

Memorandum

Federal Banking Agencies Propose Significant Rules and Guidance Related to Regional Bank Long-Term Debt and Resolvability

September 1, 2023

On August 29, 2023, the federal banking agencies issued a cascade of proposals that, if finalized, would continue the agencies' trek to dramatically increasing regulatory requirements for mid-sized banking organizations and eliminating the "tailoring" distinctions based on size that were implemented by extensive rulemaking in 2019. Several dissenting Federal Reserve and FDIC board members also questioned whether the proposed rules are intended to require regional banks to adopt the more complex "single-point-of-entry" (or "SPOE") resolution strategy used by U.S. GSIBs.

According to the agencies, the proposed changes seek to address risks posed by large regional banks (with at least \$100 billion in total assets) and the challenges that the FDIC can face in executing an orderly resolution of troubled banks, including several risks and challenges highlighted by the recent failures of Silicon Valley Bank, Signature Bank and First Republic Bank.

The proposals include a new long-term debt requirement for regional banking organizations and significant changes to resolution planning requirements for mid-sized banks, as summarized below. Plans to issue proposals on these topics have been signaled for months in public speeches and testimony by agency leadership, but several aspects of the proposals would impose an unexpectedly high burden on mid-size and regional banks.

- *Long-Term Debt Requirement for Regional Banking Organizations*: Since at least October 2022, when the Federal Reserve and FDIC jointly issued an Advance Notice of Proposed Rulemaking indicating that the agencies were exploring whether to require large regional banks to hold minimum amounts of qualifying long-term debt ("LTD"), the industry has anticipated that such LTD requirements would be expanded to cover certain large banks not currently subject to LTD requirements.

This week's proposed rules would significantly expand the scope of banking organizations subject to LTD requirements to include regional banking organizations (including intermediate holding companies of foreign banks) with at least \$100 billion in total assets. Unexpectedly, the proposal would require LTD to be maintained at both the holding company and the depository institution level. According to Federal Reserve staff estimates, the proposed expansion of LTD requirements would apply to 20 newly-subject banking organizations, requiring the issuance of an additional \$70 billion in LTD with incremental funding costs between \$1.5 billion and \$5.6 billion for banks to come into initial compliance with the proposed rules.

- “Clean Holding Company” Requirements: In addition to the LTD requirements, the proposed rules would also require covered holding companies to comply with “clean holding company” rules similar to those currently applicable to GSIBs (e.g., prohibitions against maintaining short-term debt and third-party derivatives).
- Enhanced Large Bank Resolution Planning Guidance: While the Federal Reserve and FDIC have issued guidance for the resolution plans, or “living wills,” of U.S. GSIBs and certain of the largest foreign banks, they had not to date issued guidance for non-GSIB large regional banking organizations that are subject to resolution planning requirements.

This week’s proposed guidance would apply to large U.S. regional banks (those with at least \$250 billion in total assets) and certain large foreign banking organizations, with a focus on key areas of potential obstacles to resolvability such as capital, liquidity, governance mechanisms, operational capabilities, legal entity rationalization and separability, derivatives and trading activities. Distinct from the agencies’ GSIB resolution planning guidance, the proposed regional bank guidance would provide agency expectations for both single-point-of-entry and multiple-point-of-entry resolution strategies. It also would require that foreign banking organizations develop their U.S. resolution strategies to be complementary to their global resolution plans.

- Revised Living Will Filing Requirements for Insured Depository Institutions: The FDIC proposed to comprehensively revise its “living will” requirements for insured depository institutions (“IDIs”) for the first time since the rule was adopted in 2012. Although the current rule requires IDIs with \$50 billion or more in total assets to periodically submit resolution plans, IDIs with at least \$50 billion but less than \$100 billion in total assets have been subject to a moratorium on resolution plan filing requirements since 2018.

This week’s proposed rule by the FDIC would modify the current resolution plan rule by revising the requirements regarding the content and timing of resolution submissions, and by adding a new requirement for interim supplements to those submissions provided to the FDIC by IDIs with \$50 billion or more in total assets. IDIs with \$100 billion or more in total assets will submit biennial full resolution plans, while IDIs with total assets between \$50 and \$100 billion will submit biennial “informational” filings. The proposed rule would also enhance how the credibility of resolution submissions will be assessed by the FDIC, expand expectations regarding engagement and capabilities testing, and explain expectations regarding the FDIC’s review and enforcement of IDIs’ compliance with the rule.

Additional detail regarding the proposed LTD and “clean holding company” requirements for regional banking organizations is available [here](#), and additional detail regarding the proposals relating to resolution planning is available [here](#).

For further information regarding this memorandum, please contact any member of the Firm's [Financial Institutions Group](#), including those listed below.

NEW YORK CITY

Lee A. Meyerson
+1-212-455-3675
lmeyerson@stblaw.com

Spencer A. Sloan
+1-212-455-7821
spencer.sloan@stblaw.com

WASHINGTON, D.C.

Amanda K. Allexon
+1-202-636-5977
amanda.allexon@stblaw.com

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