Proposed Rules

Federal Register
Vol. 84, No. 67
Monday, April 8, 2019

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

RIN 0584–AE57

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents; Reopening of Comment Period

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This proposed rule seeks to amend the regulatory standards by which the U.S. Department of Agriculture evaluates State Supplemental Nutrition Assistance Program (SNAP) agency requests to waive the time limit and to end the unlimited carryover of able-bodied adults without dependents (ABAWD) percentage exemptions. The proposed rule would encourage broader application of the statutory ABAWD work requirement, consistent with the Administration's focus on fostering self-sufficiency. The original comment period for this proposed rule ended on April 2, 2019. FNS seeks to reopen the comment period on April 8, 2019, for a period of 3 days ending April 10, 2019.

DATES: The comment period for the information collection requirements published on February 2, 2019, 84 FR 980, has been reopened from April 8, 2019, through April 10, 2019. To be assured of consideration, comments must be received on or before April 10, 2019.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method: Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302. *SNAPCPBRules@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service (FNS) is reopening the public comment period for this proposed rule, which was published on February 1, 2019. FNS believes that affected parties need to be informed as soon as possible of the extension and its length.

Dated: April 3, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–06878 Filed 4–5–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2018–0019]

RIN 1557–AE38

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1655]

RIN 7100–AF43

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE79

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

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); the Board of Governors of the Federal Reserve System (Board); and the Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are inviting public comment on a notice of proposed rulemaking (proposal) that would address an advanced approaches banking organization's regulatory capital treatment of an investment in unsecured debt instruments issued by foreign or U.S. global systemically important banking organizations (GSIBs) for the purposes of meeting minimum total loss absorbing capacity (TLAC) and, where applicable, long-term debt (LTD) requirements, or unsecured debt instruments issued by GSIBs that are pari passu or subordinated to such debt instruments. Under the proposal, investments by an advanced approaches banking organization in such unsecured debt instruments generally would be subject to deduction from the advanced approaches banking organization's own regulatory capital. The proposal would reduce both interconnectedness within

the financial system and systemic risk. The Board is proposing changes to regulatory reporting requirements resulting from the proposal. The Board is also proposing to require that banking organizations subject to minimum TLAC and LTD requirements under Board regulations publicly disclose their TLAC and LTD issuances in a manner described in this proposal.

DATES: Comments must be received by June 7, 2019.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''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'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal— ''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0019'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0019'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0019'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments can be filtered by clicking on ''View All'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* Supporting materials may be viewed by clicking on ''Open Docket Folder'' and then clicking on ''Supporting Documents.'' The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1655, RIN 7100–AF43, by any of the following methods:

• *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE79 by any of the following methods:

• *Agency Website: http://www.fdic.gov/regulations/laws/federal/* Follow instructions for submitting comments on the Agency website.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.* Include the RIN 3064–AE79 on the subject line of the message.

• *Public Inspection:* All comments received must include the agency name and RIN 3064–AE79 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: David Elkes, Risk Expert (202) 649–6984; or Christine Smith, Risk Expert (202) 649–6985, Capital and Regulatory Policy; or Carl Kaminski, Special Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan Climent, Manager, (202) 872–7526; Mark Handzlik, Senior Supervisory Financial Analyst (202) 475–6636 or Sean Healey, Supervisory Financial Analyst, (202) 912–4611, Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel (202) 452–2036; or Mark Buresh, Counsel (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section; *bbosco@fdic.gov;* David Riley, Senior Policy Analyst, Capital Policy Section; *dariley@fdic.gov;* Stephanie Lorek, Senior Policy Analyst, *slorek@fdic.gov; regulatorycapital @fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* or Catherine Wood, Counsel, *cawood@ fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Summary of the Proposal

A. Background on Capital Requirements

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) impose minimum capital requirements on banking organizations.[1] These requirements include minimum risk-based and leverage capital ratios. The regulatory capital ratios measure different definitions of regulatory capital relative to total and risk-weighted assets.[2] The numerators of the regulatory capital ratios include various adjustments and deductions to GAAP-based regulatory capital components.

The agencies' capital rule includes two broad categories of deductions related to investments in the capital instruments of financial institutions. First, it requires a banking organization to deduct any investment in its own regulatory capital instruments and any investment in regulatory capital instruments held reciprocally with another financial institution.[3] Second, it requires a banking organization to deduct investments in capital instruments issued by unconsolidated financial institutions that would qualify as regulatory capital if issued by the banking organization itself.[4] For the purpose of the latter deduction, a banking organization may be required to deduct the entire amount of the investment, or it may be required to deduct only the portion of the investment that exceeds a certain threshold.[5] These deductions are intended to reduce interconnectedness and contagion risk among banks by discouraging banking organizations from investing in the regulatory capital of another financial institution.

For purposes of the deductions related to investments in the capital instruments of financial institutions, a banking organization must make the deduction from the component of regulatory capital for which the instrument qualifies or would qualify if it were issued by the banking organization that is holding the exposure.[6] For example, a banking organization that owns less than 10 percent of the common stock of an unaffiliated banking organization (non-significant investment in the capital of unconsolidated financial institution), and is invested in tier 2 instruments issued by the unaffiliated banking organization, must deduct from tier 2 capital the amount, if any, by which the investment exceeds 10 percent of its own common equity tier 1 capital when combined with other non-significant investments in the capital of unconsolidated financial institutions. Any non-significant investments in the capital of unconsolidated financial institutions below the 10 percent threshold must be assigned their appropriate risk-weight.[7]

B. Background on TLAC and LTD Requirements

In October 2015, the Board invited public comment on a notice of proposed rulemaking (2015 proposal) to require the largest domestic and foreign banking organizations operating in the United States to maintain a minimum amount of total loss-absorbing capacity (TLAC), consisting of tier 1 capital (excluding minority interest) and certain long-term debt instruments (LTD).[8] The proposal had two core objectives: (1) To improve the resiliency of covered banking organizations (as defined below); and (2) to enhance the resolvability of covered banking organizations in the event of their failure or material financial distress. In December 2016, the Board issued a final rule (TLAC Rule) that was

[1] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States, but excluding banking organizations subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), and certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

A banking organization is an advanced approaches banking organization if it has total assets of at least $250 billion or if it has consolidated on-balance sheet foreign exposures of at least $10 billion, or if it is a subsidiary of a depository institution, bank holding company, savings and loan holding company or intermediate holding company that is an advanced approaches banking organization. *See,* 78 FR 62018, 62204 (October 11, 2013), 78 FR 55340, 55523 (September 10, 2013). *See also* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); and 12 CFR part 324 (FDIC). The agencies recently proposed revisions to the capital rule that would amend the advanced approaches banking organization threshold and would tailor the application of capital requirements based on an institution's risk profile (Interagency Tailoring NPR). If the Interagency Tailoring NPR is finalized as proposed, it would affect the scope of application of the deduction of investments in certain debt instruments issued by GSIBs in this notice of proposed rulemaking (NPR). *See* 83 FR 66024 (December 21, 2018). *See* discussion in section I.D of this NPR's preamble.

[2] *See* 12 CFR 3.10(a) (OCC); 12 CFR 217.10(a) (Board); and 12 CFR 324.10(a) (FDIC). In addition to the generally applicable leverage ratio, advanced approaches banking organizations are subject to a supplementary leverage ratio, which measures a banking organization's tier 1 capital relative to its on-balance sheet and certain off-balance sheet exposures.

[3] *See* 12 CFR 3.22(c)(1) (OCC); 12 CFR 217.22(c)(1) (Board); and 12 CFR 324.22(c)(1) (FDIC).

[4] *See* 12 CFR 3.22(c)(2) (OCC); 12 CFR 217.22(c)(2) (Board); and 12 CFR 324.22(c)(2) (FDIC).

[5] *See* 12 CFR 3.22(c)(3) through (5) (OCC); 12 CFR 217.22(c)(3) through (5) (Board); and 12 CFR 324.22(c)(3) through (5) (FDIC).

[6] *See* 12 CFR 3.22(c)(1) and (2) (OCC); 12 CFR 217.22(c)(1) and (2) (Board); and 12 CFR 324.22(c)(1) and (2) (FDIC).

[7] *See* 12 CFR part 3, subparts D, E, or F, as applicable (OCC); 12 CFR part 217, subparts D, E, and F, as applicable (FRB); and 12 CFR part 324, subparts D, E, or F, as applicable (FDIC).

[8] *See* 80 FR 74926 (November 30, 2015).

substantially consistent with the 2015 proposal.[9] The TLAC and LTD requirements set forth in the TLAC Rule take effect on January 1, 2019.

The TLAC and LTD requirements in the TLAC Rule build on, and serve as a complement to, the Board's regulatory capital requirements.[10] Regulatory capital requirements are intended to ensure that a banking organization has sufficient capital to remain a going concern. The objective of the TLAC and LTD requirements is to enhance financial stability by reducing the impact stemming from the failure of certain large and systemically important banking organizations by requiring such organizations to have sufficient loss-absorbing capacity on both a going-concern and a gone-concern basis. The TLAC and LTD requirements in the TLAC Rule apply to a U.S. top-tier bank holding company identified under the Board's rules as a global systemically important bank holding company (covered BHC) or a top-tier U.S. intermediate holding company subsidiary of a global systemically important foreign banking organization (foreign GSIB) with $50 billion or more in U.S. non-branch assets (covered IHC) (collectively, covered banking organizations) because the failure or material financial distress of covered banking organizations could substantially impair the functioning of the U.S. financial system.[11]

The requirements in the TLAC Rule use many of the same measures that are set forth in the capital rule. For example, the TLAC Rule includes both risk-based and leverage-based requirements, including buffers on top of the minimum TLAC requirements that function in a manner similar to the capital conservation buffer in the capital rule.[12] The risk-based measures in the TLAC Rule help to ensure that the amount of TLAC maintained by a covered banking organization is commensurate with its overall risks, while the leverage-based measures in the TLAC Rule act as a backstop to the risk-based measures.

LTD, which count in regulatory capital in limited amounts if they comply with certain eligibility criteria, are capable of absorbing losses in resolution. This is because the debt holders' claim on a company's assets may not receive full payment in a resolution, receivership, insolvency, or similar proceeding, which would increase the size of a company's assets relative to the size of its liabilities and thereby increase the company's equity. This potential loss-absorbing capacity of LTD is part of the rationale for the deduction approach for investments in such debt instruments under this proposal.

