# Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations – Final Rule

## Executive Summary

On February 18, 2014, the Board of Governors of the Federal Reserve System (Federal Reserve Board) approved a final rule, Regulation YY, that establishes enhanced prudential standards for U.S. bank holding companies (BHCs) and foreign banking organizations (FBOs) with total global consolidated assets of more than $50 billion. Nonbank financial companies deemed systemically important by the Financial Stability Oversight Council (Council) and supervised by the Federal Reserve Board are not covered by the final rule, though in the preamble the Federal Reserve Board states it will apply enhanced prudential standards to individual nonbank financial companies by rule or order.

The final rule implements portions of Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) related to: risk-based and leverage capital requirements; liquidity standards; overall risk management, including risk committees; stress testing requirements; and a debt-to-equity ratio for BHCs that the Council has determined pose a threat to financial stability. Provisions governing single counterparty credit limits (SCCL) and early remediation (required under Section 166 of the Dodd-Frank Act) were not included in the final rule but are expected to be released separately. The final rule also imposes risk committee and stress testing requirements on certain U.S. BHCs and FBOs with total consolidated assets of $10 billion or more. As finalized, the rule is substantially similar to the proposal previously released in December 2011.

With regard to FBOs, the final rule generally follows the Section 165 requirements as proposed in December 2012, except the assets threshold applicable to the supplemental enhanced standard that requires FBOs to form an intermediate holding company (IHC) in the United States has been raised to $50 billion or more in non-branch U.S. assets.

Notably, the rule becomes effective June 1, 2014. BHCs will be required to comply with the final rule requirements beginning January 1, 2015. FBOs will be expected to comply beginning July 1, 2016, and FBOs that have $50 billion or more in non-branch U.S. assets as of June 30, 2014 will be required to submit an implementation plan by January 1, 2015 outlining their proposed process to comply with the final rule. An FBO's U.S. IHC will generally have until January 1, 2018 to comply with the leverage capital requirements.

The Federal Reserve Board staff estimates that 24 U.S. BHCs and approximately 100 FBOs will be impacted by the final rule, and as many as 20 FBOs will meet the IHC requirement.

## Initial Key Takeaways

- There is clearly more to come, as the Federal Reserve Board has not finalized all of the enhanced prudential standards that it intends to move forward. The largest global financial services firms are already struggling to deal with the enhanced standards that have been finalized to date, and the likelihood of still more new standards to come will need to be carefully factored into their strategic planning process.
- For FBOs, in particular, the impact of the final rule is likely more pronounced, and even more so when combined with the recently finalized Volcker Rule:
  - *Strategy:* the Federal Reserve Board's latest proposal raises significant questions around how FBOs conduct their global operations. Coupled with the impact of the Volcker Rule, FBOs face a number of strategic and business decisions, relative to their U.S. operations.
  - *Governance:* FBOs will need to immediately review their governance structures, as the final rule's U.S. requirements for boards of directors, risk committees, and chief risk officers may fit uneasily with their wider group level risk governance arrangements.
  - *Data:* large FBOs will, at a minimum, need to assess whether their current data systems can support both the new stress testing requirements under the final rule and the metrics reporting required by the Volcker Rule beginning in the summer of 2014.
  - *Tax:* potential tax implications of strategic and organizational restructurings will need to be fully considered, especially with respect to the formation of an IHC.
  - *Recovery and resolution planning:* group-wide recovery and resolution plans may need to be adjusted to align with the final rules.
  - *Policing the boundary:* FBOs will need to actively monitor whether they meet any of the relevant asset size thresholds that will trigger implementing the final rule's requirements.

## Background

In 2011 and 2012, the Federal Reserve Board sought comment on two separate proposals to implement enhanced prudential standards for BHCs and FBOs supervised by the Federal Reserve Board. On December 20, 2011, the Federal Reserve Board proposed rules to implement the provisions of Sections 165 and 166 of the Dodd-Frank Act for BHCs with total consolidated assets of $50 billion or more and for nonbank financial firms (the "domestic proposal," please refer to Regulatory Practice Letter 12-04 for a detailed outline of the proposed rule). On December 14, 2012, the Federal Reserve Board proposed rules to implement the provisions of Sections 165 and 166 of the Dodd-Frank Act for FBOs with total consolidated assets of $50 billion or more and foreign nonbank financial companies (the "foreign proposal," please refer to Regulatory Practice Letter 12-23 for a detailed outline of the proposed rule).

