September 6, 2023

FEDERAL BANKING AGENCIES ISSUE PROPOSED LONG-TERM DEBT REQUIREMENTS

To Our Clients and Friends:

On August 29, 2023, the federal banking agencies (the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC")) issued a joint notice of proposed rulemaking that would require certain large banking organizations to issue and maintain minimum amounts of long-term debt ("LTD").[1] The Proposed Rule represents another major step in the federal banking agencies' continued efforts to impose heightened enhanced prudential standards on banking organizations with $100 billion or more in total consolidated assets and align those enhanced prudential standards with those currently applicable to global systemically important banking organizations ("GSIBs").

As anticipated, the Proposed Rule would require Category II, III and IV bank holding companies ("BHCs"), savings and loan holding companies ("SLHCs") and U.S. intermediate holding companies ("IHCs") of foreign banking organizations ("FBOs") that are not GSIBs (collectively, "covered entities") to issue and maintain minimum amounts of LTD that satisfies certain requirements.[2]

The Proposed Rule also would require four categories of insured depository institutions ("IDIs") that are not consolidated subsidiaries of U.S. GSIBs to issue and maintain minimum amounts of LTD. Those "covered IDIs" are:

- any IDI that has at least $100 billion in total consolidated assets and that is a consolidated subsidiary of a covered entity or a U.S. IHC of a foreign GSIB;
- any IDI that has at least $100 billion in total consolidated assets and is not controlled by a parent entity;
- any IDI that has at least $100 billion in total consolidated assets and (i) is a consolidated subsidiary of a company that is not a covered entity, a U.S. GSIB or a foreign GSIB subject to the Federal Reserve's total loss-absorbing capacity ("TLAC") rule or (ii) is controlled but not consolidated by another company; and
- any IDI (regardless of size) that is affiliated with an IDI in one of the foregoing three categories.[3]

IDIs that are consolidated subsidiaries of U.S. GSIBs would not be subject to the Proposed Rule because their parent holding companies are subject to LTD requirements under the Federal Reserve's TLAC rule and the most stringent capital, liquidity and other enhanced prudential standards.[4] However, covered

IDIs that are consolidated subsidiaries of U.S. IHCs controlled by foreign GSIBs would be subject to the Proposed Rule and would be required to issue and maintain minimum amounts of LTD.

The Proposed Rule follows closely the federal banking agencies' release of the Basel III endgame reforms in July 2023 (see our prior Client Alert). The Basel III endgame proposal would significantly reduce the differences that apply across the four categories established by the federal banking agencies in 2019 for determining the applicability and stringency of regulatory capital requirements for large banking organizations. Like the Basel III endgame proposal, the Proposed Rule would align LTD requirements applicable to large banking organizations with total assets of $100 billion or more in a similar manner across the four categories—although, as noted above, IDIs that are consolidated subsidiaries of U.S. GSIBs would not be subject to the Proposed Rule.

Unlike the Basel III endgame proposal, the Proposed Rule was adopted unanimously. However, Federal Reserve Governors Bowman and Waller raised concerns with the Proposed Rule, including concerns that the Proposed Rule, like the Basel III endgame proposal, would not comply with the tailoring requirements of Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), as amended by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA").[5]

As with prior rulemakings, the Proposed Rule, if finalized, would include a three-year transition period and the LTD requirements under any final rule would be fully phased in over that three-year period. Entities that become subject to the Proposed Rule after the effective date also would benefit from a three-year transition period. The Proposed Rule also would allow banking organizations to include, as part of the required minimum amounts, certain "grandfathered" existing LTD.

Comments on the Proposed Rule are due by November 30, 2023 – the same date that comments to the Basel III endgame proposal are due.[6] The agencies have included 67 questions as prompts (almost all of which include multiple related sub-prompts) to solicit comments on all aspects of the Proposed Rule.

I. Key Aspects of the Proposed Rule

Scope of Application. The Proposed Rule would apply to all non-U.S. GSIBs with $100 billion or more in total consolidated assets. Large banking organizations subject to the Proposed Rule would be required to comply with LTD requirements at *both* the holding company level and IDI level. U.S. GSIBs would *not* be subject to the LTD requirements at the IDI level, though IDI subsidiaries of U.S. IHCs controlled by foreign GSIBs would be subject to the Proposed Rule.