The TLAC Rule requires covered BHCs to maintain outstanding minimum levels of ''external TLAC'' and ''external LTD.'' External TLAC is the sum of the tier 1 capital instruments issued directly by the covered BHC (excluding minority interests) and the external LTD issued by the covered BHC. Under the TLAC Rule, external LTD is generally unsecured debt that is issued directly by a covered BHC, has no features that would interfere with a smooth resolution proceeding, has a remaining maturity of at least one year, and is governed by U.S. law, among other provisions.[13]

The TLAC Rule also requires covered IHCs to maintain minimum levels of TLAC and LTD. However, the specific requirements applicable to a covered IHC vary depending on the resolution strategy of the foreign GSIB parent of the covered IHC—either a single point-of-entry (SPOE)[14] resolution strategy or a multiple point-of-entry (MPOE) resolution strategy.[15] Under the TLAC Rule, a covered IHC that has a foreign GSIB parent with a SPOE strategy must issue LTD to the foreign GSIB parent or to a wholly owned subsidiary of the foreign GSIB parent, but a covered IHC that is expected to enter into resolution may issue LTD externally to third party investors, as well as internally to its foreign GSIB parent.[16]

Given the important role of LTD in absorbing the losses of a covered banking organization in bankruptcy or resolution, the Board proposed limitations on investments by Board-regulated banking organizations in LTD issued by covered BHCs in its 2015 proposal, which are discussed in further detail below.[17] Such limitations already apply to investments in regulatory capital instruments of banking organizations in order to reduce interconnectedness and pro-cyclicality within the financial system in times of stress. The Board did not finalize these limitations when it issued the TLAC Rule because it needed additional time to work with the OCC and FDIC towards a proposed interagency approach regarding the regulatory capital treatment for investments in certain debt instruments issued by covered BHCs.

Accordingly, the agencies are now jointly proposing a regulatory capital treatment for investments in covered debt instruments, as defined below, that would apply to all advanced approaches banking organizations. In addition, this proposal takes into consideration and incorporates public comments from the 2015 proposal.

C. 2015 Proposal and General Summary of Comments

To reduce the potential contagion risk stemming from the failure of a covered BHC, the 2015 proposal would have amended the Board's capital rule to require a Board-regulated banking organization to deduct from its regulatory capital any direct, indirect, or synthetic investment in, or exposure to, LTD issued by a covered BHC as if they were investments in tier 2 capital

[9] *See* 82 FR 8266 (January 24, 2017).

[10] *See* 12 CFR part 217.

[11] In 2015, the Financial Stability Board (FSB), in consultation with the Basel Committee on Banking Supervision (BCBS), issued an international TLAC standard, titled, *Principles on Loss-absorbing and Recapitalisation Capacity of G–SIBs in Resolution; Total Loss-absorbing Capacity Term Sheet* (TLAC Term Sheet). The TLAC Term Sheet sets forth the minimum TLAC standards applicable to all global systemically important banking organizations (GSIBs), for consultation and implementation by member jurisdictions. The Board's TLAC Rule is generally consistent with the TLAC Term Sheet. A foreign GSIB is subject to the TLAC requirements established by its home jurisdiction pursuant to the TLAC Term Sheet, which may vary in certain respects from the Board's TLAC Rule.

[12] Covered banking organizations that do not meet a TLAC buffer face limitations on capital distributions and discretionary bonus payments (in a manner similar to the capital conservation buffer restrictions in the capital rule).

[13] External LTD excludes instruments with exotic features that could impact the loss absorbing capacity and thereby diminish the prospects for an orderly resolution of a covered BHC; excluded instruments include structured notes and most instruments that contain derivative-linked features.

[14] Under a SPOE resolution strategy, the covered IHC would not be expected to enter resolution. In a SPOE resolution of a GSIB, only a single entity—the top-tier holding company of the GSIB—would enter a resolution proceeding. Thus, the effect of losses that led to a GSIB's failure would pass up from the operating subsidiaries that incurred the losses to the holding company and then would be imposed on the equity holders and unsecured creditors of the holding company through resolution.

[15] Under a MPOE resolution strategy, the covered IHC may be expected to go through resolution. In a MPOE strategy, entities within the consolidated banking organization may be resolved separately by their local authorities when the entity fails or is approaching failure. Thus, the losses that caused an entity within a consolidated banking organization to fail are passed directly to the equity holders and unsecured creditors of that entity through a separate resolution process.

[16] An IHC that is expected to enter into resolution is deemed to be a ''resolution covered IHC'' under the TLAC Rule upon certification to the Board of the IHC's resolution strategy. *See* 12 CFR 252.164.

[17] The 2015 proposal was issued solely by the Board. Therefore, the proposed regulatory capital deductions in that proposal would have only applied to Board-regulated banking organizations, which include bank holding companies, intermediate holding companies, savings and loan holdings companies, and state member banks.

instruments.[18] The form and amount of the deduction would have depended on the type of investment and various other factors, described below.

The proposed deduction requirement in the 2015 proposal would have substantially reduced the incentive of a Board-regulated banking organization to invest in LTDs issued by a covered BHC, thereby reducing the risk of contagion spreading to other banking organizations in the event of distress or failure of the covered BHC. Analysis conducted by Board staff concurrent with the 2015 proposal did not indicate that Board-regulated banking organizations owned a substantial amount of debt issued by covered BHCs.

The Board received approximately 37 comments on the 2015 proposal from banking and trade organizations, academic institutions, market advocacy groups, and an individual. A few of the commenters addressed the proposed deduction portion of the 2015 proposal. One commenter recommended an expansion of the proposed deductions to TLAC instruments issued by foreign GSIBs, while another commenter urged the Board to address its concerns through a different means than the capital rule. Some commenters supported the proposed deduction, and some suggested amending or abandoning the proposed deduction.

Commenters made a number of recommendations regarding the specific details of how the deductions from regulatory capital should be implemented. The recommendations included increasing the capital rule's deduction thresholds to reflect the increase in the scope of assets subject to deduction. Other commenters requested formal public guidance regarding the proposed deduction requirement to ensure that community banking organizations were aware of the requirement and could undertake the necessary preparations.

One commenter requested that the Board exclude debt instruments that do not qualify as LTD under the TLAC Rule from the scope of the deduction in the capital rule. Another commenter advocated for a less stringent capital deduction for senior debt, relative to the deduction requirement for subordinated debt.

With respect to the mechanics of the capital deduction, several commenters advocated for allowing a banking organization to first deduct any investment in a LTD from the banking organization's own LTD, before deducting such holdings from regulatory capital. Commenters argued that deducting LTD from regulatory capital would impose significant costs on issuers and adversely affect the market for these instruments. Some commenters also suggested that banking organizations be allowed to choose among several different treatments for investments in LTD, including the application of a higher risk weight rather than a capital deduction.

A number of commenters sought an exemption for underwriting and market making positions in LTD. These commenters argued that requiring deduction in these contexts could negatively impact market making activities of GSIBs and increase the cost of market making while reducing liquidity, thereby adversely impacting customers of banking organizations and the global economy.[19]

D. Overview and Scope of Application of the Proposal

The agencies are issuing this notice of proposed rulemaking (proposal or proposed rule) to recognize, for purposes of the agencies' capital rule, the systemic risks posed by banking organizations' investments in ''covered debt instruments,'' as defined below, and to create an incentive for advanced approaches banking organizations to limit their exposure to GSIBs. Absent the proposal, investments in covered debt instruments issued by covered BHCs, foreign GSIBs, and covered IHCs are generally subject to a risk weight of 100 percent and are not subject to deduction from regulatory capital.

The deductions that would be required under the proposal would affect the capital ratios of advanced approaches banking organizations—that is, the risk-based capital ratios that include ''standardized total risk-weighted assets'' and ''advanced approaches total risk-weighted assets'' in the denominator of the ratios, as well as the leverage ratio and the supplementary leverage ratio. The agencies believe such an approach appropriately reduces systemic risks.

The agencies believe the proposed rule will have relatively small effects on advanced approaches banking organizations. It is difficult to calculate TLAC holdings of affected institutions using available data. As noted earlier, Board analysis suggests that debt instruments subject to the proposed rule represent a minimal portion of the total assets of advanced approaches banking organizations. The proposed rule could pose some additional regulatory costs for advanced approaches banking organizations associated with changes to internal systems or processes. The agencies expect that the proposal will have the benefit of improving the resiliency and enhancing resolvability of advanced approaches banking organizations in the event that an entity required to issue LTD or TLAC fails or encounters material financial distress.

While the systemic risk associated with banking organizations' investments in covered debt instruments is greatest for large banking organizations, it is relevant for all banking organizations. Distress at a GSIB and the associated write-down or conversion into equity of its covered debt instruments could have a direct negative impact on the capital of investing banking organizations, potentially at a time when investing banking organizations are already experiencing financial stress. In order to strongly discourage smaller banking organizations from investing in covered debt instruments, the agencies intend to give further consideration on how to address these risks with respect to investments in covered debt instruments, as defined below, by non-advanced approaches banking organizations. The agencies recognize that the proposed approach is relatively complex and, as a result, are only proposing to apply it to advanced approaches banking organizations at this time.

In late 2018, the agencies issued the Interagency Tailoring NPR that would, among other changes, amend the scope of ''advanced approaches banking organizations.'' [20] Under the Interagency Tailoring NPR, the scope of ''advanced approaches banking organizations'' would be amended to include only those banking organizations subject to Category I or Category II standards.[21] For purposes of considering and commenting on this NPR, the requirements that would apply to ''advanced approaches banking organizations'' would be included as Category I and II standards under the Interagency Tailoring NPR. Commenters should consider both proposals together

[18] Unsecured debt issued by a covered BHC may or may not qualify as tier 2 capital, depending on its characteristics. *See* 12 CFR 217.20(d). Similarly, unsecured debt issued by a covered BHC may or may not qualify as eligible external LTD under the TLAC Rule, depending on its characteristics. *See* 12 CFR 252.61 and 252.62, 252.161 and 252.162.

[19] The comments received on the 2015 proposal have been considered in developing this proposal.

[20] *See* 83 FR 66024 (December 21, 2018).

[21] Under the Interagency Tailoring NPR, Category I standards would apply to U.S. GSIBs and their subsidiary depository institutions. Category II standards would apply to banking organizations with $700 billion or more in total consolidated assets or $75 billion or more in cross-jurisdictional activity that are not subject to Category I standards and to their subsidiary depository institutions.

for purposes of their comments to the agencies.

Question 1: The agencies invite comment on all aspects of the proposed deduction approach for investments in covered debt instruments by advanced approaches banking organizations.

Question 2: To what extent do non-advanced approaches banking organizations have material holdings of covered debt instruments issued by covered BHCs, covered IHCs, and foreign GSIBs? The agencies invite data demonstrating the relative significance of such holdings.

II. Proposed Regulatory Capital Treatment for Advanced Approaches Banking Organizations' Investments in Covered Debt Instruments

Under the existing capital rule, a banking organization must deduct from regulatory capital any investment in its own capital instruments and investments in the capital of other financial institutions that it holds reciprocally. Other investments in the capital of unconsolidated financial institutions are subject to deduction to the extent they exceed certain thresholds.

Under the proposal, an investment in a covered debt instrument by an advanced approaches banking organization generally would be treated as an investment in a tier 2 capital instrument, and therefore, would be subject to deduction from the advanced approaches banking organization's own tier 2 capital. The existing deduction approaches under the capital rule would therefore apply to a banking organization's investments in its own covered debt instruments and to reciprocal cross-holdings of covered debt instruments; that is, an advanced approaches banking organization would deduct from its own tier 2 capital any investments in its own covered debt instruments and reciprocal crossholdings of covered debt instruments with another banking organization. In addition, the existing corresponding deduction approach in the capital rule would apply to any required deduction by advanced approaches banking organizations of an investment in a covered debt instrument that exceeds certain thresholds.

