculation date; *divided by*

(2) The [BANK]'s RSF amount, calculated pursuant to § \_\_\_\_ .105 of this part, as of the calculation date.

**§ \_\_\_\_ .101 Determining maturity.**

For purposes of calculating its net stable funding ratio, including its ASF amount and RSF amount, under subparts K through N, a [BANK] shall assume each of the following:

(a) With respect to any NSFR liability, the NSFR liability matures according to § \_\_\_\_ .31(a)(1) of this part without regard to whether the NSFR liability is subject to § \_\_\_\_ .32 of this part;

(b) With respect to an asset, the asset matures according to § \_\_\_\_ .31(a)(2) of this part without regard to whether the asset is subject to § \_\_\_\_ .33 of this part;

(c) With respect to an NSFR liability or asset that is perpetual, the NSFR liability or asset matures one year or more after the calculation date;

(d) With respect to an NSFR liability or asset that has an open maturity, the NSFR liability or asset matures on the first calendar day after the calculation date, except that in the case of a deferred tax liability, the NSFR liability matures on the first calendar day after the calculation date on which the deferred tax liability could be realized; and

(e) With respect to any principal payment of an NSFR liability or asset, such as an amortizing loan, that is due prior to the maturity of the NSFR liability or asset, the payment matures on the date on which it is contractually due.

**§ \_\_\_\_ .102 Rules of construction.**

(a) *Balance-sheet metric.* Unless otherwise provided in this subpart, an

NSFR regulatory capital element, NSFR liability, or asset that is not included on a [BANK]'s balance sheet is not assigned an RSF factor or ASF factor, as applicable; and an NSFR regulatory capital element, NSFR liability, or asset that is included on a [BANK]'s balance sheet is assigned an RSF factor or ASF factor, as applicable.

(b) *Netting of certain transactions.* Where a [BANK] has secured lending transactions, secured funding transactions, or asset exchanges with the same counterparty and has offset the gross value of receivables due from the counterparty under the transactions by the gross value of payables under the transactions due to the counterparty, the receivables or payables associated with the offsetting transactions that are not included on the [BANK]'s balance sheet are treated as if they were included on the [BANK]'s balance sheet with carrying values, unless the criteria in [§ \_\_\_\_ .10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE] are met.

(c) *Treatment of Securities Received in an Asset Exchange by a Securities Lender.* Where a [BANK] receives a security in an asset exchange, acts as a securities lender, includes the carrying value of the security on its balance sheet, and has not rehypothecated the security received:

(1) The security received by the [BANK] is not assigned an RSF factor; and

(2) The obligation to return the security received by the [BANK] is not assigned an ASF factor.

**§ \_\_\_\_ .103 Calculation of available stable funding amount.**

A [BANK]'s ASF amount equals the sum of the carrying values of the [BANK]'s NSFR regulatory capital elements and NSFR liabilities, in each case multiplied by the ASF factor applicable in § \_\_\_\_ .104 or § \_\_\_\_ .107(c) and consolidated in accordance with § \_\_\_\_ .108.

**§ \_\_\_\_ .104 ASF factors.**

(a) *NSFR regulatory capital elements and NSFR liabilities assigned a 100 percent ASF factor.* An NSFR regulatory capital element or NSFR liability of a [BANK] is assigned a 100 percent ASF factor if it is one of the following:

(1) An NSFR regulatory capital element; or

(2) An NSFR liability that has a maturity of one year or more from the calculation date, is not described in paragraph (e)(3) of this section, and is not a retail deposit or brokered deposit provided by a retail customer or counterparty.

(b) *NSFR liabilities assigned a 95 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 95 percent ASF factor if it is a stable retail deposit (regardless of maturity or collateralization) held at the [BANK].

(c) *NSFR liabilities assigned a 90 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 90 percent ASF factor if it is funding provided by a retail customer or counterparty that is:

(1) A retail deposit (regardless of maturity or collateralization) other than a stable retail deposit or brokered deposit;

(2) A reciprocal brokered deposit where the entire amount is covered by deposit insurance;

(3) A brokered sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance; or

(4) A brokered deposit that is not a reciprocal brokered deposit or a brokered sweep deposit, that is not held in a transactional account, and that matures one year or more from the calculation date.

(d) *NSFR liabilities assigned a 50 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 50 percent ASF factor if it is one of the following:

(1) Unsecured wholesale funding that:

(i) Is not provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures less than one year from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit placed at the [BANK];

(2) A secured funding transaction with the following characteristics:

(i) The counterparty is not a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures less than one year from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit placed at the [BANK];

(3) Unsecured wholesale funding that:

(i) Is provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures six months or more, but less than one year, from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit;

(4) A secured funding transaction with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures six months or more, but less than one year, from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit;

(5) A security issued by the [BANK] that matures six months or more, but less than one year, from the calculation date;

(6) An operational deposit placed at the [BANK];

(7) A brokered deposit provided by a retail customer or counterparty that is not described in paragraphs (c) or (e)(2) of this section; or

(8) Any other NSFR liability that matures six months or more, but less than one year, from the calculation date and is not described in paragraphs (a) through (c), (d)(1) through (d)(7), or (e)(3) of this section.

(e) *NSFR liabilities assigned a zero percent ASF factor.* An NSFR liability of a [BANK] is assigned a zero percent ASF factor if it is one of the following:

(1) A trade date payable that results from a purchase by the [BANK] of a financial instrument, foreign currency, or commodity that is contractually required to settle within the lesser of the market standard settlement period for the particular transaction and five business days from the date of the sale;

(2) A brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date;

(3) An NSFR liability owed to a retail customer or counterparty that is not a deposit and is not a security issued by the [BANK];

(4) A security issued by the [BANK] that matures less than six months from the calculation date; or

(5) An NSFR liability with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary, or a central bank;

(ii) The NSFR liability matures less than six months from the calculation date or has an open maturity; and

(iii) The NSFR liability is not a security issued by the [BANK] or an operational deposit placed at the [BANK]; or

(6) Any other NSFR liability that matures less than six months from the calculation date and is not described in paragraphs (a) through (d) or (e)(1) through (5) of this section.

**§ \_\_\_\_ .105 Calculation of required stable funding amount.**

A [BANK]'s RSF amount equals the sum of:

(a) The carrying values of a [BANK]'s assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § \_\_\_\_ .107(b)) and the undrawn amounts of a [BANK]'s credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § \_\_\_\_ .106; and

(b) The [BANK]'s derivatives RSF amount calculated pursuant to § \_\_\_\_ .107(b).

**§ \_\_\_\_ .106 RSF Factors.**

(a) *Unencumbered assets and commitments.* All assets and undrawn amounts under credit and liquidity facilities, unless otherwise provided in § \_\_\_\_ .107(b) relating to derivative transactions or paragraphs (b) through (d) of this section, are assigned RSF factors as follows:

(1) *Unencumbered assets assigned a zero percent RSF factor.* An asset of a [BANK] is assigned a zero percent RSF factor if it is one of the following:

(i) Currency and coin;

(ii) A cash item in the process of collection;

(iii) A Reserve Bank balance or other claim on a Reserve Bank that matures less than six months from the calculation date;

(iv) A claim on a foreign central bank that matures less than six months from the calculation date; or

(v) A trade date receivable due to the [BANK] resulting from the [BANK]'s sale of a financial instrument, foreign currency, or commodity that is required to settle within the lesser of the market standard settlement period, without extension, for the particular transaction and five business days from the date of the sale, and that has not failed to settle within the required settlement period.