Application of the Proposed Rule		
U.S. GSIBs and their IDI subsidiaries	**Category II, III and IV BHCs and SLHCs and their IDI subsidiaries**	**Category II, III and IV U.S. IHCs and their IDI subsidiaries**
U.S. GSIBs are already subject to LTD requirements under the TLAC rule.	Category II, III and IV BHCs and SLHCs would be subject to the LTD requirements.	Category II, III and IV U.S. IHCs of FBOs would be subject to the LTD requirements. U.S. IHCs controlled by foreign GSIBs are already subject to LTD requirements under the TLAC rule.
IDIs that are consolidated subsidiaries of U.S. GSIBs would *not* be subject to the LTD requirements.	IDIs with at least $100 billion in total consolidated assets and their affiliated IDIs would be subject to the LTD requirements. IDI subsidiaries of U.S. IHCs controlled by foreign GSIBs *would* be subject to the LTD requirements.	

Minimum LTD Levels. Under the Proposed Rule, covered entities and covered IDIs would be subject to the same minimum LTD levels as U.S. IHCs of foreign GSIBs under the TLAC rule:

Minimum LTD Levels		
U.S. GSIBs under TLAC Rule	**U.S. IHCs of foreign GSIBs under TLAC Rule**	**Covered Entities and Covered IDIs under Proposed Rule**
Outstanding eligible external LTD in an amount not less than the greater of: - 6% of total risk-weighted assets plus the surcharge applicable under the GSIB surcharge rule; and - 4.5% of total leverage exposure.	Outstanding eligible external LTD in an amount not less than the greater of: - 6% of total risk-weighted assets; - 3.5% of average total consolidated assets; and - 2.5% of total leverage exposure if subject to the supplementary leverage ratio ("SLR").	Outstanding eligible LTD in an amount not less than the greater of: - 6% of total risk-weighted assets; - 3.5% of average total consolidated assets; and - 2.5% of total leverage exposure if subject to the SLR.

As with the LTD requirements applicable to U.S. GSIBs and the U.S. IHCs of foreign GSIBs, the Proposed Rule's eligible LTD requirement was calibrated primarily on the basis of a "capital refill" framework. The Proposed Rule would not tailor the LTD requirements for Category II, III or IV banking organizations or their IDI subsidiaries.

The Proposed Rule would prohibit a covered entity from redeeming or repurchasing any outstanding eligible LTD without the prior approval of the Federal Reserve if after the redemption or repurchase the covered entity would not meet its minimum LTD requirement. Additionally, the Proposed Rule would authorize the agencies, after providing an external LTD issuer with notice and an opportunity to respond, to order the external issuer to exclude from its outstanding eligible LTD amount any otherwise eligible debt securities "with features that would significantly impair the ability of such debt securities to absorb losses in resolution."[7]

Externally/Internally Issued LTD. Under the Proposed Rule, certain covered entities and covered IDIs would be required or permitted to issue eligible LTD externally, while others would be required or permitted to issue eligible LTD internally.

Externally/Internally Issued LTD	
Covered U.S. Holding Companies	• May only issue eligible "external" LTD
Covered IHCs of FBOs	• "Resolution IHCs"[8] may issue eligible "internal" or "external" LTD • "Non-resolution IHCs"[9] may only issue eligible "internal" LTD
Covered IDIs	• Covered IDIs that are consolidated subsidiaries of covered entities or a foreign GSIB IHC may only issue eligible "internal" LTD • Covered IDIs that are not controlled subsidiaries of a parent entity may only issue eligible "external" LTD • Covered IDIs that are consolidated subsidiaries of a parent entity that is not a covered entity or that are controlled but not consolidated by a covered entity or foreign GSIB IHC entity may issue eligible "internal" or "external" LTD

Eligible External and Internal LTD. The Proposed Rule would generally align the requirements for externally issued LTD with the requirements for eligible LTD under the Federal Reserve's TLAC rule.