The proposal would revise section ____.22(c), (f), and (h) of the capital rule to incorporate the proposed deduction approach for investments in covered debt instruments. Several new definitions would be added to section ___.2 in order to effectuate these deductions. Further, the definition of ''investment in the capital of an unconsolidated financial institution'' would be amended to correct a typographical error.

A. Amendments to Definitions

Consistent with the Board's 2015 proposal, the proposal would add or amend certain definitions in section &___.2 of the capital rule to implement the proposed deduction approach. Under the proposal, a ''covered debt instrument'' would be defined to include an unsecured debt instrument that is: (1) Issued by a covered BHC and that is an ''eligible debt security'' for purposes of the TLAC Rule,[22] or that is pari passu or subordinated to any ''eligible debt security'' issued by the covered BHC; or (2) issued by a covered IHC and that is an ''eligible Covered IHC debt security'' for purposes of the TLAC Rule,[23] or that is pari passu or subordinated to any ''eligible Covered IHC debt security'' issued by the covered IHC. A covered debt instrument would not include a debt instrument that qualifies as tier 2 capital under the capital rule.

A ''covered debt instrument'' also would include any unsecured debt instrument issued by a foreign GSIB or any of its subsidiaries, other than its covered IHC, for the purpose of absorbing losses or recapitalizing the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency or similar proceeding of the issuer or any of its subsidiaries. Further, covered debt instruments would also include any debt instrument that is pari passu or subordinated to any unsecured debt instrument described above issued by the foreign GSIB or any of its subsidiaries, other than an unsecured debt instrument that is included in the regulatory capital of the issuer.

Question 3: Under the proposed definition of ''covered debt instrument,'' unsecured debt instruments issued by a covered BHC or a covered IHC would be covered debt instruments—and thus potentially subject to deduction—if they were eligible debt securities or eligible Covered IHC debt securities, as applicable, under the TLAC Rule, or if they were pari passu or subordinated to any eligible debt security or eligible Covered IHC debt security. What would be a less burdensome way to include approximately the same debt instruments within the definition of ''covered debt instrument?'' For example, should ''covered debt instrument'' include any unsecured debt instrument issued by a covered BHC or a covered IHC, including, for example, debt instruments that are senior to all eligible debt securities or eligible Covered IHC debt securities?

In late 2016, the BCBS published its *TLAC Holdings* standard, which described the regulatory capital treatment under the BCBS Basel III framework applicable to investments in non-capital TLAC instruments.[24] These investments are defined in the BCBS standards as ''other TLAC liabilities.'' Similar to the definition of ''covered debt instrument'' described in this proposal, ''other TLAC liabilities'' are defined by the BCBS to include all direct, indirect, and synthetic investments in the instruments of a GSIB resolution entity that are eligible to be recognized as external TLAC but that do not otherwise qualify as regulatory capital. Instruments pari passu to TLAC, aside from certain exemptions described below, are also included in the BCBS's definition of ''other TLAC liabilities.'' In addition, similar to the proposal's definition of ''covered debt instruments,'' ''other TLAC liabilities'' are subject to deduction from the investing bank's regulatory capital, depending on the nature of the investment. However, there are several differences between the proposed definition of ''covered debt instrument'' and the BCBS's definition of ''other TLAC liabilities.''

Under the FSB's TLAC Term Sheet, certain ''Excluded Liabilities'' do not qualify as TLAC and therefore are not subject to deduction under the *TLAC Holdings* standard, even if they rank pari passu or subordinated to a TLAC instrument. Excluded Liabilities include deposits, liabilities arising from derivatives, and structured notes, among other items. The TLAC Rule prohibits or limits covered banking organizations from entering into financial arrangements that may compromise an orderly resolution process, including the issuance of Excluded Liabilities that rank pari passu or subordinated to LTD (referred to as ''clean holding company'' requirements in the TLAC Rule). Therefore, the definition of ''covered debt instrument'' in the proposal would not provide an exemption for Excluded Liabilities that rank pari passu or subordinated to LTD. An investment in a covered debt investment that constitutes an Excluded Liability may therefore be subject to deduction if it ranks pari passu or subordinated to LTD. To provide symmetrical treatment between liabilities issued by covered banking organizations and foreign GSIBs, the proposal also would not

[22] *See* 12 CFR 252.61.

[23] See 12 CFR 252.161.

[24] *See https://www.bis.org/bcbs/publ/d387.pdf (TLAC Holdings standard).*

exempt Excluded Liabilities issued by foreign GSIBs from the proposed definition of ''covered debt instrument.''

In addition, the *TLAC Holdings* standard excludes from the definition of ''other TLAC liabilities'' instruments that are pari passu to (1) Excluded Liabilities and (2) other instruments that are eligible for recognition as external TLAC by virtue of the exemptions to the subordination requirements in the FSB's TLAC Term Sheet.[25] However, the *TLAC Holdings* standard also provide national discretion to recognize such pari passu debt instruments as external TLAC. In jurisdictions that have exercised this discretion, such instruments are subject to the proportional deduction approach set forth in the *TLAC Holdings* standard.[26]

The proposed definition of ''covered debt instruments'' would include all unsecured debt instruments that are pari passu or subordinated to instruments issued by a foreign GSIB for the purpose of satisfying the foreign GSIB's home-country TLAC requirements. This would include instruments that are pari passu to Excluded Liabilities if such instruments are recognized as external TLAC under home-country requirements as a matter of national discretion. In contrast to the BCBS standard, the proposal would not require proportional deduction for these instruments. Instead, the proposal would require deduction using the existing deduction approaches for tier 2 capital instruments under the capital rule. The agencies believe that implementation of the proportional deduction approach would introduce a high degree of complexity and operational burden because it would require a banking organization to track the full or partial recognition of TLAC instruments that may be pari passu to other liabilities in foreign jurisdictions. In addition, given that advanced approaches banking organizations are not expected to hold material investments in ''covered debt instruments,'' use of the existing deduction approaches for tier 2 capital instruments is unlikely to have a meaningful impact on banking organizations' regulatory capital ratios relative to the proportional deduction approach.

The proposal would also add a definition of ''excluded covered debt instrument'' to the capital rule in order to identify covered debt instruments held for short-term trading purposes that would not be subject to deduction, if below a certain threshold. The definition and prudential treatment of excluded covered debt instruments and their deduction are discussed in more detail in section II.C below.

Question 4: How well does the proposed definition of covered debt instrument capture non-capital debt instruments issued by covered BHCs and covered IHCs for the purposes of meeting their TLAC requirements? The agencies invite comment on all aspects of the definition of covered debt instruments as it relates to instruments issued by covered BHCs and covered IHCs, particularly the scope of instruments that may be subject to deduction under the proposed definition.

Question 5: To what degree does the proposed definition of covered debt instrument capture debt instruments issued by foreign GSIBs or their subsidiaries under foreign implementations of the international TLAC standard? The agencies invite comment on the definition of covered debt instrument, and whether it appropriately captures unsecured debt instruments that do not qualify as regulatory capital and that are issued by a foreign GSIB or any of its subsidiaries. Which method for identifying covered debt instruments would be simpler to apply in practice: (1.) Referring to the purpose of the debt instrument as to absorbing losses or recapitalizing the issuer, as proposed by the agencies, or (2.) referring to home country rules implementing the FSB's TLAC Term Sheet?

Question 6: What are possible alternatives to the definition of ''excluded covered debt instrument?'' For example, should the agencies consider as an alternative to ''held for the purpose of short-term or with the intent of benefiting from actual or expected short-term price movements'' a different standard, such as held available-for-sale or classified as a trading asset for accounting purposes?

Similar to the measurement of investments in financial institutions capital instruments, an ''investment in a covered debt instrument'' would be defined as a net long position in a covered debt instrument, including direct, indirect, and synthetic exposures to such covered debt instrument. Investments in covered debt instruments would exclude underwriting positions held for five business days or less. In addition, the proposal would amend the definitions of ''indirect exposure'' and ''synthetic exposure'' in the capital rule to add exposures to covered debt instruments.[27]

B. Investments in Covered Banking Organization's Own Covered Debt Instruments and Reciprocal Cross Holdings

Under the agencies' capital rule, a banking organization must deduct from regulatory capital an investment in its own capital instruments and investments in the capital of other financial institutions that it holds reciprocally under sections____.22(c)(1) and (3). The proposal would amend sections____.22(c)(1) and (3) to require an advanced approaches banking organization to also deduct from its tier 2 capital investments in its own covered debt instruments and any investment in a covered debt instrument that is held reciprocally with another banking organization.

C. Significant and Non-Significant Investments in Covered Debt Instruments

Under sections___.22(c)(4) and (5) of the capital rule, a banking organization must deduct from regulatory capital certain investments in the capital of unconsolidated financial institutions. The calculation of the deduction depends on whether the banking organization has a ''significant'' or a ''non-significant'' investment, with ''significant'' defined as ownership of more than 10 percent of the common stock of the unconsolidated financial institution.[28] When a banking

[25] To ensure that TLAC absorbs losses prior to liabilities that are excluded from TLAC, eligible TLAC instruments must satisfy certain subordination requirements set forth in the FSB TLAC Term Sheet. However, an instrument may qualify as TLAC and not meet the subordination requirements if: (i) The amount of Excluded Liabilities on the balance sheet of the resolution entity that rank pari passu or junior to the TLAC-eligible liabilities does not exceed 5 percent of the GSIB's eligible TLAC; (ii) the resolution authority of the GSIB has authority to differentiate among pari passu creditors in resolution; (iii) differentiation in resolution in favor of such excluded liabilities would not give rise to material risk of successful legal challenge or valid compensation claims; and (iv) this does not have a material adverse impact on resolvability. *See* section 11 of the FSB TLAC Term Sheet.

[26] *See* ¶ 66.c of the *TLAC Holdings* standard. Only a proportion of instruments that are eligible to be recognized as external TLAC by virtue of the subordination exemptions may be considered TLAC under the *TLAC Holdings* standard. The proportion equals the ratio of (1) the debt instruments issued by a GSIB that rank pari passu to Excluded Liabilities and that are recognized as external TLAC by the GSIB, to (2) the debt instruments issued by the GSIB that rank pari passu to Excluded Liabilities and that would be recognized as external TLAC if the subordination requirement was not applied.

[27] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC) (''investment in the capital of an unconsolidated financial institution'', ''investment in the banking organization's own capital instrument'', and ''synthetic exposure'').

[28] 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC) (''significant investment in the capital of an unconsolidated financial institution'').

organization has a ''significant investment'' in an unconsolidated financial institution, the banking organization must deduct from regulatory capital any investment in the capital of the unconsolidated financial institution that is not in the form of common stock.[29] If the banking organization has one or more ''non-significant investments'' in unconsolidated financial institutions, it must aggregate such investments and deduct from regulatory capital any amount that exceeds 10 percent of the banking organization's common equity tier 1 capital.[30]

The proposal would amend section ___.22(c)(4) of the capital rule to require an advanced approaches banking organization with a non-significant investment in a covered debt instrument to include such investment in the aggregate amount of non-significant investments in the capital of other unconsolidated financial institutions. As under the existing capital rule, the proposal would require a banking organization to deduct from regulatory capital the amount by which the aggregate amount of non-significant investments in the capital of unconsolidated financial institutions exceeds 10 percent of the advanced approaches banking organization's common equity tier 1 capital. Any investment in a covered debt instrument subject to deduction would be deducted according to the corresponding deduction approach described below in section II.D.