(2) *Unencumbered assets and commitments assigned a 5 percent RSF factor.* An asset or undrawn amount under a credit or liquidity facility of a [BANK] is assigned a 5 percent RSF factor if it is one of the following:

(i) A level 1 liquid asset, other than a level 1 liquid asset described in paragraph (a)(1) of this section; or

(ii) The undrawn amount of any committed credit facility or committed liquidity facility extended by the [BANK]. For the purposes of this paragraph (a)(2)(ii), the undrawn

amount of a committed credit facility or committed liquidity facility is the entire unused amount of the facility that could be drawn upon within one year of the calculation date under the governing agreement.

(3) *Unencumbered assets assigned a 10 percent RSF factor.* An asset of a [BANK] is assigned a 10 percent RSF factor if it is a secured lending transaction with the following characteristics:

(i) The secured lending transaction matures less than six months from the calculation date;

(ii) The secured lending transaction is secured by level 1 liquid assets;

(iii) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(iv) The [BANK] retains the right to rehypothecate the collateral provided by the counterparty for the duration of the secured lending transaction.

(4) *Unencumbered assets assigned a 15 percent RSF factor.* An asset of a [BANK] is assigned a 15 percent RSF factor if it is one of the following:

(i) A level 2A liquid asset; or

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures less than six months from the calculation date;

(B) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(C) The asset is not described in paragraph (a)(3) of this section and is not an operational deposit described in paragraph (a)(5)(iii) of this section.

(5) *Unencumbered assets assigned a 50 percent RSF factor.* An asset of a [BANK] is assigned a 50 percent RSF factor if it is one of the following:

(i) A level 2B liquid asset;

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures six months or more, but less than one year, from the calculation date;

(B) The borrower is a financial sector entity, a consolidated subsidiary thereof, or a central bank; and

(C) The asset is not an operational deposit described in paragraph (a)(5)(iii) of this section;

(iii) An operational deposit placed by the [BANK] at a financial sector entity or a consolidated subsidiary thereof;

(iv) A general obligation security issued by, or guaranteed as to the timely payment of principal and interest by, a public sector entity that is not described in paragraph (a)(5)(i); or

(v) An asset that is not described in paragraphs (a)(1) through (a)(4) or (a)(5)(i) through (a)(5)(iv) of this section

that matures less than one year from the calculation date, including:

(A) A secured lending transaction or unsecured wholesale lending where the borrower is a wholesale customer or counterparty that is not a financial sector entity, a consolidated subsidiary thereof, or a central bank; or

(B) Lending to a retail customer or counterparty.

(6) *Unencumbered assets assigned a 65 percent RSF factor.* An asset of a [BANK] is assigned a 65 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of no greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION]; or

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(6)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of no greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION].

(7) *Unencumbered assets assigned an 85 percent RSF factor.* An asset of a [BANK] is assigned an 85 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION]; or

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(7)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION];

(iii) A publicly traded common equity share that is not HQLA;

(iv) A security, other than a common equity share, that matures one year or more from the calculation date and is not HQLA; and

(v) A commodity for which derivative transactions are traded on a U.S. board of trade or trading facility designated as a contract market under sections 5 and 6 of the Commodity Exchange Act (7 U.S.C. 7 and 8) or on a U.S. swap execution facility registered under section 5h of the Commodity Exchange Act (7 U.S.C. 7b–3).

(8) *Unencumbered assets assigned a 100 percent RSF factor.* An asset of a [BANK] is assigned a 100 percent RSF factor if it is not described in paragraphs (a)(1) through (a)(7) of this section, including a secured lending transaction or unsecured wholesale lending where the borrower is a financial sector entity or a consolidated subsidiary thereof and that matures one year or more from the calculation date.

(b) *Nonperforming assets.* An RSF factor of 100 percent is assigned to any asset that is past due by more than 90 days or nonaccrual.

(c) *Encumbered assets.* An encumbered asset, unless otherwise provided in § \_\_\_.107(b) relating to derivative transactions, is assigned an RSF factor as follows:

(1)(i) *Encumbered assets with less than six months remaining in the encumbrance period.* For an encumbered asset with less than six months remaining in the encumbrance period, the same RSF factor is assigned to the asset as would be assigned if the asset were not encumbered.

(ii) *Encumbered assets with six months or more, but less than one year, remaining in the encumbrance period.* For an encumbered asset with six months or more, but less than one year, remaining in the encumbrance period:

(A) If the asset would be assigned an RSF factor of 50 percent or less under paragraphs (a)(1) through (a)(5) of this section if the asset were not encumbered, an RSF factor of 50 percent is assigned to the asset.

(B) If the asset would be assigned an RSF factor of greater than 50 percent under paragraphs (a)(6) through (a)(8) of this section if the asset were not encumbered, the same RSF factor is assigned to the asset as would be assigned if it were not encumbered.

(iii) *Encumbered assets with one year or more remaining in the encumbrance period.* For an encumbered asset with one year or more remaining in the encumbrance period, an RSF factor of 100 percent is assigned to the asset.

(2) If an asset is encumbered for an encumbrance period longer than the asset's maturity, the asset is assigned an RSF factor under paragraph (c)(1) of this section based on the length of the encumbrance period.

(3) *Segregated account assets.* An asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets is not considered encumbered for purposes of this paragraph solely because such asset is held in the segregated account.

(d) *Off-balance sheet rehypothecated assets.* For an NSFR liability of a [BANK] that is secured by an off-balance sheet asset or results from the [BANK] selling an off-balance sheet asset (for instance, in the case of a short sale):

(1) If the [BANK] received the off-balance sheet asset under a lending transaction, an RSF factor is assigned to the lending transaction as if it were encumbered for the longer of (A) the remaining maturity of the NSFR liability and (B) any other encumbrance period applicable to the lending transaction;

(2) If the [BANK] received the off-balance sheet asset under an asset exchange, an RSF factor is assigned to the asset provided by the [BANK] in the asset exchange as if the provided asset were encumbered for the longer of (A) the remaining maturity of the NSFR liability and (B) any other encumbrance period applicable to the provided asset; or

(3) If the [BANK] did not receive the off-balance sheet asset under a lending transaction or asset exchange, the off-balance sheet asset is assigned an RSF factor as if it were included on the balance sheet of the [BANK] and encumbered for the longer of (A) the remaining maturity of the NSFR liability and (B) any other encumbrance period applicable to the off-balance sheet asset.

#### § \_\_\_.107 Calculation of NSFR derivatives amounts.

(a) *General requirement.* A [BANK] must calculate its derivatives RSF amount and certain components of its ASF amount relating to the [BANK]'s derivative transactions (which includes cleared derivative transactions of a customer with respect to which the [BANK] is acting as agent for the customer that are included on the [BANK]'s balance sheet under GAAP) in accordance with this section.