Eligible External LTD
Category II, III and IV BHCs and SLHCs, covered IDIs required or permitted to issue external LTD and "resolution IHCs"

• Paid in and issued directly by the external issuer (debt instruments issued by a subsidiary of a covered entity or covered IDI would not qualify as eligible external LTD)
• Held by a non-affiliate (except that a covered IDI may issue eligible external LTD to an affiliate that controls but does not consolidate the covered IDI)[10]
• Unsecured, not guaranteed by the issuer or a subsidiary or an affiliate of the issuer, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument (such as a credit enhancement provided by an affiliate)
• Maturity of greater than or equal to one year from the date of issuance
• "Plain vanilla" features
    o Excluded from treatment as eligible external LTD if instruments are: (i) structured notes, (ii) have a credit-sensitive feature, (iii) include a contractual provision for conversion into or exchange for equity in the issuer, or (iv) include a provision that gives the holder a contractual right to accelerate payment (including automatic acceleration)
    o Permissible acceleration rights include rights exercisable: (i) on one or more dates specified in the instrument, (ii) in the event of the issuer entering into insolvency or resolution proceedings, or (iii) upon the issuer's failure to pay principal or interest on the instrument and which remains uncured for 30 days or more[11]
    o In the case of eligible external LTD issued by a covered IDI, instrument must be contractually subordinated so that the claim represented by the LTD in the receivership of the IDI would be junior to deposit and general unsecured claims
• Issued in a minimum principal denomination of $400,000
• Governed by U.S. law or the laws of any state

Principal due to be paid on eligible external LTD in one year or more and less than two years would be subject to a 50% haircut for purposes of the external LTD requirement and principal due to be paid on eligible external LTD in less than one year would not count toward the external LTD requirement.

Eligible Internal LTD
Covered IDIs required or permitted to issue internal LTD and "non-resolution IHCs"

• The requirements for eligible internal LTD are generally the same as those for eligible external LTD, with two principal differences:
  ○ eligible internal LTD issued by a covered IDI must be issued to and remain held by a company that consolidates the covered IDI, generally an upstream parent; and
  ○ no minimum principal denomination requirement
• Eligible internal LTD issued by a covered IHC would be required to include a contractual conversion trigger approved by the Federal Reserve pursuant to which the Federal Reserve could require the covered IHC, under certain circumstances, to convert or exchange some or all of the internal LTD into common equity tier 1 capital of the covered IHC without the covered IHC's entry into a resolution proceeding and would not include a prohibition against credit sensitive features[12]
• Non-resolution IHCs would be required to issue eligible internal LTD to a foreign company that directly or indirectly controls the covered IHC, or to a wholly owned subsidiary of a controlling foreign company
• For a covered IDI that is a consolidated subsidiary of a covered IHC, the Proposed Rule would require that eligible internal LTD of the covered IDI be issued to the covered IHC, or a subsidiary of the covered IHC that consolidates the IDI (the LTD could not be directly issued to a foreign affiliate that controls the IDI)

Grandfathering of Legacy External LTD. The Proposed Rule would permit some legacy external LTD to count towards the minimum LTD requirements, even where such legacy external LTD does not meet certain eligibility requirements:

- instruments that contain impermissible acceleration clauses;
- instruments issued with principal denominations that are less than the proposed $400,000 minimum amount; and

- in the case of legacy instruments issued externally by a covered IDI, are not contractually subordinated to general unsecured creditors (collectively, "eligible legacy external LTD").

Notably, eligible legacy external LTD issued by a consolidated subsidiary IDI of a covered entity may be used to satisfy the minimum external LTD requirement applicable to *both* its covered parent holding company or covered resolution IHC and any internal LTD requirement applicable to the subsidiary IDI itself. However, eligible legacy external LTD cannot be used to satisfy the internal LTD requirement for non-resolution covered IHCs. To qualify as "eligible legacy external LTD," an instrument must be issued prior to the date that notice of the final rule is published in the *Federal Register*. The Proposed Rule would authorize the federal banking agencies, after providing a covered entity or covered IDI with notice and an opportunity to respond, to order the covered entity or covered IDI to exclude from its outstanding eligible LTD amount any eligible legacy external LTD.[13]

Transition Period. The Proposed Rule would provide a transition period for covered entities and covered IDIs that would be subject to the rule upon its effectiveness, and a transition period for covered entities and covered IDIs that become subject to the rule after it becomes effective. Over that three-year period, covered entities and covered IDIs would need to meet:

- 25% of their LTD requirements by one year after the effective date of the final rule (or one year after becoming subject to the rule);
- 50% after two years of the effective date of the final rule (or two years after becoming subject to the rule); and
- 100% after three years of the effective date of the final rule (or three years after becoming subject to the rule).