Consistent with the Dodd-Frank Act mandate, the two proposals contained similar enhanced risk-based and leverage capital requirements, enhanced liquidity requirements, enhanced risk management and risk committee requirements, resolution planning requirements, single counterparty credit limits, stress-test requirements, and a debt-to-equity limit for companies that the Council has determined "pose a grave threat to the financial stability of the United States."

The December 14, 2012 proposal also included a U.S. IHC requirement for FBOs with total consolidated assets of at least $50 billion and combined U.S. assets, other than those held by a U.S. branch or agency or U.S. subsidiary held under section 2(h)(2) of the Bank Holding Company Act (U.S. non-branch assets), of at least $10 billion.

# Description

## Major Changes from the Domestic and Foreign Proposals

The final rule implements elements of both the domestic and foreign proposals, but differs from the two proposals in the following respects:

*Threshold for Forming a U.S. IHC Increased to $50 Billion of U.S. Non-Branch Assets*

The foreign proposal would have required FBOs with U.S. non-branch assets of at least $10 billion to establish a U.S. IHC. After considering comments suggesting that this threshold may be too low and "other statutory considerations in section 165 of the Dodd-Frank Act," the Federal Reserve Board raised the final rule's threshold for U.S. non-branch assets[1] from $10 billion to $50 billion.

*Implementation Timing for FBOs Extended to July 1, 2016*

The foreign proposal would have required FBOs with U.S. non-branch assets of at least $50 billion as of July 1, 2014, to establish a U.S. IHC by July 1, 2015, unless the Federal Reserve Board granted a written extension. FBOs with U.S. non-branch assets equal to or exceeding the asset threshold after July 1, 2014 would have been required to establish a U.S. IHC within twelve months after meeting or exceeding the asset threshold, unless that time were accelerated or extended by the Federal Reserve Board in writing. The final rule extends the initial compliance date for FBOs by one year to July 1, 2016, in order to provide FBOs exceeding the asset threshold on the effective date of the rule with a "reasonable transition period" during which to prepare for the structural reorganization required by the final rule and for compliance with the enhanced prudential standards.

The final rule also requires FBOs with U.S. non-branch assets of $50 billion or more as of June 30, 2014, to submit an implementation plan by January 1, 2015 that outlines their proposed process to comply with the final rule's requirements. In addition, to address concerns about the cost of compliance with the leverage capital requirements proposed for the U.S. IHC, the final rule generally delays application of leverage capital requirements to the U.S. IHC until January 1, 2018. Lastly, FBOs with U.S. non-

[1] In response to comments received regarding debt previously contracted (DPC) assets, the final rule provides an exemption from the requirement to hold U.S. subsidiaries through the U.S. IHC for DPC branch subsidiaries, defined as subsidiaries of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency.

branch assets of $50 billion or more after July 1, 2015 have two years to comply with the final rule, instead of twelve months under the foreign proposal.

### *Enhanced Prudential Standards Do Not Apply to Nonbank Financial Companies Supervised by the Federal Reserve Board at This Time*

The domestic and foreign proposals would have provided that the standards applicable to BHCs and FBOs would also serve as the baseline for enhanced prudential standards applicable to U.S. and foreign nonbank financial companies. The final rule, however, does not apply enhanced prudential standards to nonbank financial companies that are designated by the Council for Federal Reserve supervision.[2] Instead, the Federal Reserve Board states that it will apply enhanced prudential standards to these institutions through a subsequently issued order or rule after evaluating the business model, capital structure, and risk profile of each designated nonbank financial company.

