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civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

§ 225.7 Exceptions to tying restrictions.

(a) *Purpose.* This section establishes exceptions to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). These exceptions are in addition to those in section 106. The section also restricts tying of electronic benefit transfer services by bank holding companies and their nonbank subsidiaries.

(b) *Exceptions to statute.* Subject to the limitations of paragraph (c) of this section, a bank may:

(1) *Extension to affiliates of statutory exceptions preserving traditional banking relationships.* Extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement that a customer:

(i) Obtain a loan, discount, deposit, or trust service from an affiliate of the bank; or

(ii) Provide to an affiliate of the bank some additional credit, property, or service that the bank could require to be provided to itself pursuant to section 106(b)(1)(C) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)(C)).

(2) *Safe harbor for combined-balance discounts.* Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

(i) The bank offers deposits, and all such deposits are eligible products; and

(ii) Balances in deposits count at least as much as nondeposit products toward the minimum balance.

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(3) *Safe harbor for foreign transactions.* Engage in any transaction with a customer if that customer is:

(i) A corporation, business, or other person (other than an individual) that:

(A) Is incorporated, chartered, or otherwise organized outside the United States; and

(B) Has its principal place of business outside the United States; or

(ii) An individual who is a citizen of a foreign country and is not resident in the United States.

(c) *Limitations on exceptions.* Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a bank to operate under any exception granted pursuant to this section shall terminate upon a finding by the Board that its exercise of this authority is resulting in anti-competitive practices.

(d) *Extension of statute to electronic benefit transfer services.* A bank holding company or nonbank subsidiary of a bank holding company that provides electronic benefit transfer services shall be subject to the anti-tying restrictions applicable to such services set forth in section 7(i)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2016(i)(11)).

(e) For purposes of this section, *bank* has the meaning given that term in section 106(a) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971), but shall also include a United States branch, agency, or commercial lending company subsidiary of a foreign bank that is subject to section 106 pursuant to section 8(d) of the International Banking Act of 1978 (12 U.S.C. 3106(d)), and any company made subject to section 106 by section 4(f)(9) or 4(h) of the BHC Act.

§ 225.8 Capital planning and stress capital buffer requirement.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain bank holding companies. This section also establishes the Board's process for determining the stress capital buffer requirement applicable to these bank holding companies.

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(b) *Scope and reservation of authority*—(1) *Applicability*. Except as provided in paragraph (c) of this section, this section applies to:

(i) Any top-tier bank holding company domiciled in the United States with average total consolidated assets of \$100 billion or more (\$100 billion asset threshold);

(ii) Any other bank holding company domiciled in the United States that is made subject to this section, in whole or in part, by order of the Board;

(iii) Any U.S. intermediate holding company subject to this section pursuant to 12 CFR 252.153; and

(iv) Any nonbank financial company supervised by the Board that is made subject to this section pursuant to a rule or order of the Board.

(2) *Average total consolidated assets*. For purposes of this section, average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Holding Companies (FR Y-9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y-9C, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average.

(3) *Ongoing applicability*. A bank holding company (including any successor bank holding company) that is subject to any requirement in this section shall remain subject to such requirements unless and until its total consolidated assets fall below \$100 billion for each of four consecutive quarters, as reported on the FR Y-9C and effective on the as-of date of the fourth consecutive FR Y-9C.

(4) *Reservation of authority*. Nothing in this section shall limit the authority of the Federal Reserve to issue or enforce a capital directive or take any other supervisory or enforcement action, including an action to address un-

safe or unsound practices or conditions or violations of law.

(5) *Rule of construction*. Unless the context otherwise requires, any reference to bank holding company in this section shall include a U.S. intermediate holding company and shall include a nonbank financial company supervised by the Board to the extent this section is made applicable pursuant to a rule or order of the Board.

(6) *Application of this section by order*. The Board may apply this section, in whole or in part, to a bank holding company by order based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(c) *Transition periods for certain bank holding companies*. (1) A bank holding company that meets the \$100 billion asset threshold (as measured under paragraph (b) of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a bank holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the bank holding company pursuant to 12 CFR 252.44.

(2) A bank holding company that meets the \$100 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the bank holding company meets the \$100 billion asset threshold, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a bank holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the bank holding company pursuant to 12 CFR 252.44.

(3) The Board, or the appropriate Reserve Bank with the concurrence of the Board, may require a bank holding company described in paragraph (c)(1) or (2) of this section to comply with any or all of the requirements of this section if the Board, or appropriate Reserve Bank with concurrence of the

Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

(2) *Average total nonbank assets* means the average of the total nonbank assets, calculated in accordance with the instructions to the FR Y-9LP, for the four most recent calendar quarters or, if the bank holding company has not filed the FR Y-9LP for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable.