(b) *Calculation of required stable funding amount relating to derivative transactions.* A [BANK]'s derivatives RSF amount equals the sum of:

(1) *Current derivative transaction values.* The [BANK]'s NSFR derivatives asset amount, as calculated under paragraph (d)(1) of this section, multiplied by an RSF factor of 100 percent;

(2) *Variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a

qualifying master netting agreement and each QMNA netting set, to the extent the variation margin reduces the [BANK]'s derivatives liability value under the derivative transaction or QMNA netting set, as calculated under paragraph (f)(2) of this section, multiplied by an RSF factor of zero percent;

(3) *Excess variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set in excess of the amount described in section (b)(2) for each derivative transaction or QMNA netting set, multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § \_\_\_\_.106;

(4) *Variation margin received.* The carrying value of variation margin received by the [BANK], multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § \_\_\_\_.106;

(5) *Potential valuation changes.*

(i) An amount equal to 20 percent of the sum of the gross derivative values of the [BANK] that are liabilities, as calculated under paragraph (ii), for each of the [BANK]'s derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, multiplied by an RSF factor of 100 percent;

(ii) For purposes of paragraph (i), the gross derivative value of a derivative transaction not subject to a qualifying master netting agreement or of a QMNA netting set is equal to the value to the [BANK], calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the value of the derivative transaction or QMNA netting set.

(6) *Contributions to central counterparty mutualized loss sharing arrangements.* The fair value of a [BANK]'s contribution to a central counterparty's mutualized loss sharing arrangement (regardless of whether the contribution is included on the [BANK]'s balance sheet), multiplied by an RSF factor of 85 percent; and

(7) *Initial margin provided.* The fair value of initial margin provided by the [BANK] for derivative transactions (regardless of whether the initial margin is included on the [BANK]'s balance sheet), which does not include initial margin provided by the [BANK] for cleared derivative transactions with respect to which the [BANK] is acting as agent for a customer and the [BANK] does not guarantee the obligations of the customer's counterparty to the customer under the derivative transaction (such

initial margin would be assigned an RSF factor pursuant to § \_\_\_\_.106 to the extent the initial margin is included on the [BANK]'s balance sheet), multiplied by an RSF factor equal to the higher of 85 percent or the RSF factor assigned to each asset comprising the initial margin pursuant to § \_\_\_\_.106.

(c) *Calculation of available stable funding amount relating to derivative transactions.* The following amounts of a [BANK] are assigned a zero percent ASF factor:

(1) The [BANK]'s NSFR derivatives liability amount, as calculated under paragraph (d)(2) of this section; and

(2) The carrying value of NSFR liabilities in the form of an obligation to return initial margin or variation margin received by the [BANK].

(d) *Calculation of NSFR derivatives asset or liability amount.*

(1) A [BANK]'s NSFR derivatives asset amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section, less the [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section.

(2) A [BANK]'s NSFR derivatives liability amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section, less the [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section.

(e) *Calculation of total derivatives asset and liability amounts.*

(1) A [BANK]'s total derivatives asset amount is the sum of the [BANK]'s derivatives asset values, as calculated under paragraph (f)(1) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(2) A [BANK]'s total derivatives liability amount is the sum of the [BANK]'s derivatives liability values, as calculated under paragraph (f)(2) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(f) *Calculation of derivatives asset and liability values.* For each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set:

(1) The derivatives asset value is equal to the asset value to the [BANK], after taking into account any variation margin received by the [BANK] that meets the conditions of [§ \_\_\_\_.10(c)(4)(ii)(C)(1) through (7) of

the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]; or

(2) The derivatives liability value is equal to the liability value to the [BANK], after taking into account any variation margin provided by the [BANK].

#### § \_\_\_\_.108 Rules for consolidation.

(a) *Consolidated subsidiary available stable funding amount.* For available stable funding of a legal entity that is a consolidated subsidiary of a [BANK], including a consolidated subsidiary organized under the laws of a foreign jurisdiction, the [BANK] may include the available stable funding of the consolidated subsidiary in its ASF amount up to:

(1) The RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part; *plus*

(2) Any amount in excess of the RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part, to the extent the consolidated subsidiary may transfer assets to the top-tier [BANK], taking into account statutory, regulatory, contractual, or supervisory restrictions, such as sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c-1) and Regulation W (12 CFR part 223).

(b) *Required consolidation procedures.* To the extent a [BANK] includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, the [BANK] must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from any of its consolidated subsidiaries. These procedures must document which types of transactions the [BANK] could use to transfer assets from a consolidated subsidiary to the [BANK] and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions.

#### Subpart L—Net Stable Funding Shortfall

##### § \_\_\_\_.110 NSFR shortfall: supervisory framework.

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] no later than 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, following the date that any event has occurred that would cause or has caused the [BANK]'s net stable funding ratio to

be less than 1.0 as required under § \_\_\_\_\_.100.

(b) *Liquidity Plan.* (1) A [BANK] must within 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, provide to the [AGENCY] a plan for achieving a net stable funding ratio equal to or greater than 1.0 as required under § \_\_\_\_\_.100 if:

(i) The [BANK] has or should have provided notice, pursuant to § \_\_\_\_\_.110(a), that the [BANK]'s net stable funding ratio is, or will become, less than 1.0 as required under § \_\_\_\_\_.100;

(ii) The [BANK]'s reports or disclosures to the [AGENCY] indicate that the [BANK]'s net stable funding ratio is less than 1.0 as required under § \_\_\_\_\_.100; or

(iii) The [AGENCY] notifies the [BANK] in writing that a plan is required and provides a reason for requiring such a plan.

(2) The plan must include, as applicable:

(i) An assessment of the [BANK]'s liquidity profile;

(ii) The actions the [BANK] has taken and will take to achieve a net stable funding ratio equal to or greater than 1.0 as required under § \_\_\_\_\_.100, including:

(A) A plan for adjusting the [BANK]'s liquidity profile;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with subpart K of this part; and

(iii) An estimated time frame for achieving full compliance with § \_\_\_\_\_.100.

(3) The [BANK] must report to the [AGENCY] at least monthly, or such other frequency as required by the [AGENCY], on progress to achieve full compliance with § \_\_\_\_\_.100.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum net stable funding ratio and other requirements of subparts K through N of this part (see also § \_\_\_\_\_.2(c)).

#### Subpart M—Reserved

#### Subpart N—NSFR Public Disclosure

##### § \_\_\_\_\_.130 Timing, method, and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company

that is subject to the minimum stable funding requirement in § \_\_\_\_\_.100 of this part must publicly disclose the information required under this subpart.

(b) *Timing of disclosure.* A covered depository institution holding company must provide timely public disclosures each calendar quarter of all of the information required under this subpart, beginning when the covered depository institution holding company is first required to comply with the requirements of this part pursuant to § \_\_\_\_\_.100 and continuing thereafter.

(c) *Disclosure method.* A covered depository institution holding company must publicly disclose, in a direct and prominent manner, the information required under this subpart on its public internet site or in its public financial or other public regulatory reports.

(d) *Availability.* The disclosures provided under this subpart must remain publicly available for at least five years after the date of disclosure.

##### § \_\_\_\_\_.131 Disclosure requirements.

(a) *General.* A covered depository institution holding company must publicly disclose the information required by this subpart in the format provided in Table 1 below.

(b) *Calculation of disclosed amounts.*

(1) *General.*

(i) A covered depository institution holding company must calculate its disclosed amounts:

(A) On a consolidated basis and presented in millions of U.S. dollars or as a decimal, as applicable; and

(B) As of the last business day of each calendar quarter.

(ii) A covered depository institution holding company must include the as-of date for the disclosed amounts.

(2) Calculation of unweighted amounts.