In applying the standards to a nonbank financial company, the Federal Reserve Board states that it will take into account differences among nonbank financial companies supervised by the Federal Reserve Board and BHCs with total consolidated assets of at least $50 billion. For nonbank financial companies that are similar in activities and risk profile to BHCs, the Federal Reserve Board expects to apply enhanced prudential standards that are similar to those that apply to BHCs. For nonbank financial companies that differ from BHCs in their activities, balance sheet structure, risk profile, and functional regulation, the Federal Reserve Board expects to apply more tailored standards.

### *Other Modifications*

In addition to the changes noted above, IHCs will only be subject to the standardized approach and will not have to apply the advanced approaches risk-based rules. The final rule also reduces the liquidity buffer required of U.S. branches from thirty days to fourteen days.

Lastly, the final rule does not implement single-counterparty credit limits or early remediation requirements for U.S. or foreign banking organizations. The Federal Reserve Board states that this will be implemented at a later date following further study.

## Summary of the Final Rule

The new requirements for U.S. BHCs complement the stress testing and resolution planning requirements for large BHCs that the Federal Reserve Board previously finalized. The following table provides a general overview of the requirements for BHCs by asset threshold, as required by Regulation YY.

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[2] However, for nonbank financial companies supervised by the Federal Reserve Board and BHCs with at least $50 billion in total consolidated assets, Subpart E and Subpart F of the final rule implement Section 165(i)(1) and Section 165(i)(2), respectively, of the Dodd-Frank Act. Section 165(i)(1) requires the Federal Reserve Board to conduct annual analyses of the capital held by these covered entities and Section 165(i)(2) requires these entities to conduct annual and semi-annual stress tests.

*Requirements for U.S. BHCs by Asset Size*

| BHC Asset Size | Overview of Requirements | Applicable Subpart of the Final Rule |
|---|---|---|
| **Total consolidated assets of more than $10 billion, but less than $50 billion** | Company-run stress tests | Subpart B |
| **Total consolidated assets equal to or greater than $10 billion, but less than $50 billion, <u>if publicly-traded</u>** | Risk committee, which may reside within an existing Board committee | Subpart C |
| **Total consolidated assets of $50 billion or more** | Risk-based and leverage capital<br>Risk management<br>Stand alone risk committee, including a chief risk officer<br>Liquidity risk-management, stress-testing, and buffers | Subpart D |
| | Supervisory stress tests | Subpart E |
| | Company-run stress tests | Subpart F |
| | Debt-to-equity limits (upon grave threat determination) | Subpart U |

### *Requirements for FBOs by Asset Size*

The following table provides a general overview of the requirements for FBOs by asset threshold, as required by Regulation YY.

| FBO Asset Size | Overview of Requirements | Applicable Subpart of the Final Rule |
|---|---|---|
| **Total consolidated assets of more than $10 billion, but less than $50 billion** | Company-run stress tests | Subpart L |
| **Total consolidated assets equal to or greater than $10 billion, but less than $50 billion, if publicly-traded** | Risk committee, either stand-alone or as part of the FBO's enterprise-wide risk committee | Subpart M |
| **Total consolidated assets of $50 billion or more, but combined U.S. assets of less than $50 billion** | Risk-based and leverage capital<br>Risk management<br>Risk committee, either stand-alone or as part of the FBO's enterprise-wide risk committee<br>Liquidity<br>Capital stress testing | Subpart N |
| | Debt-to-equity limits (upon grave threat determination) | Subpart U |
| **Total consolidated assets of $50 billion or more, and combined U.S. assets of $50 billion or more** | Risk-based and leverage capital<br>Risk management<br>U.S. risk committee, including a U.S. chief risk officer<br>Liquidity risk management, liquidity stress testing, and buffer<br>Capital stress testing | Subpart O |
| | U.S. intermediate holding company requirement, **if the FBO has U.S. non-branch assets of $50 billion or more** | Subpart O |
| | Debt-to-equity limits (upon grave threat determination) | Subpart U |

*Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations with Total Consolidated Assets of More than $10 Billion and Less than $50 Billion*

The final rule includes a company-run stress test requirement that would apply to (1) BHCs with total consolidated assets that are more than $10 billion, but less than $50 billion, and (2) savings and loan holding companies and state member banks with more than $10 billion in total consolidated assets. In general, these entities would be required to complete an annual stress test between October 1 of a calendar year and September 30 of the following calendar year using baseline, adverse, and severely adverse scenarios provided by the Federal Reserve Board.