(3) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(4) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(5) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (e)(2) of this section.

(6) *Capital plan cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

(7) *Capital policy* means a bank holding company's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential cap-

ital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(8) *Category IV bank holding company* means any bank holding company or U.S. intermediate holding company subject to this section that, as of December 31 of the prior capital plan cycle, is a Category IV banking organization pursuant to 12 CFR 252.5.

(9) *Common equity tier 1 capital* has the same meaning as under 12 CFR part 217.

(10) *Effective capital distribution limitations* means any limitations on capital distributions established by the Board by order or regulation, including pursuant to 12 CFR 217.11, 225.4, 252.63, 252.165, and 263.202, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in 12 CFR part 217, subpart D.

(11) *Final planned capital distributions* means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (h) of this section, if any.

(12) *GSIB surcharge* has the same meaning as under 12 CFR 217.403.

(13) *Internal baseline scenario* means a scenario that reflects the bank holding company's expectation of the economic and financial outlook, including expectations related to the bank holding company's capital adequacy and financial condition.

(14) *Internal stress scenario* means a scenario designed by a bank holding company that stresses the specific vulnerabilities of the bank holding company's risk profile and operations, including those related to the bank holding company's capital adequacy and financial condition.

(15) *Nonbank financial company supervised by the Board* means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(16) *Planning horizon* means the period of at least nine consecutive quarters, beginning with the quarter preceding the quarter in which the bank

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holding company submits its capital plan, over which the relevant projections extend.

(17) *Regulatory capital ratio* means a capital ratio for which the Board has established minimum requirements for the bank holding company by regulation or order, including, as applicable, the bank holding company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the bank holding company shall not use the advanced approaches to calculate its regulatory capital ratios.

(18) *Severely adverse scenario* has the same meaning as under 12 CFR part 252, subpart E.

(19) *Stress capital buffer requirement* means the amount calculated under paragraph (f) of this section.

(20) *Supervisory stress test* means a stress test conducted using a severely adverse scenario and the assumptions contained in 12 CFR part 252, subpart E.

(21) *U.S. intermediate holding company* means the top-tier U.S. company that is required to be established pursuant to 12 CFR 252.153.

(e) *Capital planning requirements and procedures*—(1) *Annual capital planning*.

(i) A bank holding company must develop and maintain a capital plan.

(ii) A bank holding company must submit its complete capital plan to the Board and the appropriate Reserve Bank by April 5 of each calendar year, or such later date as directed by the Board or by the appropriate Reserve Bank with concurrence of the Board.

(iii) The bank holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (e)(1)(ii) of this section:

(A) Review the robustness of the bank holding company's process for assessing capital adequacy;

(B) Ensure that any deficiencies in the bank holding company's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the bank holding company's capital plan.

(2) *Mandatory elements of capital plan*. A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under a range of scenarios, including:

(1) If the bank holding company is a Category IV bank holding company, the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios, based on financial conditions or the macroeconomic outlook, or based on the bank holding company's financial condition, size, complexity, risk profile, or activities, or risks to the U.S. economy, that the Federal Reserve may provide the bank holding company after giving notice to the bank holding company; or

(2) If the bank holding company is not a Category IV bank holding company, any scenarios provided by the Federal Reserve, the Internal baseline scenario, and at least one Internal stress scenario;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with effective capital distribution limitations, except as may be adjusted pursuant to paragraph (h) of this section. In determining whether a bank holding company's planned capital distributions are consistent with effective capital distribution limitations, a bank holding company must assume that:

(1) Any countercyclical capital buffer amount currently applicable to the bank holding company remains at the same level, except that the bank holding company must reflect any increases or decreases in the countercyclical capital buffer amount that have been announced by the Board at

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the times indicated by the Board's announcement for when such increases or decreases will take effect; and

(2) Any GSIB surcharge currently applicable to the bank holding company when the capital plan is submitted remains at the same level, except that the bank holding company must reflect any increase in its GSIB surcharge pursuant to 12 CFR 217.403(d)(1), beginning in the fifth quarter of the planning horizon.

(ii) A detailed description of the bank holding company's process for assessing capital adequacy, including:

(A) A discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the regulatory capital ratios, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the bank holding company will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The bank holding company's capital policy; and

(iv) A discussion of any expected changes to the bank holding company's business plan that are likely to have a material impact on the bank holding company's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the bank holding company shall provide the Federal Reserve with information regarding:

(i) The bank holding company's financial condition, including its capital;

(ii) The bank holding company's structure;

(iii) Amount and risk characteristics of the bank holding company's on- and off-balance sheet exposures, including exposures within the bank holding company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appro-

priate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The bank holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The bank holding company's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the bank holding company for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by the Board or by the appropriate Reserve Bank to facilitate review of the bank holding company's capital plan under this section.