The federal banking agencies would be authorized to accelerate or extend the transition period. The transition period would not re-start for a covered IDI that converts its charter or any holding company thereof. Finally, covered entities that transition from being subject to the final rule to the Federal Reserve's TLAC rule would have three years to comply with the requirements imposed under the TLAC rule.[14]

Clean Holding Company Requirements. The Proposed Rule also would include "clean holding company" requirements like those that apply to U.S. GSIBs and U.S. IHCs of foreign GSIBs subject to the Federal Reserve's TLAC rule. In particular, the Proposed Rule would prohibit covered entities from:

- externally issuing short-term debt instruments (*i.e*., instruments with an original maturity of less than one year);
- entering into qualified financial contracts, or "QFCs", with third parties;[15]
- guaranteeing (including by providing credit support for) a subsidiary's liabilities with an external counterparty if the covered entity's insolvency or entry into a resolution proceeding (other than

resolution under Title II of the Dodd-Frank Act) would create default rights for a counterparty of the subsidiary; and

- having outstanding liabilities that are guaranteed by a subsidiary of the covered entity or that are subject to rights that would allow a third party to offset its debt to a subsidiary upon the covered entity's default on an obligation owed to the third party.

The Proposed Rule would amend the QFC prohibition of the clean holding company requirements so that holding companies subject to the TLAC rule may enter into underwriting agreements, fully paid structured share repurchase agreements and employee and director compensation agreements. These changes also would be applied to the clean holding company requirements proposed for covered BHCs and SLHCs (not covered IHCs) under the Proposed Rule. The Proposed Rule would authorize the Federal Reserve to determine that additional agreements would not be subject to the QFC prohibition.

Capital Deduction Framework. Under the current capital rule, U.S. GSIBs, their subsidiary depository institutions and Category II banking organizations are required to deduct investments in LTD issued by banking organizations that are required to issue LTD to the extent that aggregate investments by the investing banking organization in the capital and LTD of other financial institutions exceed a specified threshold. The Proposed Rule would expand the existing capital deduction framework for LTD issued by U.S. GSIBs and the IHCs of foreign GSIBs to include external LTD issued by covered entities and external LTD issued by covered IDIs by amending the capital rule's definition of "covered debt instrument." The Proposed Rule would not otherwise amend the capital rule's deduction framework.

Notably, the Basel III endgame proposal would subject Category III and IV banking organizations to the LTD deduction framework that currently only applies to U.S. GSIBs, their subsidiary depository institutions and Category II banking organizations and would apply a heightened risk weight to investments in LTD that are not deducted.

Changes to the Existing TLAC Rule. The Proposed Rule would make conforming and certain other changes to the TLAC rule, including:

- conforming changes to require minimum denominations for eligible LTD;[16]
- changes to the haircuts that are applied to eligible LTD for purposes of compliance with the TLAC requirement to conform to haircuts that apply for purposes of the LTD requirement – accordingly, the Proposed Rule would allow only 50% of the amount of eligible LTD with a maturity of one year or more but less than two years to count towards the TLAC requirement;
- clarifications to the clean holding company requirements so that U.S. GSIBs and U.S. IHCs of foreign GSIBs may enter into underwriting agreements, fully paid structured share repurchase agreements and employee and director compensation agreements; and
- enhanced disclosure requirements.

Finally, the Proposed Rule would authorize the Federal Reserve to require LTD and TLAC levels greater than or less than the minimum requirement currently required under the TLAC rule.[17]

II. Issues with the Proposed Rule

As they did with the Basel III endgame proposal, each of Federal Reserve Governors Bowman and Waller—although voting in support of the Proposed Rule—raised concerns with the authority for the Proposed Rule being in conflict with the tailoring requirements under Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, and the federal banking agencies' tailoring rules implementing Section 165. These statements raise the prospects that the Proposed Rule could be subject to challenge if adopted substantially as proposed.