*Subpart C—Risk Committee Requirement for Publicly Traded BHCs with Total Consolidated Assets of 10 Billion or Greater and Less than $50 billion*

The final rule requires BHCs that have issued any class of publicly traded stock and have total consolidated assets of at least $10 billion, but less than $50 billion, to maintain a risk committee that approves and periodically reviews the risk management policies of its global operations and oversees the operation of its global risk management framework.

The Federal Reserve Board states that the risk committee must have at least one member with "experience in identifying, assessing, and managing risk exposures of large, complex firms." The committee must also be chaired by an independent director who has not been an officer or employee of the BHC during the previous three years, among other requirements.

*Subpart D—Enhanced Prudential Standards for BHCs with Total Consolidated Assets of $50 Billion or More*

The final rule states that BHCs with total consolidated assets of at least $50 billion must comply with the following:

- *Liquidity requirements*, including meeting liquidity risk management standards, conducting internal liquidity stress tests, and maintaining a 30-day buffer of highly liquid assets;
- *Risk management requirements*, including establishing an enterprise-wide risk committee and appointing a chief risk officer with "risk management expertise and corporate authority commensurate with the size and complexity of the BHC" that reports directly to both the risk committee and the BHC's chief executive officer; and
- *Enhanced risk-based and leverage capital requirements and stress testing requirements*, as previously adopted for BHCs.[3]

*Subpart E—Supervisory Stress Test Requirements for BHCs with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board*

The final rule requires the Federal Reserve Board to conduct analyses of the capital held by (1) BHCs with at least $50 billion in total consolidated assets and (2) nonbank

[3] In 2011, the Federal Reserve Board issued the capital plan rule requiring capital plans and governing capital distributions for BHCs with total consolidated assets of $50 billion or more, and in 2012, the Federal Reserve Board issued final stress test rules for BHCs with more than $10 billion in total consolidated assets.

financial companies supervised by the Board, in order to evaluate whether these entities have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

The final rule also states that, by March 31 of each calendar year, the Federal Reserve Board will disclose a summary of the results of its analyses of the covered BHCs. In addition, covered BHCs must update their resolution plans, as the Federal Reserve Board deems appropriate, based on the results of its analyses.

*Subpart F—Company-Run Stress Test Requirements for U.S. BHCs with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board*

The final rule includes an annual and semi-annual company-run stress test requirement that would apply to BHCs with total consolidated assets of at least $50 billion and nonbank financial companies supervised by the Federal Reserve Board. These entities would be required to complete an annual stress test by January 5 during each stress test cycle, based on data as of September 30 of the preceding calendar year, using baseline, adverse, and severely adverse scenarios provided by the Federal Reserve Board. These entities would also be required to complete a mid-cycle stress test by July 5 during each stress test cycle, based on data as of March 31 of that calendar year.

*Subpart L—Company-Run Stress Test Requirements for FBOs and Foreign Savings and Loan Holding Companies with Total Consolidated Assets Over $10 Billion but less than $50 billion*

The final rule states that FBOs with total consolidated assets of more than $10 billion, but less than $50 billion, and foreign savings and loan holding companies with total consolidated assets of more than $10 billion must be subject, on a consolidated basis, to the capital stress testing regimes of their home-country supervisors and meet any minimum standards set by their home-country supervisor. The capital stress testing regime of these entities' home-country supervisor must include:

- An annual supervisory capital stress test conducted by the relevant home-country supervisor or an annual evaluation and review by the home-country supervisor of an internal capital adequacy stress test conducted by the FBO; and
- Requirements for governance and controls of the stress testing practices by relevant management and the board of directors.