(4) *Resubmission of a capital plan.* (i) A bank holding company must update and resubmit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile, financial condition, or corporate structure since the bank holding company last submitted the capital plan to the Board and the appropriate Reserve Bank under this section; or

(B) The Board, or the appropriate Reserve Bank with concurrence of the Board, directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(1) The capital plan is incomplete or the capital plan, or the bank holding company's internal capital adequacy process, contains material weaknesses;

(2) There has been, or will likely be, a material change in the bank holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(3) The Internal stress scenario(s) are not appropriate for the bank holding company's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a bank holding company's risk profile

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and financial condition require the use of updated scenarios; or

(ii) The Board, or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

(f) *Calculation of the stress capital buffer requirement—(1) General.* The Board will determine the stress capital buffer requirement that applies under 12 CFR 217.11 pursuant to this paragraph (f). For each bank holding company that is not a Category IV bank holding company, the Board will calculate the bank holding company's stress capital buffer requirement annually. For each Category IV bank holding company, the Board will calculate the bank holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an even number, and will adjust the bank holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an odd number. Notwithstanding the previous sentence, the Board will calculate the stress capital buffer requirement of a Category IV bank holding company in a year ending in an odd number with respect to which that company makes an election pursuant to 12 CFR 252.44(d)(2)(ii).

(2) *Stress capital buffer requirement calculation.* A bank holding company's

stress capital buffer requirement is equal to the greater of:

(i) The following calculation:

(A) The ratio of a bank holding company's common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, as of the final quarter of the previous capital plan cycle, unless otherwise determined by the Board; minus

(B) The lowest projected ratio of the bank holding company's common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, in any quarter of the planning horizon under a supervisory stress test; plus

(C) The ratio of:

(1) The sum of the bank holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon; to

(2) The risk-weighted assets of the bank holding company in the quarter in which the bank holding company had its lowest projected ratio of common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, in any quarter of the planning horizon under a supervisory stress test; and

(ii) 2.5 percent.

(3) *Recalculation of stress capital buffer requirement.* If a bank holding company resubmits its capital plan pursuant to paragraph (e)(4) of this section, the Board may recalculate the bank holding company's stress capital buffer requirement. The Board will provide notice of whether the bank holding company's stress capital buffer requirement will be recalculated within 75 calendar days after the date on which the capital plan is resubmitted, unless the Board provides notice to the company that it is extending the time period.

(4) *Adjustment of stress capital buffer requirement.* In each calendar year in which the Board does not calculate a Category IV bank holding company's stress capital buffer requirement pursuant to paragraph (f)(1) of this section, the Board will adjust the Category IV bank holding company's stress capital buffer requirement to be equal to the result of the calculation set forth in paragraph (f)(2) of this section, using the same values that were

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used to calculate the stress capital buffer requirement most recently provided to the bank holding company, except that the value used in paragraph (f)(2)(i)(C)(I) of this section will be equal to the bank holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon as set forth in the capital plan submitted by the bank holding company in the calendar year in which the Board adjusts the bank holding company's stress capital buffer requirement.

(g) *Review of capital plans by the Federal Reserve.* The Board, or the appropriate Reserve Bank with concurrence of the Board, will consider the following factors in reviewing a bank holding company's capital plan:

(1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the bank holding company and the bank holding company's capital policy;

(2) The reasonableness of the bank holding company's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;

(3) Relevant supervisory information about the bank holding company and its subsidiaries;

(4) The bank holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of the bank holding company's loss, revenue, and reserve projections;

(5) The results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(6) Other information requested or required by the Board or the appropriate Reserve Bank, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

(h) *Federal Reserve notice of stress capital buffer requirement; final planned capital distributions—(1) Notice.* The Board will provide a bank holding company with notice of its stress capital buffer requirement and an explanation of the results of the supervisory stress test. Unless otherwise determined by the

Board, notice will be provided by June 30 of the calendar year in which the capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section or within 90 calendar days of receiving notice that the Board will recalculate the bank holding company's stress capital buffer requirement pursuant to paragraph (f)(3) of this section.