(i) For each component of a covered depository institution holding company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the "unweighted amount" means the sum of the carrying values of the covered depository institution holding company's NSFR regulatory capital elements and NSFR liabilities, as applicable, determined before applying the appropriate ASF factors, and subdivided into the following maturity categories, as applicable: Open maturity; less than six months after the

calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(ii) For each component of a covered depository institution holding company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the "unweighted amount" means the sum of the carrying values of the covered depository institution holding company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, as applicable, determined before applying the appropriate RSF factors, and subdivided by maturity into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(3) Calculation of weighted amounts.

(i) For each component of a covered depository institution holding company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the "weighted amount" means the sum of the carrying values of the covered depository institution holding company's NSFR regulatory capital elements and NSFR liabilities, as applicable, multiplied by the appropriate ASF factors.

(ii) For each component of a covered depository institution holding company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the "weighted amount" means the sum of the carrying values of the covered depository institution holding company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, multiplied by the appropriate RSF factors.

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Table 1 to § \_\_.131(a) – Disclosure Template

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
<b>ASF ITEM</b>							
1	Capital and securities:						
2	NSFR regulatory capital elements						
3	Other capital elements and securities						
4	Retail funding:						
5	Stable deposits						
6	Less stable deposits						
7	Retail brokered deposits						
8	Other retail funding						
9	Wholesale funding:						
10	Operational deposits						
11	Other wholesale funding						
	Other liabilities:						
12	NSFR derivatives liability amount						
13	Total derivatives liability amount						
14	All other liabilities not included in the above categories						
15	<b>TOTAL ASF</b>						
<b>RSF ITEM</b>							
16	Total high-quality liquid assets (HQLA)						
17	Level 1 liquid assets						
18	Level 2A liquid assets						
19	Level 2B liquid assets						
20	Zero percent RSF assets that are not level 1 liquid assets						
21	Operational deposits placed at financial sector entities or their consolidated subsidiaries						
22	Loans and securities:						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
23	Loans to financial sector entities secured by level 1 liquid assets						
24	Loans to financial sector entities secured by assets other than level 1 liquid assets and unsecured loans to financial sector entities						
25	Loans to wholesale customers or counterparties that are not financial sector entities and loans to retail customers or counterparties						
26	Of which: With a risk weight no greater than 20 percent under [AGENCY CAPITAL REGULATION]						
27	Retail mortgages						
28	Of which: With a risk weight of no greater than 50 percent under [AGENCY CAPITAL REGULATION]						
29	Securities that do not qualify as HQLA						
	Other assets:						
30	Commodities						
31	Assets provided as initial margin for derivative transactions and contributions to CCPs' mutualized loss-sharing arrangements						



Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
32	NSFR derivatives asset amount						
33	Total derivatives asset amount						
34	RSF for potential derivatives portfolio valuation changes						
35	All other assets not included in the above categories, including nonperforming assets						
36	Undrawn commitments						
37	<b>TOTAL RSF</b>						
38	<b>NET STABLE FUNDING RATIO</b>						

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(c) *Quantitative disclosures.* A covered depository institution holding company must disclose all of the information required under Table 1 to § \_\_\_\_.131(a)—Disclosure Template, including:

(1) Disclosures of ASF amount calculations:

(i) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(1)(ii) and (iii) of this section (row 1);

(ii) The weighted amount and, for each applicable maturity category, the unweighted amount of NSFR regulatory capital elements described in § \_\_\_\_.104(a)(1) (row 2);

(iii) The weighted amount and, for each applicable maturity category, the unweighted amount of securities described in §§ \_\_\_\_.104(a)(2), \_\_\_\_.104(d)(5), and \_\_\_\_.104(e)(4) (row 3);

(iv) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(1)(v) through (viii) of this section (row 4);

(v) The weighted amount and, for each applicable maturity category, the unweighted amount of stable retail deposits held at the covered depository institution holding company described in § \_\_\_\_.104(b) (row 5);

(vi) The weighted amount and, for each applicable maturity category, the unweighted amount of retail deposits other than stable retail deposits or

brokered deposits, described in § \_\_\_\_.104(c)(1) (row 6);

(vii) The weighted amount and, for each applicable maturity category, the unweighted amount of brokered deposits provided by a retail customer or counterparty described in §§ \_\_\_\_.104(c)(2), \_\_\_\_.104(c)(3), \_\_\_\_.104(c)(4), \_\_\_\_.104(d)(7), and \_\_\_\_.104(e)(2) (row 7);

(viii) The weighted amount and, for each applicable maturity category, the unweighted amount of other funding provided by a retail customer or counterparty described in § \_\_\_\_.104(e)(3) (row 8);

(ix) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(1)(x) and (xi) of this section (row 9);

(x) The weighted amount and, for each applicable maturity category, the unweighted amount of operational deposits placed at the covered depository institution holding company described in § \_\_\_\_.104(d)(6) (row 10);

(xi) The weighted amount and, for each applicable maturity category, the unweighted amount of other wholesale funding described in §§ \_\_\_\_.104(a)(2), \_\_\_\_.104(d)(1), \_\_\_\_.104(d)(2), \_\_\_\_.104(d)(3), \_\_\_\_.104(d)(4), \_\_\_\_.104(d)(8), and \_\_\_\_.104(e)(5) (row 11);

(xii) In the “unweighted” cell, the NSFR derivatives liability amount described in § \_\_\_\_.107(d)(2) (row 12);

(xiii) In the “unweighted” cell, the total derivatives liability amount described in § \_\_\_\_.107(e)(2) (row 13);

(xiv) The weighted amount and, for each applicable maturity category, the unweighted amount of all other liabilities not included in amounts disclosed under paragraphs (c)(1)(i) through (xiii) of this section (row 14);

(xv) The ASF amount described in § \_\_\_\_.103 (row 15);

(2) Disclosures of RSF amount calculations, including to reflect any encumbrances under §§ \_\_\_\_.106(c) and \_\_\_\_.106(d):

(i) The sum of the weighted amounts and the sum of the unweighted amounts of paragraphs (c)(2)(ii) through (iv) of this section (row 16);

(ii) The weighted amount and, for each applicable maturity category, the unweighted amount of level 1 liquid assets described in §§ \_\_\_\_.106(a)(1) and \_\_\_\_.106(a)(2)(i) (row 17);

(iii) The weighted amount and, for each applicable maturity category, the unweighted amount of level 2A liquid assets described in § \_\_\_\_.106(a)(4)(i) (row 18);

(iv) The weighted amount and, for each applicable maturity category, the unweighted amount of level 2B liquid assets described in § \_\_\_\_.106(a)(5)(i) (row 19);

(v) The weighted amount and, for each applicable maturity category, the unweighted amount of assets described in § \_\_\_\_.106(a)(1), other than level 1 liquid assets included in amounts disclosed under paragraph (c)(2)(ii) of this section (row 20);

(vi) The weighted amount and, for each applicable maturity category, the unweighted amount of operational

deposits placed at financial sector entities or consolidated subsidiaries thereof described in § \_\_\_\_ .106(a)(5)(iii) (row 21);

(vii) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(2)(viii), (ix), (x), (xii), and (xiv) of this section (row 22);

(viii) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity and the secured lending transaction is secured by level 1 liquid assets, described in §§ \_\_\_\_ .106(a)(3), \_\_\_\_ .106(a)(4)(ii), \_\_\_\_ .106(a)(5)(ii), and \_\_\_\_ .106(a)(8) (row 23);