- *Governor Bowman*: "Today's proposal would weaken the current risk-based, tailored approach to regulation by applying the same regulatory requirements to firms from $100 billion to $1 trillion regardless of their activities and potential risks to the financial system. I am concerned that collapsing Categories II, III, and IV into a single prudential category may call into question whether the Federal Reserve is complying with the statutory requirements to tailor prudential requirements for large firms.[2] … In 2017, when the rules addressing total loss-absorbing capacity and long-term debt for GSIBs and the U.S. intermediate holding companies of foreign GSIBs were adopted, the [Federal Reserve] expressly noted that the application of the rules were limited, 'in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.'[3] In my view, there is a legitimate question about whether the proposal meets the statutory bar for tailoring the stringency of enhanced prudential standards, and applying such standards to banks with $100 billion to $250 billion in assets. I look forward to receiving feedback from commenters on this issue."[18]
- *Governor Waller*: "More importantly, I am concerned that our regulatory framework for large banks is moving in a direction that does not tailor requirements in a manner consistent with the spirit of the Dodd-Frank Act, as amended by Congress in 2018."[19]

Governor Bowman also focused on the potential impacts of the Proposed Rule on competition and highlighted that the joint implementation of the Basel III endgame proposal and LTD requirements would have unclear effects. On competition, she noted:

In my view, as the differences between the regulatory requirements for GSIBs and firms with more than $100 billion in assets continue to be eroded, it will become less economically rational for firms to remain in Category IV and creates an even steeper "cliff" effect for regional banks that seek to grow into this category. Ultimately, the cumulative effect of these proposals and others to be considered in the coming months could exacerbate the pressure on banks to grow larger through acquisition resulting in harmful effects on competition, the reduction of banking options in some geographic or product markets, and rendering some institutions competitively unviable.[20]

Governor Bowman has long stressed that enhanced supervision should be the federal banking agencies' focus, consistently highlighting that the Dodd-Frank Act provides regulators the toolkit they need to supervise banking organizations through the cycle, and that as banks grow, those tools are in place for supervision and regulation to become more stringent. In her statement accompanying the release of the Proposed Rule, she again reiterated the need for enhanced supervision, rather than a "belt, suspenders, and elastic waistband approach" to regulatory reform.[21]

Finally, as the federal banking agencies acknowledge in the preamble to the Proposed Rule, "there is a risk that efforts by covered entities and covered IDIs to issue a large volume of LTD over a limited period could strain the market capacity to absorb the full amount of such issuance if issuance volume exceeds debt market appetite for LTD instruments," particularly in periods of adverse funding market conditions.[22] In recent years, a number of large banking organizations have been issuing LTD instruments in the market in anticipation of LTD requirements similar to those imposed on U.S. GSIBs under the TLAC rule being imposed on firms with $100 billion in more in total assets. It will be important for organizations that could become subject to the Proposed Rule to contemplate further LTD issuances in anticipation of the Proposed Rule being adopted substantially as proposed and taking advantage of the grandfathering provisions for eligible legacy external LTD and the Proposed Rule's three-year transition period to satisfy expected LTD requirements going forward.

III. Conclusions

As with the Basel III endgame proposal, it is imperative that all stakeholders actively engage in the rulemaking process with the federal banking agencies and other policymakers to facilitate a thoughtful approach to the final rule. The comment process will play a critical role in shaping the substance of the final rule and the federal banking agencies' consideration of the myriad issues raised by the Proposed Rule, its interaction with the Basel III endgame proposal, its potentially broader unintended consequences, including impacts on competition, and may also form the basis for any future legal challenges to the federal banking agencies' final rule.

---

[1] Federal Reserve, FDIC, OCC, *Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions* (July 27, 2023), *available at*: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230829a1.pdf (the "Proposed Rule"). The Proposed Rule follows an advance notice of proposed rulemaking issued in October 2022 by the Federal Reserve and FDIC seeking input on a long-term debt requirement for certain large banking organizations that are not GSIBs. *See* Federal Reserve, FDIC, *Resolution-Related Resource Requirements for Large Banking Organizations*, 87 Fed. Reg. 64170 (Oct. 24, 2022).

[2] Proposed Rule, p. 9. This part of the Proposed Rule is issued by the Federal Reserve.

[3] Proposed Rule, p. 10. This part of the Proposed Rule is issued by the Federal Reserve, FDIC and OCC.

[4] Proposed Rule, p. 9, n. 2.