The proposal includes limited exclusions from this approach. The specifics of the applicable exclusion would depend on whether a firm is a covered BHC or is a subsidiary of a GSIB, consistent with the *TLAC Holdings* standard. To help support a deep and liquid market for covered debt instruments, the proposal would allow advanced approaches banking organizations to hold limited amounts of, and conduct limited market making in, such instruments. The proposal would provide that, under certain circumstances, an advanced approaches banking organization that is a covered BHC or is a subsidiary of a GSIB (advanced approaches GSIB banking organization) could designate an investment in a covered debt instrument as an ''excluded covered debt instrument'' if it holds the covered debt instrument for 30 business days or less for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits. In this case, the advanced approaches GSIB banking organization could exclude each excluded covered debt instrument from the threshold calculation and potential deduction under section ___.22(c)(4) if the aggregate amount of excluded covered debt instruments, measured by their gross long position, is 5 percent or less of its common equity tier 1 capital. If the aggregate amount of excluded covered debt instruments is more than 5 percent of the common equity tier 1 capital of the advanced approaches GSIB banking organization, the excess over 5 percent would be subject to deduction from tier 2 capital. In addition, if an excluded covered debt instrument were held for more than 30 business days or ceased to be held for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits, the excluded covered debt instrument would be subject to deduction from tier 2 capital.

Consistent with the *TLAC Holdings* standard, the proposal includes a more simple materiality threshold for advanced approaches banking organizations that are not covered BHCs or subsidiaries of GSIBs (advanced approaches non-GSIB banking organizations) given that these banking organizations pose less systemic risk than GSIBs. Such banking organizations could exclude covered debt instruments from the threshold calculation and potential deduction under section ___.22(c)(4) if the aggregate amount of covered debt instruments, measured by their gross long position, is 5 percent or less of its common equity tier 1 capital. If the aggregate amount of covered debt instruments is more than 5 percent of an advanced approaches non-GSIB banking organization's common equity tier 1 capital, the excess over 5 percent would be included, on a net long position basis in accordance with section___.22(h), with other non-significant investments in the capital instruments of unconsolidated financial institutions as described above.

The proposal would amend section ___.22(c)(5) of the capital rule to require an advanced approaches banking organization with an investment in a covered debt instrument issued by an unconsolidated financial institution to deduct the investment from tier 2 capital, in accordance with the corresponding deduction approach, if the advanced approaches banking organization has a significant investment in the capital of the unconsolidated financial institution.

Question 7: Do the proposed exclusions from deduction for certain investments in covered debt instruments of an unconsolidated financial institution appropriately align with the treatment set forth in the TLAC Holdings standard? Should all banking organizations subject to the rule be subject to uniform exclusion requirements, and if so, why? Would the exclusion applicable only to GSIBs and the 5 percent threshold below which deduction is not required allow for sufficient market making activity to support a deep and liquid market for covered debt instruments?

D. Corresponding Deduction Approach

Under the corresponding deduction approach, a banking organization must apply any required deduction to the component of capital for which the underlying instrument would qualify if it were issued by the banking organization.[31] If the banking organization does not have enough of the component of capital to give full effect to the deduction, the corresponding deduction approach provides that any amount of the investment that has not already been deducted would be deducted from the next, more subordinated component of capital.[32] If, for example, a banking organization has insufficient amounts of tier 2 capital and additional tier 1 capital to effect a required deduction, the banking organization would need to deduct from common equity tier 1 capital the amount of the investment that exceeds the tier 2 and additional tier 1 capital of the banking organization.[33] The proposal would amend the corresponding deduction approach in section ___.22(c)(2) of the capital rule to specify that an investment in a covered debt instrument by an advanced approaches banking organization would be subject to the corresponding deduction approach.

Question 8: Are there simpler alternatives to the proposed deduction approach for investments in covered debt instruments that would achieve the same objectives of reducing both interconnectedness within the financial system and systemic risk?

[29] See 12 CFR 3.22(c)(5) (OCC); 12 CFR 217.22(c)(5) (Board); and 12 CFR 324.22(c)(5) (FDIC).

[30] *See* 12 CFR 3.22(c)(4) (OCC); 12 CFR 217.22(c)(4) (Board); and 12 CFR 324.2(c)(4) (FDIC).

[31] *See* 12 CFR 3.22(c)(2) (OCC); 12 CFR 217.22(c)(2) (Board); and 12 CFR 324.22(c)(2) (FDIC).

[32] *See* 12 CFR 3.22(c)(2) and (f) (OCC); 12 CFR 217.22(c)(2) and (f) (Board); and 12 CFR 324.(c)(2) and (f) (FDIC).

[33] *See* 12 CFR 3.22(f) (OCC); 12 CFR 217.22(f) (Board); and 12 CFR 324.22(f) (FDIC).

E. Net Long Position

The proposal would follow the same general approach as currently provided under the agencies' capital rule regarding the calculation of the amount of any deduction and the treatment of guarantees and indirect investments for purposes of the deductions. Under the capital rule, the amount of a banking organization's investment in its own capital instrument or in the capital instrument of an unconsolidated financial institution is the banking organization's net long position in the capital instrument as calculated under section___.22(h) of the capital rule. Under section___.22(h), a banking organization may net certain gross short positions in a capital instrument against a gross long position in the instrument to determine the net long position. The amount of an investment potentially subject to deduction under section ___ .22(c) is the net long position.

The proposal would modify section ___.22(h) of the capital rule such that an advanced approaches banking organization would determine its net long position in an exposure to its own covered debt instrument or in a covered debt instrument issued by an unconsolidated financial institution in the same manner as currently provided for investments in the capital of an unconsolidated financial institution or investments in an institution's own capital instruments. Consistent with the current capital rule, the calculation of a net long position would take into account direct investments in covered debt instruments as well as indirect exposures to covered debt instruments held through investment funds.

A banking organization has three options under the capital rule to measure its gross long position in a capital instrument held indirectly through an investment fund.[34] The proposal would amend section___ 22(h)(2)(ii) of the capital rule to provide the same three options to determine the gross long position in a covered debt instrument held through an investment fund. The first option would be to use the entire carrying value of the investment in the fund. The second option would be, with prior supervisory approval, for the advanced approaches banking organization to use a conservative estimate of the amount of the investment in the covered debt instrument held through the fund. The third option would be to multiply the carrying value of the advanced approaches banking organization's investment in the fund by the exact percentage of the covered debt instrument held by the investment fund or by the highest stated prospectus limit for such an investment. In each case, the amount of the gross long position may be reduced by the advanced approaches banking organization's qualifying short positions to reach the net long position.[35]

For purposes of any deduction required for an advanced approaches banking organization's investment in the capital of an unconsolidated financial institution, the amount of a covered debt instrument would include any contractual obligations the advanced approaches banking organization has to purchase such covered debt instruments.

III. Technical Amendment and Additional Requests for Comment

The agencies are amending the definition of investment in the capital of an unconsolidated financial institution in section___.2 of the capital rule in order to correct a drafting error. The agencies' capital rule currently defines investment in the capital of an unconsolidated financial institution as ''. . . an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution and is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution . . . .'' The proposal would change ''and is'' to ''or'' to reflect the agencies' original intent.

The agencies invite comment on all aspects of the proposed deduction approaches for investments in covered debt instruments by advanced approaches banking organizations, and the technical amendment to the agencies' capital rule. Comments are requested about the potential advantages of the proposal in ensuring the safety and soundness of advanced approaches banking organizations as well as the stability of the financial system. Comments are also requested about the capital impact of the proposal and the nature and extent of costs and benefits to the affected institutions or the broader economy.

IV. Proposed Changes to Regulatory Reporting

A. Deductions From Tier 2 Capital Related to Investments in Covered Debt Instruments and Excluded Covered Debt Instruments

The Board is proposing to modify the instructions to the Consolidated Financial Statements for Holding Companies (FR Y–9C), Schedule HC–R, Part I and Part II, to effectuate the deductions from regulatory capital for Board-regulated advanced approaches banking organizations related to investments in covered debt instruments and excluded covered debt instruments as described above.

Specifically, the Board would modify the instructions of the FR Y–9C for Schedule HC–R, Part I, item 33, ''Tier 2 capital deductions.'' On the FR Y–9C, a Board-regulated advanced approaches GSIB banking organization would be required to deduct from tier 2 capital the aggregate amount of its investments in covered debt instruments that, when combined with the banking organization's other non-significant investments in unconsolidated financial institutions, exceed 10 percent of the common equity tier 1 capital of the banking organization. Also, if an excluded covered debt instrument is held by a Board-regulated advanced approaches GSIB banking organization for more than 30 business days, or is no longer held for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits, the excluded covered debt instrument would be deducted from tier 2 capital.

In addition, for purposes of the deduction requirements related to non-significant investments in unconsolidated financial institutions, Board-regulated advanced approaches non-GSIB banking organizations would be required to deduct from tier 2 capital those investments in covered debt instruments that exceed 5 percent of common equity tier 1 capital, and that also, when combined with the banking organization's other non-significant investments in unconsolidated financial institutions, exceed 10 percent of the common equity tier 1 capital of the banking organization. The Board would also modify the instructions for calculating other deduction-related and risk-weighted asset line items to incorporate investments in covered debt instruments and excluded debt instruments, as applicable, by Board-regulated advanced approaches banking organizations.

[34] *See* 12 CFR 3.22(h)(2) (OCC); 12 CFR 217.12(h)(2) (Board); and 12 CFR 324.22(h)(2) (FDIC).

[35] *See* 12 CFR 3.22(h)(1) (OCC); 12 CFR 217.22(h)(1) (Board); and 12 CFR 324.22(h)(1) (FDIC).

The agencies would propose to modify in a future interagency reporting proposal the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFEIC 041) (collectively with the FFIEC 031, the Call Report [36]), and Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101) in a manner consistent with the changes described above to the FR Y–9C.

B. Public Disclosure of LTD and TLAC by Covered BHCs and Covered IHCs

The Board is proposing to modify Schedule HC–R, Part I of the FR Y–9C by adding new data items that would publicly disclose: (1) The LTD and TLAC for covered BHCs and covered IHCs; (2) these firms' LTD and TLAC ratios to ensure compliance with the TLAC Rule; (3) TLAC buffers; and (4) amendments to the instructions for the calculation of eligible retained income (item 47), institution-specific capital buffer (items 46.a and 46.b), and distributions and discretionary bonus payments (item 48) for covered BHCs and covered IHCs.

V. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number.

The proposal would revise sections __.22(c), (f), and (h) of the capital rule to incorporate the proposed deduction approach for investments in covered debt instruments. Several new definitions would be added to section __.2 in order to effectuate these deductions. Further, the definition of ''investment in the capital of an unconsolidated financial institution'' would be amended to correct a typographical error.