(ix) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions that are secured by assets other than level 1 liquid assets and unsecured wholesale lending, in each case where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity, described in §§ \_\_\_\_ .106(a)(4)(ii), \_\_\_\_ .106(a)(5)(ii), and \_\_\_\_ .106(a)(8) (row 24);

(x) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions and unsecured wholesale lending to wholesale customers or counterparties that are not financial sector entities or consolidated subsidiaries thereof, and lending to retail customers and counterparties other than retail mortgages, described in §§ \_\_\_\_ .106(a)(5)(ii), \_\_\_\_ .106(a)(5)(v), \_\_\_\_ .106(a)(6)(ii), and \_\_\_\_ .106(a)(7)(ii) (row 25);

(xi) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions, unsecured wholesale lending, and lending to retail customers or counterparties that are assigned a risk weight of no greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION] described in §§ \_\_\_\_ .106(a)(5)(ii), \_\_\_\_ .106(a)(5)(v), and \_\_\_\_ .106(a)(6)(ii) (row 26);

(xii) The weighted amount and, for each applicable maturity category, the unweighted amount of retail mortgages described in §§ \_\_\_\_ .106(a)(5)(v), \_\_\_\_ .106(a)(6)(i), and \_\_\_\_ .106(a)(7)(i) (row 27);

(xiii) The weighted amount and, for each applicable maturity category, the unweighted amount of retail mortgages assigned a risk weight of no greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION] described in

§§ \_\_\_\_ .106(a)(5)(v) and \_\_\_\_ .106(a)(6)(i) (row 28);

(xiv) The weighted amount and, for each applicable maturity category, the unweighted amount of publicly traded common equity shares and other securities that are not HQLA and are not nonperforming assets described in §§ \_\_\_\_ .106(a)(5)(iv), \_\_\_\_ .106(a)(7)(iii), and \_\_\_\_ .106(a)(7)(iv) (row 29);

(xv) The weighted amount and unweighted amount of commodities described in §§ \_\_\_\_ .106(a)(7)(v) and \_\_\_\_ .106(a)(8) (row 30);

(xvi) The unweighted amount and weighted amount of the sum of (A) assets contributed by the covered depository institution holding company to a central counterparty's mutualized loss-sharing arrangement described in § \_\_\_\_ .107(b)(6) (in which case the "unweighted amount" shall equal the fair value and the "weighted amount" shall equal the unweighted amount multiplied by 85 percent) and (B) assets provided as initial margin by the covered depository institution holding company for derivative transactions described in § \_\_\_\_ .107(b)(7) (in which case the "unweighted amount" shall equal the fair value and the "weighted amount" shall equal the unweighted amount multiplied by the higher of 85 percent or the RSF factor assigned to the asset pursuant to § \_\_\_\_ .106) (row 31);

(xvii) In the "unweighted" cell, the covered depository institution holding company's NSFR derivatives asset amount under § \_\_\_\_ .107(d)(1) and in the "weighted" cell, the covered depository institution holding company's NSFR derivatives asset amount multiplied by 100 percent (row 32);

(xviii) In the "unweighted" cell, the covered depository institution holding company's total derivatives asset amount described in § \_\_\_\_ .107(e)(1) (row 33);

(xix) (A) In the "unweighted" cell, the sum of the gross derivative liability values of the covered depository institution holding company that are liabilities for each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, described in § \_\_\_\_ .107(b)(5) and (B) in the "weighted" cell, such sum multiplied by 20 percent, as described in § \_\_\_\_ .107(b)(5) (row 34);

(xx) The weighted amount and, for each applicable maturity category, the unweighted amount of all other asset amounts not included in amounts disclosed under paragraphs (c)(2)(i) through (xix) of this section, including nonperforming assets (row 35);

(xxi) The weighted and unweighted amount of undrawn credit and liquidity facilities described in § \_\_\_\_ .106(a)(2)(ii) (row 36);

(xxii) The RSF amount described in § \_\_\_\_ .105 (row 37);

(3) The net stable funding ratio under § \_\_\_\_ .100(b) (row 38);

(d) *Qualitative disclosures.*

(1) A covered depository institution holding company must provide a sufficient qualitative discussion to facilitate an understanding of the covered depository institution holding company's net stable funding ratio and its components.

(2) For purposes of paragraph (d)(1) of this section, a covered depository institution holding company's qualitative discussion may include, but need not be limited to, the following items, to the extent they are significant to the covered depository institution holding company's net stable funding ratio and facilitate an understanding of the data provided:

(i) The main drivers of the net stable funding ratio;

(ii) Changes in the net stable funding ratio results over time and the causes of such changes (for example, changes in strategies and circumstances);

(iii) Concentrations of funding sources and changes in funding structure;

(iv) Concentrations of available and required stable funding within a covered company's corporate structure (for example, across legal entities); or

(v) Other sources of funding or other factors in the net stable funding ratio calculation that the covered depository institution holding company considers to be relevant to facilitate an understanding of its liquidity profile.

[End of Proposed Common Rule Text]

## List of Subjects

### 12 CFR Part 50

Administrative practice and procedure; Banks, banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

### 12 CFR Part 249

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

### 12 CFR Part 329

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation, FDIC; Liquidity; Reporting and recordkeeping requirements; Savings associations.

**Adoption of the Common Rule Text**

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

**Department of the Treasury****Office of the Comptroller of the Currency****12 CFR Chapter I****Authority and Issuance**

For the reasons set forth in the common preamble, the OCC proposes to amend part 50 of chapter I of title 12 to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** section and is further amended as follows:

**PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS**

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 93a, 481, 1818, and 1462 *et seq.*

■ 2. Amend § 50.1 by:

- a. Revising paragraph (a) and (b)(1);
- b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6) respectively and adding new paragraph (b)(3);

The additions and revisions read as follows:

**§ 50.1 Purpose and applicability.**

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain national banks and Federal savings associations on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard and the minimum stable funding standard, and other requirements of this part if:

(i) The national bank or Federal savings association has total consolidated assets equal to \$250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(ii) The national bank or Federal savings association has total consolidated on-balance sheet foreign exposure at the most recent year end equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative

products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) The national bank or Federal savings association is a depository institution that has total consolidated assets equal to \$10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to \$250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y-9C), or, if the covered depository institution holding company is not required to report on the FR Y-9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y-9C;

(B) A depository institution that has total consolidated assets equal to \$250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company; or

(iv) The OCC has determined that application of this part is appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(3)(i) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (b)(1)(i) through (iii) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the

year in which the national bank or Federal savings association becomes subject to the minimum stable funding standard and the requirements of subparts K through N of this part; and

(ii) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (b)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the OCC.

\* \* \* \* \*

■ 3. Amend § 50.2, by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly-redesignated paragraph (c) to read as follows:

**§ 50.2 Reservation of authority.**

\* \* \* \* \*

(b) The OCC may require a national bank or Federal savings association to hold an amount of available stable funding (ASF) greater than otherwise required under this part, or to take any other measure to improve the national bank's or Federal savings association's stable funding, if the OCC determines that the national bank's or Federal savings association's stable funding requirements as calculated under this part are not commensurate with the national bank's or Federal savings association's funding risks. In making determinations under this section, the OCC will apply notice and response procedures as set forth in 12 CFR 3.404.

