

RESCINDED

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Replaced - See OCC 2021-1

Regulatory Capital Rule: Notice of Proposed Rulemaking

Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Federal Deposit Insurance Corporation (collectively, the agencies) are issuing a notice of proposed rulemaking that would be applicable to advanced approaches banking organizations. The OCC's proposed rule would apply to national banks and federal savings associations (collectively, banks) that have or that are subsidiaries of banking organizations that have at least \$250 billion in total consolidated assets or at least \$10 billion in total consolidated foreign financial exposures (advanced approaches banks).

To

Chief Executive Officers of All National Banks and Federal Savings Associations, Department and Division Heads, All Examining Personnel, and Other Interested Parties

Note for Community Banks

This proposed rule would not apply to community banks. It would apply only to large, internationally active banks (i.e., advanced approaches banks).

Highlights

- This proposed rule would increase the capital requirements applicable to an advanced approaches bank that invests in a long-term debt (LTD) instrument that is issued by a bank holding company or intermediate holding company that is subject to the Federal Reserve's total loss absorbing capacity (TLAC) requirements, or that is issued by a foreign banking organization identified as a global systemically important banking organization (GSIB) by the Basel Committee on Banking Supervision.
- The increased capital requirements would be subject to limited exceptions for LTD instruments held for a short period in connection with market making or underwriting activities.
- Advanced approaches banks would be required to treat an investment in an LTD instrument as an investment in a tier 2 regulatory capital instrument. Therefore, under the capital regulations, an advanced approaches bank would be required to deduct from tier 2 capital significant investments in covered LTD instruments (i.e., investments where the bank owns 10 percent or more of the issuing organization's common stock), any reciprocal cross-holdings, and any direct, indirect, or synthetic investments in the bank's own covered debt instruments.
- Additionally, any non-significant investments in covered LTD instruments (i.e., investments where the advanced approaches bank owns less than 10 percent of the issuing entity's common stock) would be subject to deduction to the extent the

advanced approaches bank holds such investments, in the aggregate, in excess of 10 percent of the advanced approaches bank's common equity tier 1 capital.

Background

In 2017, the Federal Reserve published a final rule to require the largest and most systemically important domestic and foreign-owned bank holding companies operating in the United States to maintain a minimum amount of TLAC. The Federal Reserve's rule is generally consistent with international standards published by the Basel Committee on Banking Supervision.

Under the Federal Reserve's regulations, a covered entity's TLAC consists of its common equity tier 1 capital (excluding minority interest), additional tier 1 capital (excluding minority interest), and eligible LTD. Covered bank holding companies (BHC) and intermediate holding companies (IHC) must meet a portion of their TLAC requirements with a minimum amount of eligible LTD.

To qualify as eligible LTD, an instrument must be issued directly by the BHC or IHC, be unsecured, "plain vanilla," and governed by U.S. law. Additionally, the instrument must have a remaining maturity of greater than one year. Debt with a remaining maturity between one and two years will be subject to a 50 percent haircut.

The Federal Reserve's TLAC regulations became effective on January 1, 2019. Under the regulations, a covered organization that does not meet the minimum TLAC requirement will face limitations on its ability to make capital distributions and discretionary bonus payments.

The OCC's current capital regulations do not impose any special requirements for holdings of LTD instruments. Under the generally applicable risk-based capital rules, an investment in an LTD instrument issued by a BHC or IHC generally would be treated as an investment in a corporate bond, which is subject to a risk weight of 100 percent. This proposal would increase the capital requirements for an advanced approaches bank that invests in an LTD instrument issued pursuant to the Federal Reserve's TLAC requirements and, therefore, would reduce incentives for an advanced approaches bank to invest in such instruments.

Further Information

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Related Link

- ["Regulatory Capital Treatment for Investments in Certain Unsecured Debt Instruments of Global Systemically Important U.S. Bank Holding Companies, Certain Intermediate Holding Companies, and Global Systemically Important Foreign Banking Organizations"](#) (PDF)

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