The proposal will require changes to the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Collection (Board Only)

Title of information collection: Consolidated Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Affected public: Businesses or other for-profit.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and U.S. Intermediate Holding Companies (IHCs) (collectively, holding companies (HCs)).

Estimated number of respondents: FR Y–9C (non-advanced approaches holding companies): 292; FR Y–9C (advanced approached holding companies): 18; FR Y–9LP: 338; FR Y–9SP: 4,238; FR Y–9ES: 82; FR Y–9CS: 236.

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on HCs on which examiners rely between on-site inspections. Financial data from these reporting forms is used to detect emerging financial problems, review performance, conduct pre-inspection analysis, monitor and evaluate capital adequacy, evaluate HC mergers and acquisitions, and analyze an HC's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C serves as the standardized financial statements for certain consolidated holding companies. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. HCs file the FR Y–9C on a quarterly basis.

Legal authorization and confidentiality: The FR Y–9 family of reports is authorized by section 5(c) of the Bank Holding Company Act,[37] section 10(b) of the Home Owners' Loan Act,[38] section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[39] and section 165 of the Dodd-Frank Act.[40] The obligation of covered institutions to report this information is mandatory.

With respect to FR Y–9C, Schedule HI's item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential. Such treatment is appropriate because the data is not publicly available and the public release of this data is likely to impair the Board's ability to collect necessary information in the future and could cause substantial harm to the competitive position of the respondent. Thus, this information may be kept confidential under exemptions (b)(4) of the Freedom of Information Act, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)), and (b)(8) of the Freedom of Information Act, which exempts from disclosure information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(8)).

[36] The proposed modifications would not affect the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $1 Billion (FFIEC 051) because banks and savings associations that are advanced approaches banking organizations are not eligible to file the FFIEC 051 report.

[37] *See* 12 U.S.C. 1844(c).

[38] *See* 12 U.S.C. 1467a(b).

[39] *See* 12 U.S.C. 1850a(c)(1).

[40] *See* 12 U.S.C. 5365.

Current actions: To implement the reporting requirements of the proposed rule, the Board proposes to revise the FR Y–9C, Schedule HC–R, Part I, Regulatory Capital Components and Ratios, to amend instructions for line items 11, 17, 24, and 33 to effectuate the deductions from regulatory capital for advanced approaches holding companies related to investments in covered debt instruments and excluded covered debt instruments as described above. Further, the Board proposes to revise the FR Y–9C, Schedule HC–R, Part II, Risk-Weighted Assets, to amend instructions for line items 2(a), 2(b), 7, and 8 to incorporate investments in covered debt instruments and excluded debt instruments, as applicable, by advanced approaches holding companies in their calculation of risk-weighted assets.

In addition, the Board proposes to revise the FR Y–9C, Schedule HC–R, Part I, Regulatory Capital Components and Ratios, to create new line items and instructions to allow the BHCs of U.S. GSIBs and the IHCs of foreign GSIBs to publicly report their long-term debt (LTD) and total loss absorbing capacity (TLAC) in accordance, respectively, with 12 CFR 252, Subpart G and 12 CFR 252, Subpart P. Specifically, new line items would be created to report, as applicable, BHCs of U.S GSIBs' and IHCs of foreign GSIBs' (1.) outstanding eligible LTD (item 46); (2.) TLAC (item 47); (3.) LTD standardized risk-weighted asset ratio (item 48, column A); (4.) TLAC standardized risk-weighted asset ratio (item 48, column B); (5.) LTD advanced approaches risk-weighted asset ratio (item 49, column A); (6.) TLAC advanced approaches risk-weighted asset ratio (item 49, column B); (7.) LTD leverage ratio (item 50, column A); (8.) TLAC leverage ratio (item 50, column B); (9.) LTD supplementary leverage ratio (item 51, column A); (10.) TLAC supplementary leverage ratio (item 51, column B); (11.) institution-specific TLAC risk-weighted asset buffer necessary to avoid limitations on distributions and discretionary bonus payments (item 53(a)); and (12.) TLAC leverage buffer necessary to avoid limitations on distributions and discretionary bonus payments (item 53(b)). Existing line items 46, 46(a), 46(b), 47, and 48 would be re-numbered, and respective instructions' references updated, to account for the proposed inclusion of the new data collection items described above. Finally, the instructions for re-numbered line item 55, ''Distributions and discretionary bonus payments during the quarter,'' would be amended for the BHCs of U.S. GSIBs and the IHCs of foreign GSIBs to reflect maximum payout amounts that take into account a firm's TLAC risk-weighted and leverage buffers reported in proposed line items 53(a) and 53(b), respectively. The draft reporting forms and instructions are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx.*

Estimated average hours per response: FR Y–9C (non-advanced approaches holding companies): 46.43; FR Y–9C (advanced approached holding companies): 48.31; FR Y–9LP: 5.27; FR Y–9SP: 5.40; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Estimated annual burden hours: FR Y–9C (non advanced approaches holding companies): 54,230; FR Y–9C (advanced approached holding companies): 3,478; FR Y–9LP: 7,125; FR Y–9SP: 45,770; FR Y–9ES: 41; FR Y–9CS: 472.

In addition to the collection of information discussed above, the agencies would propose to modify in a future interagency reporting proposal the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 and FFIEC 041; OMB No. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052) (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)) in a manner consistent with the changes described above to the FR Y–9C. The Board would also propose to modify the Capital Assessments and Stress Testing (FR Y–14A and Q; OMB No. 7100–0341) in a manner consistent with the changes described above to the FR Y–9C. These modifications will be addressed in one or more separate **Federal Register** notice(s).

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total assets of $38.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of December 31, 2017, the OCC supervises 886 small entities.[41]

As part of our analysis, we consider whether the proposal will have a significant economic impact on a substantial number of small entities, pursuant to the RFA Because the proposal only applies to advanced approaches banking organizations it will not impact any OCC-supervised small entities. Therefore, the proposal will not have a significant economic impact on a substantial number of small entities.

Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[42] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent

[41] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

[42] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,304 small bank holding companies, 216 small savings and loan holding companies, and 566 small state member banks.

practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered. The proposal would also make corresponding changes to the Board's reporting forms.

As discussed in detail above, the proposed rule would amend the capital rule. Under the proposed rule, the Board would require advanced approaches banking organizations to deduct investments in and exposures to covered debt instruments issued by covered BHCs, covered IHCs, and foreign GSIBs and their subsidiaries. These deductions may be subject to regulatory thresholds, as described in the Supplemental Information above. Deductions related to investments in and exposures to covered debt instruments would be effectuated by deduction from tier 2 capital according to the corresponding deduction approach, subject to applicable deduction thresholds.

The Board has broad authority under the International Lending Supervision Act (ILSA) [43] and the PCA provisions of the Federal Deposit Insurance Act [44] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[45] The PCA provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[46] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies under the Bank Holding Company Act and the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act).[47]

The proposed rule would apply only to an advanced approaches Board-regulated institution. This is a depository institution, bank holding company, savings and loan holding company, or intermediate holding company with at least $250 billion in total consolidated assets or has consolidated on-balance sheet foreign exposures of at least $10 billion, or a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches banking organization. The proposed rule would not apply to any small entities. Further, as discussed previously in the Paperwork Reduction Act section, the proposal would make changes to the projected reporting, recordkeeping, and other compliance requirements of the rule by proposing to collect information from firms identified as advanced approaches banking organizations. These changes would include limited revisions to the Consolidated Financial Statements for Holding Companies (FR Y–9C) to provide for reporting of investments in covered debt securities and, as necessary, to reflect deduction of such investments. In addition, the FR Y–9C would be revised to provide for reporting of TLAC and LTD ratios and TLAC buffers under the TLAC Rule by covered BHCs and covered IHCs. These changes would not impact small entities. In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

FDIC:

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[48] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million who are independently owned and operated or owned by a holding company with less than $550 million in total assets.[49] For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,604 institutions, of which 2,804 are considered small entities for the purposes of RFA.[50]

This proposed rule will affect all institutions subject to the advanced approaches regulations and their subsidiaries. The FDIC supervises two institutions that are subsidiaries of advanced approaches institutions and have $550 million or less in total assets.[51] However, neither institution is considered a small entity for the purposes of RFA since they are owned by holding companies with over $550 million in total assets. Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

[43] 12 U.S.C. 3901–3911.

[44] 12 U.S.C. 1831o.

[45] 12 U.S.C. 3907(a)(1).

[46] 12 U.S.C. 1831o(c)(2).

[47] *See, e.g.,* sections 165 and 171 of the Dodd-Frank Act (12 U.S.C. 5365 and 12 U.S.C. 5371). Public Law 111–203, 124 Stat. 1376 (2010).

[48] 5 U.S.C. 601 *et seq.*

[49] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[50] Call Report data, March 2018.

[51] Call Report data, March 2018.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[52] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

• Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?

• Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?

• Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?

• Would more, but shorter, sections be better? If so, which sections should be changed?''

• What other changes can the agencies incorporate to make the regulation easier to understand?

D. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year.[53] Accordingly, the OCC has not prepared a written statement to accompany this proposal.

[52] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[53] Based on available supervisory information, the OCC determined that no OCC-supervised advanced approaches institutions currently hold TLAC instruments. Thus, there would no cost of capital associated with the implementation of this proposal. The OCC estimates that, if implemented, non-mandated, but anticipated compliance costs associated with activities such as modifying procedures and internal audit would be less than $1 million.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[54] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[55]

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR part 3 as follows.

[54] 12 U.S.C. 4802(a).

[55] 12 U.S.C. 4802.

PART 3—CAPITAL ADEQUACY STANDARDS

■ 1. The authority citation for Part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Amend § 3.2 by:
■ a. Adding in alphabetical order the definitions of ''Covered debt instrument'' and ''Excluded covered debt instrument;''
■ b. Revising the definition of ''Indirect exposure;''
■ c. Adding in alphabetical order the definition of ''Investment in a covered debt instrument;'' and
■ d. Revising the definitions of ''Investment in the capital of an unconsolidated financial institution'' and ''Synthetic exposure''.

The additions and revisions read as follows:

§ 3.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Issued by a global systemically important BHC, as defined in 12 CFR 217.2, and that is an eligible debt security, as defined in 12 CFR 252.61, or that is *pari passu* or subordinated to any eligible debt security issued by the global systemically important BHC; or

(2) Issued by a Covered IHC, as defined in 12 CFR 252.161, and that is an eligible Covered IHC debt security, as defined in 12 CFR 252.161, or that is *pari passu* or subordinated to any eligible Covered IHC debt security issued by the Covered IHC; or,

(3) Issued by a global systemically important banking organization, as defined in 12 CFR 252.2 other than a global systemically important BHC, as defined in 12 CFR 217.2; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a Covered IHC, as defined in 12 CFR 252.161; and where,

(i) The instrument has the purpose of absorbing losses or recapitalizing the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is *pari passu* or subordinated to any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, covered debt instrument does not include a debt instrument that qualifies as tier 2 capital pursuant to 12

CFR 217.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

Excluded covered debt instrument means a covered debt instrument held by a national bank or Federal savings association that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, for 30 business days or less for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

* * * * *

Indirect exposure means an exposure that arises from the national bank's or Federal savings association's investment in an investment fund which holds an investment in the national bank's or Federal savings association's own capital instrument, or an investment in the capital of an unconsolidated financial institution. For an advanced approaches national bank or Federal savings association, indirect exposure also includes an investment in an investment fund that holds a covered debt instrument.