(c) Nothing in this part limits the authority of the OCC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 4. Amend § 50.3 by:

- a. Revising the definition for "Calculation date";
- b. Adding the definition "Carrying value";
- c. Revising the definitions for "Collateralized deposit", "Committed" and "Covered nonbank company";
- d. Adding the definitions for "Encumbered", "NSFR liability" and "NSFR regulatory capital element";
- e. Revising the definition for "Operational Deposit";
- f. Adding the definition for "QMNA netting set";
- g. Revising the definitions for: Secured funding transaction" and "Secured lending transaction";

- h. Adding the definition for “Unconditionally cancelable”;
- i. Revising the definition for “Unsecured wholesale funding”; and
- j. Adding the definition for “Unsecured wholesale lending”.

The additions and revisions read as follows:

**§ 50.3 Definitions.**

\* \* \* \* \*

*Calculation date* means, for subparts B through J of this part, any date on which a national bank or Federal savings association calculates its liquidity coverage ratio under § 50.10, and for subparts K through N of this part, any date on which a national bank or Federal savings association calculates its net stable funding ratio under § 50.100.

*Carrying value* means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the national bank or Federal savings association, each as determined in accordance with GAAP.

\* \* \* \* \*

*Collateralized deposit* means:

(1) A deposit of a public sector entity held at the national bank or Federal savings association that is required to be secured under applicable law by a lien on assets owned by the national bank or Federal savings association and that gives the depositor, as holder of the lien, priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank or Federal savings association is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank’s or Federal savings association’s affiliated insured depository institution is a fiduciary and where the national bank or Federal savings association under 12 CFR 9.10(c) (national banks) or

12 CFR 150.310 (Federal savings associations) has set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

*Committed* means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

\* \* \* \* \*

*Covered nonbank company* means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

\* \* \* \* \*

*Encumbered* means, with respect to an asset, that the asset:

- (1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the national bank or Federal savings association to monetize the asset; or
- (2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the national bank or Federal savings association or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

\* \* \* \* \*

*NSFR liability* means any liability or equity reported on a national bank’s or Federal savings association’s balance sheet that is not an NSFR regulatory capital element.

*NSFR regulatory capital element* means any capital element included in a national bank’s or Federal savings association’s common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 3.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 3.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 3.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR part 3.

*Operational deposit* means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized

deposit, in each case that meets the requirements of § 50.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

\* \* \* \* \*

*QMNA netting set* means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

\* \* \* \* \*

*Secured funding transaction* means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the national bank or Federal savings association, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

*Secured lending transaction* means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the national bank or Federal savings association, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

\* \* \* \* \*

*Unconditionally cancelable* means, with respect to a credit or liquidity facility, that a national bank or Federal savings association may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

*Unsecured wholesale funding* means a liability or general obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits.

*Unsecured wholesale lending* means a liability or general obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is not a secured lending transaction or a security.

- \* \* \* \* \*
- 5. Amend § 50.22, by revising paragraph (b)(1) to read as follows:

**§ 50.22 Requirements for eligible high-quality liquid assets.**

\* \* \* \* \*

(b) \* \* \*

(1) The assets are not encumbered.

\* \* \* \* \*

- 6. Amend § 50.30, by revising paragraph (b)(3) to read as follows:

**§ 50.30 Total net cash outflow amount.**

(b) \* \* \*

(3) Other than the transactions identified in § 50.32(h)(2), (h)(5), or (j) or § 50.33(d) or (f), the maturity of which is determined under § 50.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

- 7. Amend § 50.31, by revising paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

**§ 50.31 Determining maturity.**

(a) \* \* \*

(1) With respect to an instrument or transaction subject to § 50.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the national bank or Federal savings association should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

\* \* \* \* \*

(2) With respect to an instrument or transaction subject to § 50.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest

possible date the transaction could occur, the national bank or Federal savings association may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

\* \* \* \* \*

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 50.32(h)(2), (h)(5), (j), or (k) or § 50.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 50.32 shall be considered to mature within 30 calendar days of the calculation date.

\* \* \* \* \*

**Subpart G [Added and Reserved]**

- 8. Add and reserve subpart G.

**Subparts H, I, J, K, L, M, and N [Added]**

- 8a. Part 50 is amended by adding subparts H, I, J, K, L, M, and N as set forth at the end of the common preamble.

**Subparts K and L [Amended]**

- 9. Subparts K and L to part 50 are amended by:

- a. Removing “[AGENCY]” and adding “OCC” in its place wherever it appears.

- b. Removing “[AGENCY CAPITAL REGULATION]” and adding “12 CFR part 3” in its place wherever it appears.

- c. Removing “[BANK]” and adding “national bank or Federal savings association” in its place wherever it appears.

- d. Removing “[BANK]’s” and adding “national bank’s or Federal savings association’s” in its place wherever it appears.

- e. Removing “[§ \_\_\_\_ .10(c)(4)(ii)(C)(1) through (7) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]” and adding “12 CFR 3.10(c)(4)(ii)(C)(1) through (7)” in its place wherever it appears.

- f. Removing “[§ \_\_\_\_ .10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]” and adding “12 CFR 3.10(c)(4)(ii)(E)(1) through (3)” in its place wherever it appears.

- g. Removing “[INSERT PART]” and adding “50” in its place wherever it appears.

**Subpart N [Removed and Reserved]**

- 10. Remove and reserve subpart N.

**Board of Governors of the Federal Reserve System**

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons set forth in the common preamble, part 249 of chapter II of title 12 of the Code of Federal Regulations is amended to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** section and is further amended as follows:

**PART 249—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING (REGULATION WW)**

- 11. The authority citation for part 249 continues to read as follows:

*Authority:* 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

- 12. Revise the heading for part 249 as set forth above.

- 13. Amend § 249.1 by:

- a. Revising paragraphs (a) and (b)(1);
- b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6), respectively, and adding paragraph (b)(3);

The additions and revisions read as follows:

**§ 249.1 Purpose and applicability.**

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain Board-regulated institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard and the minimum stable funding standard, and other requirements of this part if:

(i) It has total consolidated assets equal to \$250 billion or more, as reported on the most recent year end (as applicable):

(A) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the Board-regulated institution is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(B) Consolidated Report of Condition and Income (Call Report);

(ii) It has total consolidated on-balance sheet foreign exposure at the most recent year end equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of

the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is a consolidated subsidiary of a company described in paragraphs (b)(1)(i) or (ii) of this section and has total consolidated assets equal to \$10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(iv) It is a covered nonbank company;

(v) It is a covered depository institution holding company that meets the criteria in section 249.60(a) or section 249.120(a) but does not meet the criteria in paragraphs (b)(1)(i) or (ii) of this section, and is subject to complying with the requirements of this part in accordance with subpart G or M of this part, respectively; or

(vi) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

\* \* \* \* \*  
(3)(i) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (b)(1)(i) through (iii) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the year in which the Board-regulated institution becomes subject to the minimum stable funding standard and the requirements of subparts K through N of this part; and

(ii) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (b)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the Board.

\* \* \* \* \*  
■ 14. Amend § 249.2, by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly-redesignated paragraph (c) to read as follows:

**§ 249.2 Reservation of authority.**

\* \* \* \* \*  
(b) The Board may require a Board-regulated institution to hold an amount of available stable funding (ASF) greater

than otherwise required under this part, or to take any other measure to improve the Board-regulated institution's stable funding, if the Board determines that the Board-regulated institution's stable funding requirements as calculated under this part are not commensurate with the Board-regulated institution's funding risks. In making determinations under this section, the Board will apply notice and response procedures as set forth in 12 CFR 263.202.