[5] *See* 12 U.S.C. § 5365(a)(1), (2)(A), (2)(C). As it relates to covered IDIs, Director Chopra argued in his statement in support of the Proposed Rule that the proposal "for an [IDI] to issue minimum amounts of long-term debt is not a Dodd-Frank Act Section 165 'enhanced prudential standard,' and is therefore not tied to the [EGRRCPA's] $100 billion asset threshold." Statement of CFPB Director Rohit Chopra Member, FDIC Board of Directors Regarding Proposals to Improve the FDIC's Options for Managing Large Bank Failures (Aug. 29, 2023), *available at*: https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-member-fdic-board-of-directors-regarding-proposals-to-improve-the-fdics-options-for-managing-large-bank-failures/#6 ("Director Chopra Statement").

[6] The Basel III endgame proposal provided for a 126-day comment period; the Proposed Rule provides for a 93-day comment period.

[7] *See* Proposed Rule, p. 42.

[8] "Resolution IHCs" are "covered IHCs of FBOs with a top-tier group-level resolution plan that contemplates their covered IHCs or subsidiaries of their covered IHCs entering into resolution, receivership, insolvency, or similar proceedings in the United States." Proposed Rule, p. 60.

[9] "Non-resolution IHCs" are "covered IHCs of FBOs with top-tier group-level resolution plans that do not contemplate their covered IHCs or the subsidiaries of their covered IHCs entering into resolution, receivership, insolvency, or similar proceedings." Proposed Rule, p. 60.

[10] *See* Proposed Rule, pp. 43-44.

[11] Eligible external LTD instruments would be permitted to give the holder a put right as of a future date certain (such an instrument would be treated as if it were due to be paid on the day on which it first became subject to the put right, regardless of whether the put right would be exercisable on that date only if another event occurred (*e.g.*, a credit rating downgrade)). *See* Proposed Rule, p. 52, n. 48.

[12] The conversion provision may be triggered if both (a) the Federal Reserve determines that the covered IHC is "in default or in danger of default," and (b) any of the following circumstances apply: (i) the top-tier FBO or any subsidiary of the top-tier FBO has been placed into resolution proceedings in its home country; (ii) the home country supervisory authority consents to the conversion or exchange or does not object to the conversion or exchange following 24 hours' notice; or (iii) the Federal Reserve makes a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the covered IHC under the "orderly liquidation authority" under Title II of the Dodd-Frank Act. The terms of the contractual conversion provision in the debt instrument would have to be approved by the Federal Reserve. *See* Proposed Rule, p. 63.

[13] *See* Proposed Rule, pp. 65-66.

[14] *See* Proposed Rule, pp. 83-85.

[15] The proposed requirement would only apply prospectively to new agreements entered into after the post-transition period effective date of a final rule. *See* Proposed Rule, p. 73.

[16] Question 59 asks: "Should the [Federal Reserve] impose a higher minimum denomination for TLAC companies subject to the TLAC rule? Should the minimum denomination be higher (e.g., $1 million) for companies subject to the TLAC rule than for covered entities subject to the newly proposed LTD requirement?" Proposed Rule, p. 90.

[17] *See* Proposed Rule, pp. 86-97.

[18] Statement by Federal Reserve Governor by Michelle W. Bowman (August 29, 2023), *available at*: https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm. (citing to 12 U.S.C. § 5365(a)(1), (2)(C) and 82 Fed. Reg. 8266, 8288 (Jan. 24, 2017), respectively) ("Governor Bowman Statement").

[19] Statement by Federal Reserve Governor Christopher J. Waller (August 29, 2023), *available at*: https://www.federalreserve.gov/newsevents/pressreleases/waller-statement-20230829.htm. In contrast, Director Chopra proposed whether "we should determine whether institutions below $100 billion, such as those with high levels of 'uninsured' deposits or those that have grown very rapidly, should also be subjected to a similar requirement." Director Chopra Statement.

[20] Governor Bowman Statement.

[21] *See id*.

[22] *See* Proposed Rule, p. 114.

Gibson Dunn's Distressed Banks Resource Center provides resources and regular updates to our clients. Please check the Resource Center for the latest developments.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of Gibson Dunn's Global Financial Regulatory, Financial Institutions, Capital Markets, Securities Regulation and Corporate Governance, Public Policy or Administrative Law and Regulatory practice groups, or the following authors:

Jason J. Cabral – New York (+1 212-351-6267, jcabral@gibsondunn.com)
Zach Silvers – Washington, D.C. (+1 202-887-3774, zsilvers@gibsondunn.com)

© 2023 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com.

GIBSON DUNN

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.