* * * * *

Investment in a covered debt instrument means a national bank's or Federal savings association's net long position calculated in accordance with § 3.22(h) in a covered debt instrument, including direct, indirect, and synthetic exposures to the debt instrument, excluding any underwriting positions held by the national bank or Federal savings association for five or fewer business days.

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 3.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the national bank or Federal savings association for five or fewer business days.

* * * * *

Synthetic exposure means an exposure whose value is linked to the value of an investment in the national bank or Federal savings association's own capital instrument or to the value of an investment in the capital of an unconsolidated financial institution. For an advanced approaches national bank or Federal savings association, synthetic exposure includes an exposure whose value is linked to the value of an investment in a covered debt instrument.

* * * * *

■ 3. In § 3.22, revise paragraphs (c), (f), and (h) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments or covered debt instruments*[23]—(1) *Investment in the national bank's or Federal savings association's own capital instruments.* A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own capital instruments, as follows:

(i) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 3.20(b)(1);

(ii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), non-significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(4) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(5) of this section). Under the corresponding deduction approach, a national bank or Federal savings association must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the national bank or Federal savings association itself, as described in paragraphs (c)(2)(i) through (iii) of this section. If the national bank or Federal savings association does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in a liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § 3.20, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders;

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution; and

(D) For an advanced approaches national bank or Federal savings association, a tier 2 capital instrument if it is a covered debt instrument.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 3.300(c)), the national bank or Federal savings association must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

[23] The national bank or Federal savings association must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under § 3.20(d)(3).

(3) *Reciprocal cross-holdings in the capital of financial institutions.* (i) A national bank or Federal savings association must deduct an investment in the capital of another financial institution that the national bank or Federal savings association holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(ii) An advanced approaches national bank or Federal savings association must deduct an investment in any covered debt instrument that the institution holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital or covered debt instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(4) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 3.2) that, in the aggregate, exceed 10 percent of the sum of the national bank or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[24] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, a national bank or Federal savings association that underwrites a failed underwriting, for the period of time stipulated by the OCC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution.[25]

(ii) An advanced approaches national bank or Federal savings association must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 3.2) that, in the aggregate and together with any investment in a covered debt instrument (as defined in § 3.2) issued by a financial institution in which the national bank or Federal savings association does not have a significant investment in the capital of the unconsolidated financial institution (as defined in § 3.2), exceeds 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[26] The deductions described in this paragraph are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting, for the period of time stipulated by the OCC, is not required to deduct from capital a non-significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph (c)(4) to the extent the investment is related to the failed underwriting.[27] For any calculation under this paragraph (c)(4)(ii), an advanced approaches national bank or Federal savings association may exclude the amount of an investment in a covered debt instrument under paragraphs (c)(4)(iv) or (c)(4)(v) of this section, as applicable.

(iii)(A) The amount to be deducted under this section from a specific capital component by a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is equal to:

(*1*) The national bank's or Federal savings association's aggregate non-significant investments in the capital of an unconsolidated financial institution exceeding the 10 percent threshold for non-significant investments, multiplied by

(*2*) The ratio of the national bank's or Federal savings association's aggregate non-significant investments in the capital of unconsolidated financial institutions (in the form of such capital component) to the national bank's or Federal savings association's total non-significant investments in unconsolidated financial institutions.

(B) For an advanced approaches national bank or Federal savings association, the amount to be deducted under this section from a specific capital component is equal to:

(*1*) The national bank's or Federal savings association's aggregate non-significant investments in the capital of an unconsolidated financial institution and, if applicable, any investments in a covered debt instrument subject to deduction under this paragraph (c)(4), exceeding the 10 percent threshold for non-significant investments, multiplied by

(*2*) The ratio of the national bank's or Federal savings association's aggregate non-significant investments in the capital of an unconsolidated financial institution (in the form of such capital component) to the national bank's or Federal savings association's total non-significant investments in unconsolidated financial institutions, with an investment in a covered debt instrument being treated as tier 2 capital for this purpose.

(iv) For purposes of applying the deduction under paragraph (c)(4)(ii) of this section, an advanced approaches national bank or Federal savings association that is not a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must only include the amount of investments in covered debt instruments issued by financial institutions in which the national bank or Federal savings association does not have a significant investment in the capital of the unconsolidated financial institutions to the extent that the

[24] With the prior written approval of the OCC, for the period of time stipulated by the OCC, a national bank or Federal savings association is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

[25] Any non-significant investments in the capital of an unconsolidated financial institution that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

[26] With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches a national bank or Federal savings association is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

[27] Any non-significant investment in the capital of an unconsolidated financial institution or any investment in a covered debt instrument that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

national bank's or Federal savings association's gross long position, in accordance with § 3.22(h)(2), in such covered debt instruments exceeds 5 percent of the common equity tier 1 capital of the national bank or Federal savings association.

(v) Prior to applying the deduction under paragraph (c)(4)(ii):

(A) A national bank or Federal savings association that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, may designate any investment in a covered debt instrument as an excluded covered debt instrument, as defined in § 3.2.

(B) A national bank or Federal savings association that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must deduct according to the corresponding deduction approach the amount of any investment in a covered debt instrument that was originally designated as an excluded covered debt instrument, in accordance with paragraph (c)(4)(iv)(A) above, but is no longer held for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

(C) A national bank or Federal savings association that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must deduct according to the corresponding deduction approach the amount of any investment in a covered debt instrument that was originally designated as an excluded covered debt instrument, in accordance with paragraph (c)(4)(iv)(A) of this section, and has been held for more than thirty business days.

(D) A national bank or Federal savings association that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must deduct according to the corresponding deduction approach the amount, measured on a gross long basis in accordance with § 3.22(h)(2), of its aggregate investment in excluded covered debt instruments that exceeds 5 percent of the national bank's or Federal savings association's common equity tier 1 capital.

(5) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* (i) If a national bank or Federal savings association has a significant investment in the capital of an unconsolidated financial institution, the national bank or Federal savings association must deduct from capital any such investment issued by the unconsolidated financial institution that is held by the institution other than an investment in the form of common stock by applying the corresponding deduction approach in paragraph (c)(2) of this section.[28] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, a national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution or an investment in covered debt instruments pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(ii) If an advanced approaches national bank or Federal savings association has a significant investment in the capital of an unconsolidated financial institution and has an investment in a covered debt instrument issued by the unconsolidated financial institution, the national bank or Federal savings association must also deduct its investment in the covered debt instrument by applying the corresponding deduction approach in paragraph (c)(2) of this section.[29] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct the investment in the covered debt instrument pursuant to this paragraph (c)(5) if such investment is related to such failed underwriting.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a national bank or Federal savings association does not have a sufficient amount of a specific component of capital to effect the full amount of any deduction from capital required under paragraph (d) of this section, the national bank or Federal savings association must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital. Any investment by an advanced approaches national bank or Federal savings association in a covered debt instrument must be treated as an investment in the tier 2 capital for purposes of this paragraph when applied to the capital ratio calculations in section 3.10(c).

* * * * *

(h) *Net long position.* (1) For purposes of calculating the amount of a national bank's or Federal savings association's investment in the national bank's or Federal savings association's own capital instrument, investment in the capital of an unconsolidated financial institution, and investment in a covered debt instrument, the institution's net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize any short position by the national bank or Federal savings association in the same instrument subject to paragraph (h)(3) of this section.

(2) *Gross long position.* A gross long position is determined as follows:

(i) For an equity exposure that is held directly by the national bank or Federal savings association, the adjusted carrying value of the exposure as that term is defined in § 3.51(b);

(ii) For an exposure that is held directly and that is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 3.2;

(iii) For each indirect exposure, the national bank's or Federal savings association's carrying value of its investment in an investment fund or, alternatively:

(A) A national bank or Federal savings association may, with the prior approval of the OCC, use a conservative estimate of the amount of its investment in the national bank's or Federal savings association's own capital instruments, its indirect investment in the capital of an unconsolidated financial institution, or its indirect investment in a covered debt instrument held through a position in an index, as applicable; or

(B) A national bank or Federal savings association may calculate the gross long position for an indirect exposure by multiplying the national bank's or Federal savings association's carrying

[28] With prior written approval of the OCC, for the period of time stipulated by the OCC, a national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution under this paragraph (c)(5) or otherwise under this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

[29] With prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct an investment in a covered debt instrument under this paragraph (c)(5) or otherwise under this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for an investment in the national bank's or Federal savings association's own capital instruments, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument, as applicable, as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of the investment in the national bank's or Federal savings association's own capital instruments, investment in the capital of an unconsolidated financial institution, or investment in an covered debt instrument, as applicable; and

(iv) For a synthetic exposure, the amount of the national bank's or Federal savings association's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position must have a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the national bank's or Federal savings association's Call Report, if the national bank or Federal savings association has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the national bank or Federal savings association exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in a national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4), (c)(5), and (d)(1)(iii) of this section, and an investment in a covered debt instrument under paragraphs (c)(4) and (c)(5) of this section:

(A) The national bank or Federal savings association may only net a short position against a long position in an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk;

(B) A gross long position in an investment in the national bank's or Federal savings association's own capital instrument, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument due to a position in an index may be netted against a short position in the same index;

(C) Long and short positions in the same index without maturity dates are considered to have matching maturities; and

(D) A short position in an index that is hedging a long cash or synthetic position in an investment in the national bank's or Federal savings association's own capital instrument, an investment in the capital instrument of an unconsolidated financial institution, or an investment in a covered debt instrument can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the national bank's or Federal savings association's Call Report, and the hedge is deemed effective by the national bank's or Federal savings association's internal control processes, which have not been found to be inadequate by the OCC.

* * * * *

Board of Governors of the Federal Reserve System

For the reasons set forth in the joint preamble, the Board proposes to amend part 217 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q).

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. Amend § 217.2 by:

■ a. Adding in alphabetical order the definitions of ''Covered debt instrument'' and ''Excluded covered debt instrument;''

■ b. Revising the definition of ''Indirect exposure;''

■ c. Adding in alphabetical order the definition of ''Investment in a covered debt instrument;'' and

■ d. Revising the definitions of ''Investment in the capital of an unconsolidated financial institution'' and ''Synthetic exposure''.