(c) Nothing in this part limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

- 15. Amend § 249.3 by:
  - a. Revising the definition for "Calculation date";
  - b. Adding the definition for "Carrying value";
  - c. Revising the definitions for "Collateralized deposit", "Committed", and "Covered nonbank company";
  - d. Adding the definitions for "Encumbered", "NSFR liability", and "NSFR regulatory capital element";
  - e. Revising the definition for "Operational Deposit";
  - f. Adding the definition for "QMNA netting set";
  - g. Revising the definitions for "Secured funding transaction" and "Secured lending transaction";
  - h. Adding the definition for "Unconditionally cancelable";
  - i. Revising the definition for "Unsecured wholesale funding"; and
  - j. Adding the definition for "Unsecured wholesale lending".

The additions and revisions read in alphabetical order as follows:

**§ 249.3 Definitions.**

\* \* \* \* \*  
*Calculation date* means, for subparts B through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.10, and for subparts K through N of this part, any date on which a Board-regulated institution calculates its net stable funding ratio under § 249.100.

*Carrying value* means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the Board-regulated institution, each as determined in accordance with GAAP.

\* \* \* \* \*  
*Collateralized deposit* means:  
(1) A deposit of a public sector entity held at the Board-regulated institution

that is required to be secured under applicable law by a lien on assets owned by the Board-regulated institution and that gives the depositor, as holder of the lien, priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution's affiliated insured depository institution is a fiduciary and where the Board-regulated institution under 12 CFR 9.10(c) (national banks) or 12 CFR 150.310 (Federal savings associations) has set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

*Committed* means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

\* \* \* \* \*  
*Covered nonbank company* means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

\* \* \* \* \*  
*Encumbered* means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the Board-regulated institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the

Board-regulated institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

\* \* \* \* \*

*NSFR liability* means any liability or equity reported on a Board-regulated institution's balance sheet that is not an NSFR regulatory capital element.

*NSFR regulatory capital element* means any capital element included in a Board-regulated institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in § 217.20 of Regulation Q (12 CFR part 217), prior to application of capital adjustments or deductions as set forth in § 217.22 of Regulation Q (12 CFR part 217), excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 217.22 of Regulation Q (12 CFR part 217) and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of Regulation Q (12 CFR part 217).

*Operational deposit* means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 249.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

\* \* \* \* \*

*QMNA netting set* means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

\* \* \* \* \*

*Secured funding transaction* means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the Board-regulated institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the Board-regulated institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve

Bank. Secured funding transactions do not include securities.

*Secured lending transaction* means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the Board-regulated institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the Board-regulated institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

\* \* \* \* \*

*Unconditionally cancelable* means, with respect to a credit or liquidity facility, that a Board-regulated institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

*Unsecured wholesale funding* means a liability or general obligation of the Board-regulated institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits.

*Unsecured wholesale lending* means a liability or general obligation of a wholesale customer or counterparty to the Board-regulated institution that is not a secured lending transaction or a security.

\* \* \* \* \*

■ 16. Amend § 249.22, by revising paragraph (b)(1) to read as follows:

**§ 249.22 Requirements for eligible high-quality liquid assets.**

\* \* \* \* \*

(b) \* \* \*

(1) The assets are not encumbered.

\* \* \* \* \*

■ 17. Amend § 249.30, by revising paragraph (b)(3) to read as follows:

**§ 249.30 Total net cash outflow amount.**

(b) \* \* \*

(3) Other than the transactions identified in § 249.32(h)(2), (h)(5), or (j) or § 249.33(d) or (f), the maturity of which is determined under § 249.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

■ 18. Amend § 249.31, by revising paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

**§ 249.31 Determining maturity.**

(a) \* \* \*

(1) With respect to an instrument or transaction subject to § 249.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the Board-regulated institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

\* \* \* \* \*

(2) With respect to an instrument or transaction subject to § 249.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the Board-regulated institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

\* \* \* \* \*

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 249.32(h)(2), (h)(5), (j), or (k) or § 249.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 249.32 shall be considered to mature within 30 calendar days of the calculation date.

\* \* \* \* \*

**Subparts H, I, J, K, and L, M, and N [Added]**

■ 19. Amend part 249 by adding subparts H, I, J, K, L, M, and N as set forth at the end of the common preamble.

**Subparts K, L, and N [Amended]**

- 20. Amend subparts K, L, and N of part 249 by:
  - a. Removing “[AGENCY]” and adding “Board” in its place wherever it appears.
  - b. Removing “[AGENCY CAPITAL REGULATION]” and adding “Regulation Q (12 CFR part 217)” in its place wherever it appears.
  - c. Removing “[§ \_\_\_\_ .10(c)(4)(ii)(C)(1) through (7) of the AGENCY



SUPPLEMENTARY LEVERAGE RATIO RULE]” and adding “12 CFR 217.10(c)(4)(ii)(C)(1) through (7)” in its place wherever it appears.

■ d. Removing “[§ \_\_\_\_ .10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]” and adding “12 CFR 217.10(c)(4)(ii)(E)(1) through (3)” in its place wherever it appears.

■ e. Removing “[BANK]” and adding “Board-regulated institution” in its place wherever it appears.

■ f. Removing “[BANK]’s” and adding “Board-regulated institution’s” in its place wherever it appears.

■ 21. Revise subpart M of part 249 to read as follows:

**Subpart M—Net stable funding ratio for certain depository institution holding companies**

Sec.  
249.120 Applicability.  
249.121 Net stable funding ratio requirement.

**Subpart M—Net stable funding ratio for certain depository institution holding companies**

**§ 249.120 Applicability.**

(a) *Scope.* This subpart applies to a covered depository institution holding company domiciled in the United States that has total consolidated assets equal to \$50 billion or more, based on the average of the covered depository institution holding company’s total consolidated assets in the four most recent quarters as reported on the FR Y–9C (or, if a savings and loan holding company is not required to report on the FR Y–9C, based on the average of its estimated total consolidated assets for the most recent four quarters, calculated in accordance with the instructions to the FR Y–9C) and does not meet the applicability criteria set forth in § 249.1(b).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A, K, L, and N of this part apply to covered depository institution holding companies that are subject to this subpart.

(c) *Applicability.* A covered depository institution holding company that meets the threshold for applicability of this subpart under paragraph (a) of this section after the effective date must comply with the requirements of this subpart beginning one year after the date it meets the threshold set forth in paragraph (a) of this section.

**§ 249.121 Net stable funding ratio requirement.**

(a) *Calculation of the net stable funding ratio.* A covered depository

institution holding company subject to this subpart must calculate and maintain a net stable funding ratio in accordance with § 249.100 and this subpart.

(b) *Available stable funding amount.* A covered depository institution holding company subject to this subpart must calculate its ASF amount in accordance with subpart K of this part.

(c) *Required stable funding amount.* A covered depository institution holding company subject to this subpart must calculate its RSF amount in accordance with subpart K of this part, provided, however, that the RSF amount of a covered depository institution holding company subject to this subpart equals 70 percent of the RSF amount calculated in accordance with subpart K of this part.