(2) *Response to notice—(i) Request for reconsideration of stress capital buffer requirement.* A bank holding company may request reconsideration of a stress capital buffer requirement provided under paragraph (h)(1) of this section. To request reconsideration of a stress capital buffer requirement, a bank holding company must submit to the Board a request pursuant to paragraph (i) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of receipt of notice of a stress capital buffer requirement under paragraph (h)(1) or (i)(5) of this section, as applicable, a bank holding company must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; and

(I) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the bank holding company must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; or

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(2) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the bank holding company may adjust its planned capital distributions. A bank holding company may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable; and

(B) Notify the Board of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions.* The Board will consider the planned capital distributions, including any adjustments made pursuant to paragraph (h)(2)(ii) of this section, to be the bank holding company's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (h)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer requirement.* (i) The Board will provide a bank holding company with its final stress capital buffer requirement and confirmation of the bank holding company's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board. A stress capital buffer requirement will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (i) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by the Board, a bank holding company's final planned capital distributions and final stress capital buffer requirement shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to any bank holding company subject to this section, the Board may disclose publicly any or all of the following:

(i) The stress capital buffer requirement provided to a bank holding company under paragraph (h)(1) or (i)(5) of this section;

(ii) Adjustments made pursuant to paragraph (h)(2)(ii);

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(i) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (i):

(1) *General.* To request reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, a bank holding company must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, must be received within 15 calendar days of receipt of a notice of a bank holding company's stress capital buffer requirement.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer requirement should be reconsidered). With respect to any information that was not previously provided to the Federal Reserve in the bank holding company's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the bank holding company's request for reconsideration.

(4) *Hearing.* (i) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the bank holding company's request for reconsideration of its stress capital buffer requirement submitted under paragraph (i)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (i)(4) of this section, the Board will notify the company of its decision to affirm or modify the bank holding company's stress capital buffer requirement, provided that the Board may extend this period upon notice to the bank holding company.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of the Board's decision under paragraph (i)(5) of this section, the bank holding company may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (j)(1) of this section.

(j) *Approval requirements for certain capital actions—(1) Circumstances requiring approval—Resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (j)(3) of this section, a bank holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (e)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The bank holding company's capital plan or a discussion of changes to the bank holding company's capital plan since it was last submitted to the Federal Reserve;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (j)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, the Board, or appropriate Reserve Bank with concurrence of the Board, will apply the considerations and principles in paragraph (g) of this section, as appropriate. In addition, the Board, or the appropriate Reserve Bank with concurrence of the Board, may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraph (j)(2) of this section.

(4) *Disapproval and hearing.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of the Board shall be given to the

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bank holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(iv) While the Board's decision is pending and until such time as the Board, or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the bank holding company may not make such capital distribution.

(k) *Post notice requirement.* A bank holding company must notify the Board and the appropriate Reserve Bank within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (j)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the bank holding company's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

[85 FR 15599, Mar. 18, 2020, as amended at 86 FR 7940, Feb. 3, 2021]

§ 225.9 Control over securities.

(a) *Contingent rights, convertible securities, options, and warrants.* (1) A person that controls a security, option, warrant, or other financial instrument that is convertible into, exercisable for, exchangeable for, or otherwise may become a security controls each security that could be acquired as a result of such conversion, exercise, exchange, or similar occurrence.

(2) If a financial instrument of the type described in paragraph (a)(1) of this section is convertible into, exercisable for, exchangeable for, or otherwise may become a number of securities that varies according to a formula, rate, or other variable metric, the number of securities controlled under paragraph (a)(1) of this section is the maximum number of securities that the financial instrument could be converted into, be exercised for, be exchanged for, or otherwise become under the formula, rate, or other variable metric.

(3) Notwithstanding paragraph (a)(1) of this section, a person does not control voting securities due to controlling a financial instrument if the financial instrument:

(i) By its terms is not convertible into, is not exercisable for, is not exchangeable for, and may not otherwise become voting securities in the hands of the person or an affiliate of the person; and

(ii) By its terms is only convertible into, exercisable for, exchangeable for, or may otherwise become voting securities in the hands of a transferee after a transfer:

(A) In a widespread public distribution;

(B) To the issuing company;

(C) In transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of the outstanding securities of any class of voting securities of the issuing company; or

(D) To a transferee that would control more than 50 percent of every class of voting securities of the issuing company without any transfer from the person.

(4) Notwithstanding paragraph (a)(1) of this section, a person that has agreed to acquire securities or other financial instruments pursuant to a securities purchase agreement does not control such securities or financial instruments until the person acquires the securities or financial instruments.

(5) Notwithstanding paragraph (a)(1) of this section, a right that provides a person the ability to acquire securities in future issuances or to convert nonvoting securities into voting securities does not cause the person to control the securities that could be acquired under the right, so long as the right does not allow the person to acquire a higher percentage of the class of securities than the person controlled immediately prior to the future acquisition.

(6) Notwithstanding paragraph (a)(1) of this section, a preferred security that would be a nonvoting security but for a right to vote on directors that activates only after six or more quarters of unpaid dividends is not considered to be a voting security until the security holder is entitled to exercise the voting right.