The additions and revisions to read as follows:

§ 217.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Issued by a global systemically important BHC and that is an eligible debt security, as defined in 12 CFR 252.61, or that is *pari passu* or subordinated to any eligible debt security issued by the global systemically important BHC; or

(2) Issued by a Covered IHC, as defined in 12 CFR 252.161, and that is an eligible Covered IHC debt security, as defined in 12 CFR 252.161, or that is *pari passu* or subordinated to any eligible Covered IHC debt security issued by the Covered IHC; or

(3) Issued by a global systemically important banking organization, as defined in 12 CFR 252.2 other than a global systemically important BHC; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a Covered IHC, as defined in 12 CFR 252.161; and where,

(i) The instrument has the purpose of absorbing losses or recapitalizing the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is *pari passu* or subordinated to any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, covered debt instrument does not include a debt instrument that qualifies as tier 2 capital pursuant to 12 CFR 217.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

Excluded covered debt instrument means a covered debt instrument held by a global systemically important BHC or a Board-regulated institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2 for 30 business days or less for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

* * * * *

Indirect exposure means an exposure that arises from the Board-regulated institution's investment in an investment fund which holds an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution. For an advanced approaches Board-regulated institution, indirect exposure also includes an investment in an investment fund that holds a covered debt instrument.

* * * * *

Investment in a covered debt instrument means a Board-regulated institution's net long position calculated in accordance with § 217.22(h) in a covered debt instrument, including direct, indirect, and synthetic exposures to the debt instrument, excluding any underwriting positions held by the Board-regulated institution for five or fewer business days.

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 217.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the Board-regulated institution for five or fewer business days.

* * * * *

Synthetic exposure means an exposure whose value is linked to the value of an investment in the Board-regulated institution's own capital instrument or to the value of an investment in the capital of an unconsolidated financial institution. For an advanced approaches Board-regulated institution, synthetic exposure includes an exposure whose value is linked to the value of an investment in a covered debt instrument.

* * * * *

■ 3. In § 217.22, re-designate footnote 28 as footnote 30 in paragraph (d)(2) and revise paragraphs (c), (f), and (h) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments or covered debt instruments* [23]—(1) *Investment in the Board-regulated institution's own capital or covered debt instruments.* A Board-regulated institution must deduct an investment in the Board-regulated institution's own capital instruments, and an advanced approaches Board-regulated institution also must deduct an investment in the Board-regulated institution's own covered debt instruments, as follows:

[23] The Board-regulated institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under §217.20(d)(3).

(i) A Board-regulated institution must deduct an investment in the Board-regulated institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 217.20(b)(1);

(ii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own additional tier 1 capital instruments from its additional tier 1 capital elements;

(iii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own tier 2 capital instruments from its tier 2 capital elements; and

(iv) An advanced approaches Board-regulated institution must deduct an investment in the institution's own covered debt instruments from its tier 2 capital elements. If the advanced approaches Board-regulated institution does not have a sufficient amount of tier 2 capital to effect this deduction, the institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), non-significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(4) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(5) of this section). Under the corresponding deduction approach, a Board-regulated institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the Board-regulated institution itself, as described in paragraphs (c)(2)(i) through (iii) of this section. If the Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in a liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § 217.20, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders;

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution; and

(D) For an advanced approaches Board-regulated institution, a tier 2 capital instrument if it is a covered debt instrument.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 217.300(c)), the Board-regulated institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross-holdings in the capital of financial institutions.*

(i) A Board-regulated institution must deduct an investment in the capital of another financial institution that the Board-regulated institution holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(ii) An advanced approaches Board-regulated institution must deduct an investment in any covered debt instrument that the institution holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital or covered debt instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(4) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) A Board-regulated institution that is not an advanced approaches Board-regulated institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 217.2) that, in the aggregate, exceed 10 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[24] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, a Board-regulated institution that underwrites a failed underwriting, for the period of time stipulated by the Board, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution.[25]

[24] With the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

[25] Any non-significant investments in the capital of an unconsolidated financial institution that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(ii) An advanced approaches Board-regulated institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 217.2) that, in the aggregate and together with any investment in a covered debt instrument (as defined in § 217.2) issued by a financial institution in which the Board-regulated institution does not have a significant investment in the capital of the unconsolidated financial institution (as defined in § 217.2), exceeds 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[26] The deductions described in this paragraph are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting, for the period of time stipulated by the Board, is not required to deduct from capital a non-significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph (c)(4) to the extent the investment is related to the failed underwriting.[27] For any calculation under paragraph (c)(4)(ii) of this section, an advanced approaches Board-regulated institution may exclude the amount of an investment in a covered debt instrument under paragraphs (c)(4)(iv) or (c)(4)(v) of this section, as applicable.

[26] With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

[27] Any non-significant investment in the capital of an unconsolidated financial institution or any investment in a covered debt instrument that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(iii)(A) The amount to be deducted under this section from a specific capital component by a Board-regulated institution that is not an advanced approaches Board-regulated institution is equal to:

(*1*) The Board-regulated institution's aggregate non-significant investments in the capital of an unconsolidated financial institution exceeding the 10 percent threshold for non-significant investments, multiplied by

(*2*) The ratio of the Board-regulated institution's aggregate non-significant investments in the capital of unconsolidated financial institutions (in the form of such capital component) to the Board-regulated institution's total non-significant investments in unconsolidated financial institutions.

(B) For an advanced approaches Board-regulated institution, the amount to be deducted under this section from a specific capital component is equal to:

(*1*) The Board-regulated institution's aggregate non-significant investments in the capital of an unconsolidated financial institution and, if applicable, any investments in a covered debt instrument subject to deduction under this paragraph (c)(4), exceeding the 10 percent threshold for non-significant investments, multiplied by

(*2*) The ratio of the Board-regulated institution's aggregate non-significant investments in the capital of an unconsolidated financial institution (in the form of such capital component) to the Board-regulated institution's total non-significant investments in unconsolidated financial institutions, with an investment in a covered debt instrument being treated as tier 2 capital for this purpose.

(iv) For purposes of applying the deduction under paragraph (c)(4)(ii) of this section, an advanced approaches Board-regulated institution that is not a global systemically important BHC or a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2 must only include the amount of investments in covered debt instruments issued by financial institutions in which the Board-regulated institution does not have a significant investment in the capital of the unconsolidated financial institutions to the extent that the Board-regulated institution's gross long position, in accordance with

§ 217.22(h)(2), in such covered debt instruments exceeds 5 percent of the common equity tier 1 capital of the Board-regulated institution.

(v) Prior to applying the deduction under paragraph (c)(4)(ii) of this section:

(A) A global systemically important BHC or a Board-regulated institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2 may designate any investment in a covered debt instrument as an excluded covered debt instrument, as defined in § 217.2.

(B) A global systemically important BHC or a Board-regulated institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2 must deduct according to the corresponding deduction approach the amount of any investment in a covered debt instrument that was originally designated as an excluded covered debt instrument, in accordance with paragraph (c)(4)(iv)(A) of this section, but is no longer held for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

(C) A global systemically important BHC or a Board-regulated institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2 must deduct according to the corresponding deduction approach the amount of any investment in a covered debt instrument that was originally designated as an excluded covered debt instrument, in accordance with paragraph (c)(4)(iv)(A) of this section, and has been held for more than thirty business days.

(D) A global systemically important BHC or a Board-regulated institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2 must deduct according to the corresponding deduction approach the amount, measured on a gross long basis in accordance with § 217.22(h)(2), of its aggregate investment in excluded covered debt instruments that exceeds 5 percent of the Board-regulated institution's common equity tier 1 capital.

(5) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* (i) If a Board-regulated institution has a significant investment in the capital of an unconsolidated financial institution, the Board-regulated institution must deduct from capital any such investment issued by the unconsolidated financial institution that is held by the institution other than an investment in the form of common stock by applying the corresponding deduction approach in paragraph (c)(2) of this section.[28] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution or an investment in covered debt instruments pursuant to this paragraph (c) if such investment is related to such failed underwriting.

[28] With prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution under this paragraph (c)(5) or otherwise under this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

(ii) If an advanced approaches Board-regulated institution has a significant investment in the capital of an unconsolidated financial institution and has an investment in a covered debt instrument issued by the unconsolidated financial institution, the Board-regulated institution must also deduct its investment in the covered debt instrument by applying the corresponding deduction approach in paragraph (c)(2) of this section.[29] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct the investment in the covered debt instrument pursuant to this paragraph (c)(5) if such investment is related to such failed underwriting.

[29] With prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct an investment in a covered debt instrument under this paragraph (c)(5) or otherwise under this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the full amount of any deduction from capital required under paragraph (d) of this section, the Board-regulated institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital. Any investment by an advanced approaches Board-regulated institution in a covered debt instrument must be treated as an investment in the tier 2 capital for purposes of this paragraph when applied to the capital ratio calculations in section 217.10(c).

* * * * *

(h) *Net long position.* (1) For purposes of calculating the amount of a Board-regulated institution's investment in the Board regulated institution's own capital instrument, investment in the capital of an unconsolidated financial institution, and investment in a covered debt instrument, the institution's net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize any short position by the Board-regulated institution in the same instrument subject to paragraph (h)(3) of this section.

(2) *Gross long position.* A gross long position is determined as follows:

(i) For an equity exposure that is held directly by the Board-regulated institution, the adjusted carrying value of the exposure as that term is defined in § 217.51(b);

(ii) For an exposure that is held directly and that is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 217.2;

(iii) For each indirect exposure, the Board-regulated institution's carrying value of its investment in an investment fund or, alternatively:

(A) A Board-regulated institution may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the Board-regulated institution's own capital instruments, its indirect investment in the capital of an unconsolidated financial institution, or its indirect investment in a covered debt instrument held through a position in an index, as applicable; or

(B) A Board-regulated institution may calculate the gross long position for an indirect exposure by multiplying the Board-regulated institution's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for an investment in the Board-regulated institution's own capital instruments, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument, as applicable, as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of the investment in the Board-regulated institution's own capital instruments, investment in the capital of an unconsolidated financial institution, or investment in an covered debt instrument, as applicable; and

(iv) For a synthetic exposure, the amount of the Board-regulated institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position must have a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company, savings and loan holding company, or intermediate holding company, as applicable, if the Board-regulated institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the Board-regulated institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in a Board-regulated institution's own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4), (c)(5), and (d)(1)(iii) of this section, and an investment in a covered debt instrument under paragraphs (c)(1), (c)(4), and (c)(5) of this section:

(A) The Board-regulated institution may only net a short position against a long position in an investment in the Board-regulated institution's own capital instrument or own covered debt instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk;

(B) A gross long position in an investment in the Board-regulated institution's own capital instrument, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument due to a position in an index may be netted against a short position in the same index;

(C) Long and short positions in the same index without maturity dates are considered to have matching maturities; and

(D) A short position in an index that is hedging a long cash or synthetic position in an investment in the Board-regulated institution's own capital instrument, an investment in the capital instrument of an unconsolidated financial institution, or an investment in a covered debt instrument can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company, savings and loan holding company, or intermediate holding company, as applicable, and the hedge is deemed effective by the Board-regulated institution's internal control processes, which have not been found to be inadequate by the Board.

* * * * *

12 CFR Part 324

Federal Deposit Insurance Corporation

For the reasons set out in the joint preamble, the FDIC proposes to amend 12 CFR part 324 as follows.