**Federal Deposit Insurance Corporation  
12 CFR Chapter III**

**Authority and Issuance**

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** section and is further amended as follows:

**PART 329—LIQUIDITY RISK  
MEASUREMENT STANDARDS**

■ 22. The authority citation for part 329 continues to read as follows:

**Authority:** 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 23. Amend § 329.1 by:

- a. Revising paragraphs (a) and (b)(1);
- b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6), respectively, and adding new paragraph (b)(3);

The additions and revisions read as follows:

**§ 329.1 Purpose and applicability.**

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain FDIC-supervised institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) An FDIC-supervised institution is subject to the minimum liquidity standard and the minimum stable funding standard, and other requirements of this part if:

(i) The FDIC-supervised institution has total consolidated assets equal to \$250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(ii) The FDIC-supervised institution has total consolidated on-balance sheet

foreign exposure at the most recent year end equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) The FDIC-supervised institution is a depository institution that has total consolidated assets equal to \$10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to \$250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to \$250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company; or

(iv) The FDIC has determined that application of this part is appropriate in light of the FDIC-supervised institution’s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or

domestic covered entities, or risk to the financial system.

\* \* \* \* \*

(3)(i) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (b)(1)(i) through (iii) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the year in which the FDIC-supervised institution becomes subject to the minimum stable funding standard and the requirements of subparts K through N of this part; and

(ii) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (b)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the FDIC.

\* \* \* \* \*

■ 24. Amend § 329.2, by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly-redesignated paragraph (c) to read as follows:

**§ 329.2 Reservation of authority.**

\* \* \* \* \*

(b) The FDIC may require an FDIC-supervised institution to hold an amount of available stable funding (ASF) greater than otherwise required under this part, or to take any other measure to improve the FDIC-supervised institution's stable funding, if the FDIC determines that the FDIC-supervised institution's stable funding requirements as calculated under this part are not commensurate with the FDIC-supervised institution's funding risks. In making determinations under this section, the FDIC will apply notice and response procedures as set forth in 12 CFR 324.5.

(c) Nothing in this part limits the authority of the FDIC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 25. Amend § 329.3 by:

- a. Revising the definition for "Calculation date";
- b. Adding the definition for "Carrying value";
- c. Revising the definitions for "Collateralized deposit", "Committed", and "Covered nonbank company";

- d. Adding the definitions for "Encumbered", "NSFR liability", and "NSFR regulatory capital";
- e. Revising the definition for "Operational Deposit";
- f. Adding the definition for "QMNA netting set";
- g. Revising the definitions for "Secured funding transaction", and "Secured lending transaction";
- h. Adding the definition for "Unconditionally cancelable";
- i. Revising the definitions for "Unsecured wholesale funding"; and
- j. Adding the definition for "Unsecured wholesale lending".

The additions and revisions read as follows:

**§ 329.3 Definitions.**

\* \* \* \* \*

*Calculation date* means, for subparts B through J of this part, any date on which an FDIC-supervised institution calculates its liquidity coverage ratio under § 329.10, and for subparts K through N of this part, any date on which an FDIC-supervised institution calculates its net stable funding ratio under § 329.100.

*Carrying value* means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the FDIC-supervised institution, each as determined in accordance with GAAP.

\* \* \* \* \*

*Collateralized deposit* means:

(1) A deposit of a public sector entity held at the FDIC-supervised institution that is required to be secured under applicable law by a lien on assets owned by the FDIC-supervised institution and that gives the depositor, as holder of the lien, priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held

at the FDIC-supervised institution for which the FDIC-supervised institution's affiliated insured depository institution is a fiduciary and where the FDIC-supervised institution under 12 CFR 9.10(c) (national banks) or 12 CFR 150.310 (Federal savings associations) has set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

*Committed* means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

\* \* \* \* \*

*Covered nonbank company* means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

\* \* \* \* \*

*Encumbered* means, with respect to an asset, that the asset:

- (1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the FDIC-supervised institution to monetize the asset; or
- (2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the FDIC-supervised institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

\* \* \* \* \*

*NSFR liability* means any liability or equity reported on an FDIC-supervised institution's balance sheet that is not an NSFR regulatory capital element.

*NSFR regulatory capital element* means any capital element included in an FDIC-supervised institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 324.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 324.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 324.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR 324.

*Operational deposit* means short-term unsecured wholesale funding that is a

deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 329.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

\* \* \* \* \*

*QMNA netting set* means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

\* \* \* \* \*

*Secured funding transaction* means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the FDIC-supervised institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

*Secured lending transaction* means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the FDIC-supervised institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

\* \* \* \* \*

*Unconditionally cancelable* means, with respect to a credit or liquidity facility, that an FDIC-supervised institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

*Unsecured wholesale funding* means a liability or general obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits.

*Unsecured wholesale lending* means a liability or general obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is not a secured lending transaction or a security.

\* \* \* \* \*

■ 26. Amend § 329.22, by revising paragraph (b)(1) to read as follows:

**§ 329.22 Requirements for eligible high-quality liquid assets.**

\* \* \* \* \*

(b) \* \* \*

(1) The assets are not encumbered.

\* \* \* \* \*

■ 27. Amend § 329.30, by revising paragraph (b)(3) to read as follows:

**§ 329.30 Total net cash outflow amount.**

\* \* \* \* \*

(b) \* \* \*

(3) Other than the transactions identified in § 329.32(h)(2), (h)(5), or (j) or § 329.33(d) or (f), the maturity of which is determined under § 329.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

■ 28. Amend § 329.31, by revising paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

**§ 329.31 Determining maturity.**

(a) \* \* \*

(1) With respect to an instrument or transaction subject to § 329.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the FDIC-supervised institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

\* \* \* \* \*

(2) With respect to an instrument or transaction subject to § 329.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest

possible date the transaction could occur, the FDIC-supervised institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

\* \* \* \* \*

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 329.32(h)(2), (h)(5), (j), or (k) or § 329.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 329.32 shall be considered to mature within 30 calendar days of the calculation date.

\* \* \* \* \*

**Subpart G [Added and Reserved]**

■ 29. Add reserve subpart G.

**Subparts H, I, J, K, L, M, and N [Added]**

■ 30. Part 329 is amended by adding subparts H, I, J, K, L, M, and N as set forth at the end of the common preamble.

**Subparts K and L [Amended]**

■ 31. Subparts K and L to part 329 are amended by:

■ a. Removing “[AGENCY]” and adding “FDIC” in its place wherever it appears.

■ b. Removing “[AGENCY CAPITAL REGULATION]” and adding “12 CFR part 324” in its place wherever it appears.

■ c. Removing “A [BANK]” and adding “An FDIC-supervised institution” in its place wherever it appears.

■ d. Removing “a [BANK]” and add “an FDIC-supervised institution” in its place wherever it appears.

■ e. Removing “[BANK]” and adding “FDIC-supervised institution” in its place wherever it appears.

■ f. Removing “[§ \_\_\_\_ .10(c)(4)(ii)(C)(1) through (7) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]” and adding “12 CFR 324.10(c)(4)(ii)(C)(1) through (7)” in its place wherever it appears.

■ g. Removing “[§ \_\_\_\_ .10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]” and adding “12 CFR 324.10(c)(4)(ii)(E)(1) through (3)” in its place wherever it appears.

■ h. Removing “[INSERT PART]” and adding “329” in its place wherever it appears.

**Subpart N [Removed and Reserved]**

■ 32. Remove and reserve subpart N.

Dated: May 13, 2016.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the  
Federal Reserve System, May 3, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

Dated at Washington, DC, this 26th day of  
April, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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