*Subpart M—Risk Committee Requirement for Publicly Traded FBOs with Total Consolidated Assets of at Least $10 Billion but Less than $50 Billion*

The final rule states that FBOs with (1) total consolidated assets of at least $10 billion, but less than $50 billion, and (2) any class of publicly traded stock (or similar interest) must certify to the Federal Reserve Board, on an annual basis, that they maintain a committee of global board of directors, either on a standalone basis or as part of an enterprise-wide risk committee, that oversees the risk management policies of the combined U.S. operations of the FBO.

Analogous to the risk committee requirement for BHCs, the final rule requires that FBO risk committees must have at least one member with "experience in identifying, assessing, and managing risk exposures of large, complex firms."

### *Subpart N—Enhanced Prudential Standards for FBOs with Total Consolidated Assets of $50 Billion or More but Combined U.S. Assets of Less than $50 Billion*

The final rule states that FBOs with total consolidated assets of at least $50 billion, but combined U.S. assets[4] of less than $50 billion, must comply with certain capital requirements, risk-management and risk committee requirements, liquidity risk-management requirements, and the capital stress testing requirements, including the following:

- Certifying to the Federal Reserve Board that it meets capital adequacy standards, on a consolidated basis, that are established by its home-country supervisor and consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision;
- Providing reports to the Federal Reserve Board relating to its compliance with the required capital adequacy measures;
- Annually certifying to the Federal Reserve Board that it maintains a committee of its global board of directors, on either a standalone basis or as part of its enterprise-wide risk committee, that oversees the risk management policies of the FBO's combined U.S. operations and includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firm;
- Annually reporting to the Federal Reserve Board the results of an internal liquidity stress test for either the consolidated operations of the FBO or the combined U.S. operations of the FBO;[5] and
- Submitting, on a consolidated basis, to a capital stress testing regime by its home-country supervisor that includes:
  - Either an annual supervisory capital stress test conducted by the FBO's home-country supervisor or an annual evaluation and review by the FBO's home-country supervisor of an internal capital adequacy stress test conducted by the FBO; and
  - Requirements for governance and controls of stress testing practices by relevant management and the board of directors of the FBO.

### *Subpart O—Enhanced Prudential Standards for FBOs with Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More*

The final rule states that FBOs with total consolidated assets of at least $50 billion and combined U.S. assets (i.e., branch and non-branch) of at least $50 billion must comply with the following:

- *IHC requirement for FBOs with U.S. non-branch assets of at least $50 billion*, whereby an FBO must hold its U.S. subsidiaries under an IHC, which will be subject to enhanced prudential standards on a consolidated basis. The final rule states that U.S. branches and agencies of an FBO may continue to operate outside of the IHC.
- *Risk-based and leverage capital requirements*, whereby:
  - An IHC of an FBO is subject to the risk-based and leverage capital standards applicable to BHCs (other than the advanced approaches capital rules, unless it specifically opts in). The IHC is also subject to the Federal Reserve Board's

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[4] The final rule defines combined U.S. assets of FBOs as equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the FBO (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the FBO.
[5] The final rule states that the liquidity stress test must be conducted consistently with the Basel Committee principles for liquidity risk management and must incorporate 30-day, 90-day, and one-year stress-test horizons.

capital plan rule (i.e., the Comprehensive Capital Analysis and Review annual exercise).
    - An FBO with total consolidated assets of at least $50 billion must certify that it meets consolidated capital adequacy standards established by its home country supervisor that are consistent with the Basel Capital Framework.
- *Liquidity requirements*, whereby:
    - The U.S. operations of an FBO with at least $50 billion in combined U.S. assets must meet liquidity risk management standards and conduct internal liquidity stress tests.
    - The U.S. branches and agencies of an FBO must maintain a liquidity buffer in the United States for the first fourteen days of a 30-day liquidity stress test. The IHC must maintain a liquidity buffer in the United States for a 30-day liquidity stress test.
    - An FBO with total consolidated assets of at least $50 billion but combined U.S. assets of less than $50 billion must report the results of an internal liquidity stress test (either on a consolidated basis or for its combined U.S. operations) to the Federal Reserve Board on an annual basis.
- *Risk management requirements*, whereby:
    - An FBO with combined U.S. assets of at least $50 billion must establish a U.S. risk committee at either its IHC board of directors or its FBO board of directors that oversees the risk management function for its combined U.S. operations (branch and non-branch activities). The FBO must appoint a chief risk officer that is employed by and located in the U.S. branch, U.S. agency, IHC, if any, or another U.S. subsidiary. Further, the U.S. chief risk officer must report directly to the U.S. risk committee and the global chief risk officer or equivalent management official (or officials) of the FBO that is responsible for overseeing, on an enterprise-wide basis, the implementation of, and compliance, with policies and procedures relating to risk-management governance, practices, and risk controls of the FBO, unless the Federal Reserve Board approves an alternative reporting structure based on circumstances specific to the FBO.
    - If the risk committee for the combined U.S. operations is not at the IHC, an IHC must have its own risk committee that oversees the risk management function for the IHCs operations. The risk committee may also serve as the U.S. risk committee for the combined U.S. operations.

### *Subpart U—Debt-to-Equity Limits for U.S. BHCs and FBOs*

Section 165 provides that the Federal Reserve Board must require a BHC and an FBO with at least $50 billion in total consolidated assets to maintain a debt-to-equity ratio of no more than 15-to-1 if the Council determines that these entities pose a grave threat to U.S. financial stability and that the imposition of the requirement is necessary to mitigate that risk. Consistent with the domestic and foreign proposals, the final rule defines the 15-to-1 debt-to-equity limitation and adopts procedures for its implementation. The final rule defines the debt-to-equity ratio as the ratio of a company's total liabilities to its total equity capital less goodwill.

BHCs are required to comply with the 15-to-1 debt-to-equity ratio within 180 days of receiving notice from the Council, or from the Federal Reserve Board on behalf of the Council, that they pose a grave threat. Similarly, an FBO that receives notice would be required within 180 days of the receiving it to ensure that:

- The U.S. IHC and any U.S. subsidiary not organized under the IHC achieve and maintain a debt-to-equity ratio of no more than 15-to-1.
- The U.S. branches and agencies of the FBO achieve and maintain, on a daily basis, eligible assets in an amount not less than 108 percent of the preceding quarter's average value of the liabilities of the U.S. branches and agencies.

Extensions on the time to comply may be provided upon written request and termination of the requirement would be made by the Council.

## Commentary

In adopting the Final Rule, the Federal Reserve Board seeks to strengthen its supervisory framework in the wake of the financial crisis. In her opening statement prior to the Final Rule's adoption, Federal Reserve Board Chair Janet Yellen stated, "the sudden failure or near failure of large financial institutions can have destabilizing effects on the financial system and harm the broader economy and, as the crisis also highlighted, the traditional framework for supervising and regulating major financial institutions and assessing risks contained material weaknesses."

Of particular note, Governor Tarullo said that the Federal Reserve Board will be considering additional "proposed rules covering other elements of this set of enhanced prudential standards—including risk-based capital surcharges, a supplemental leverage ratio, minimum levels of long-term debt, and quantitative liquidity standards." Further, during the Federal Reserve Board's meeting to approve the Final Rule, Board staff indicated that additional requirements will be forthcoming on single-counterparty credit limits and early remediation planning.

The immediate take away from the approval of the final rule is that the Federal Reserve Board is not finished with pushing forward enhanced prudential standards and there is clearly more to come. The largest global financial services firms are already struggling to deal with the enhanced standards that have been finalized to date, and the likelihood of still more new standards to come will need to be given due consideration.

For FBOs in particular, the Federal Reserve Board's latest proposal raises significant questions about how they conduct their global operations. Coupled with the impact of the recently finalized Volcker Rule, FBOs face a number of strategic and business decisions relative to their U.S. operations.

Specifically, FBOs will need to immediately review their governance structures. Additionally, given the data needed to support the new stress testing requirements under the final rule and the metrics reporting required by the Volcker Rule beginning in the summer of 2014, large FBOs will, at a minimum, need to assess whether their current data systems can support these new reporting requirements. Further, potential tax implications of strategic and organizational restructurings will need to be fully considered.


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