PART 324—CAPITAL ADEQUACY OF FDIC—SUPERVISED INSTITUTIONS

* * * * *

12 CFR Part 324 Authority and Issuance

For the reasons set out in the joint preamble, the FDIC proposes to amend 12 CFR part 324 as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 2. In § 324.2:

■ a. Add in alphabetical order the definitions of ''Covered debt instrument'' and ''Excluded covered debt instrument;''

■ b. Revise the definition of ''Indirect exposure'';

■ c. Add in alphabetical order the definition of ''Investment in a covered debt instrument'';

■ d. Revise the definitions of ''Investment in the capital of an unconsolidated financial institution'' and ''Synthetic exposure''.

The additions and revisions read as follows:

§ 324.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt instrument that is:

(1) Issued by a global systemically important BHC, as defined in 12 CFR 217.2, and that is an eligible debt security, as defined in 12 CFR 252.61, or that is *pari passu* or subordinated to any eligible debt security issued by the global systemically important BHC; or

(2) Issued by a Covered IHC, as defined in 12 CFR 252.161, and that is an eligible Covered IHC debt security, as defined in 12 CFR 252.161, or that is *pari passu* or subordinated to any eligible Covered IHC debt security issued by the Covered IHC; or

(3) Issued by a global systemically important banking organization, as defined in 12 CFR 252.2 other than a global systemically important BHC, as defined in 12 CFR 217.2; or issued by a subsidiary of a global systemically important banking organization that is not a global systemically important BHC, other than a Covered IHC, as defined in 12 CFR 252.161; and where,

(i) The instrument has the purpose of absorbing losses or recapitalizing the issuer or any of its subsidiaries in connection with a resolution, receivership, insolvency or similar proceeding of the issuer or any of its subsidiaries; or

(ii) The instrument is *pari passu* or subordinated to any instrument described in paragraph (3)(i) of this definition; and

(4) Provided that, for purposes of this definition, covered debt instrument

does not include a debt instrument that qualifies as tier 2 capital pursuant to 12 CFR 217.20(d) or that is otherwise treated as regulatory capital by the primary supervisor of the issuer.

* * * * *

Excluded covered debt instrument means a covered debt instrument held by an FDIC-supervised institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, for 30 business days or less for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

* * * * *

Indirect exposure means an exposure that arises from the FDIC-supervised institution's investment in an investment fund which holds an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution. For an advanced approaches FDIC-supervised institution, indirect exposure also includes an investment in an investment fund that holds a covered debt instrument.

* * * * *

Investment in a covered debt instrument means an FDIC-supervised institution's net long position calculated in accordance with § 324.22(h) in a covered debt instrument, including direct, indirect, and synthetic exposures to the debt instrument, excluding any underwriting positions held by the FDIC-supervised institution for five or fewer business days.

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 324.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the FDIC-supervised institution for five or fewer business days.

* * * * *

Synthetic exposure means an exposure whose value is linked to the value of an investment in the FDIC-supervised institution's own capital instrument or to the value of an investment in the capital of an unconsolidated financial institution. For an advanced approaches FDIC-supervised institution, synthetic exposure includes an exposure whose value is linked to the value of an investment in a covered debt instrument.

* * * * *

■ 3. Amend § 324.22 by re-designating footnotes 27 and 28 in paragraph (d) as footnotes 30 and 31, and revising paragraphs (c) (f), and (h) to read as follows.

§ 324.22 Regulatory capital adjustments and deductions.

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments or covered debt instruments*[23]—(1) *Investment in the FDIC-supervised institution's own capital instruments.* An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own capital instruments, as follows:

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), non-significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(4) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(5) of this section). Under the corresponding deduction approach, an FDIC-supervised institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the FDIC-supervised institution itself, as described in paragraphs (c)(2)(i) through (iii) of this section. If the FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in a liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § 324.20, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders;

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution; and

(D) For an advanced approaches FDIC-supervised institution, a tier 2 capital instrument if it is a covered debt instrument.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 324.300(c)), the FDIC-supervised institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross-holdings in the capital of financial institutions.* (i) An

[23] The FDIC-supervised institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under § 324.20(d)(3).

FDIC-supervised institution must deduct an investment in the capital of another financial institution that the FDIC-supervised institution holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(ii) An advanced approaches FDIC-supervised institution must deduct an investment in any covered debt instrument that the institution holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital or covered debt instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(4) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that, in the aggregate, exceed 10 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[24] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, an FDIC-supervised institution that underwrites a failed underwriting, for the period of time stipulated by the FDIC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution.[25]

(ii) An advanced approaches FDIC-supervised institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that, in the aggregate and together with any investment in a covered debt instrument (as defined in § 324.2) issued by a financial institution in which the FDIC-supervised institution does not have a significant investment in the capital of the unconsolidated financial institution (as defined in § 324.2), exceeds 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[26] The deductions described in this paragraph are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting, for the period of time stipulated by the FDIC, is not required to deduct from capital a non-significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph (c)(4) to the extent the investment is related to the failed underwriting.[27] For any calculation under this paragraph (c)(4)(ii), an advanced approaches FDIC-supervised institution may exclude the amount of an investment in a covered debt instrument under paragraphs (c)(4)(iv) or (c)(4)(v) of this section, as applicable.

(iii)(A) The amount to be deducted under this section from a specific capital component by an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is equal to:

(*1*) The FDIC-supervised institution's aggregate non-significant investments in the capital of an unconsolidated financial institution exceeding the 10 percent threshold for non-significant investments, multiplied by

(*2*) The ratio of the FDIC-supervised institution's aggregate non-significant investments in the capital of unconsolidated financial institutions (in the form of such capital component) to the FDIC-supervised institution's total non-significant investments in unconsolidated financial institutions.

(B) For an advanced approaches FDIC-supervised institution, the amount to be deducted under this section from a specific capital component is equal to:

(*1*) The FDIC-supervised institution's aggregate non-significant investments in the capital of an unconsolidated financial institution and, if applicable, any investments in a covered debt instrument subject to deduction under this paragraph (c)(4), exceeding the 10 percent threshold for non-significant investments, multiplied by

(*2*) The ratio of the FDIC-supervised institution's aggregate non-significant investments in the capital of an unconsolidated financial institution (in the form of such capital component) to the FDIC-supervised institution's total non-significant investments in unconsolidated financial institutions, with an investment in a covered debt instrument being treated as tier 2 capital for this purpose.

(iv) For purposes of applying the deduction under paragraph (c)(4)(ii), an advanced approaches FDIC-supervised institution that is not a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must only include the amount of investments in covered debt instruments issued by financial institutions in which the FDIC-supervised institution does not have a significant investment in the capital of the unconsolidated financial institutions to the extent that the FDIC-supervised institution's gross long position, in accordance with § 324.22(h)(2), in such covered debt instruments exceeds 5 percent of the common equity tier 1 capital of the FDIC-supervised institution.

(v) Prior to applying the deduction under paragraph (c)(4)(ii):

(A) An FDIC-supervised institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, may designate any investment in a covered debt instrument as an

[24] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution is not required to deduct a non-significant investment in the captial instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

[25] Any non-significant investments in the captial of an unconsolidated financial institution that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

[26] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

[27] Any non-significant investment in the capital of an unconsolidated financial institution or any investment in a covered debt instrument that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

excluded covered debt instrument, as defined in § 324.2.

(B) An FDIC-supervised institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must deduct according to the corresponding deduction approach the amount of any investment in a covered debt instrument that was originally designated as an excluded covered debt instrument, in accordance with paragraph (c)(4)(iv)(A) of this section, but is no longer held for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits.

(C) An FDIC-supervised institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must deduct according to the corresponding deduction approach the amount of any investment in a covered debt instrument that was originally designated as an excluded covered debt instrument, in accordance with paragraph (c)(4)(iv)(A) above, and has been held for more than thirty business days.

(D) An FDIC-supervised institution that is a subsidiary of a global systemically important banking organization, as defined in 12 CFR 252.2, must deduct according to the corresponding deduction approach the amount, measured on a gross long basis in accordance with § 324.22(h)(2), of its aggregate investment in excluded covered debt instruments that exceeds 5 percent of the FDIC-supervised institution's common equity tier 1 capital.

(5) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* (i) If an FDIC-supervised institution has a significant investment in the capital of an unconsolidated financial institution, the FDIC-supervised institution must deduct from capital any such investment issued by the unconsolidated financial institution that is held by the institution other than an investment in the form of common stock by applying the corresponding deduction approach in paragraph (c)(2) of this section.[28] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution or an investment in covered debt instruments pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(ii) If an advanced approaches FDIC-supervised institution has a significant investment in the capital of an unconsolidated financial institution and has an investment in a covered debt instrument issued by the unconsolidated financial institution, the FDIC-supervised institution must also deduct its investment in the covered debt instrument by applying the corresponding deduction approach in paragraph (c)(2) of this section.[29] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct the investment in the covered debt instrument pursuant to this paragraph (c)(5) if such investment is related to such failed underwriting.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if an FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the full amount of any deduction from capital required under paragraph (d) of this section, the FDIC-supervised institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital. Any investment by an advanced approaches FDIC-supervised institution in a covered debt instrument must be treated as an investment in the tier 2 capital for purposes of this paragraph when applied to the capital ratio calculations in section 324.10(c).

* * * * *

(h) *Net long position.* (1) For purposes of calculating the amount of an FDIC-supervised institution's investment in the FDIC-supervised institution's own capital instrument, investment in the capital of an unconsolidated financial institution, and investment in a covered debt instrument, the institution's net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize any short position by the FDIC-supervised institution in the same instrument subject to paragraph (h)(3) of this section.

(2) *Gross long position.* A gross long position is determined as follows:

(i) For an equity exposure that is held directly by the FDIC-supervised institution, the adjusted carrying value of the exposure as that term is defined in § 324.51(b);

(ii) For an exposure that is held directly and that is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 324.2;

(iii) For each indirect exposure, the FDIC-supervised institution's carrying value of its investment in an investment fund or, alternatively:

(A) An FDIC-supervised institution may, with the prior approval of the FDIC, use a conservative estimate of the amount of its investment in the FDIC-supervised institution's own capital instruments, its indirect investment in the capital of an unconsolidated financial institution, or its indirect investment in a covered debt instrument held through a position in an index, as applicable; or

(B) An FDIC-supervised institution may calculate the gross long position for an indirect exposure by multiplying the FDIC-supervised institution's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for an investment in the FDIC-supervised institution's own capital instruments, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument, as applicable, as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of the investment in the FDIC-supervised institution's own capital instruments, investment in the capital of an unconsolidated financial institution, or investment in an covered debt instrument, as applicable; and

(iv) For a synthetic exposure, the amount of the FDIC-supervised

[28] With prior written approval of the FDIC, for the period of time stipulated by the FDIC, and FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution under this paragraph (c)(5) or otherwise under this ssection if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

[29] With prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct an investment in a covered debt instrument under this paragraph (c)(5) or otherwise under this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position must have a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the FDIC-supervised institution's Call Report, if the FDIC-supervised institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the FDIC-supervised institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in an FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section, an investment in the capital of an unconsolidated financial institution under paragraphs (c)(4), (c)(5), and (d)(1)(iii) of this section, and an investment in a covered debt instrument under paragraphs (c)(4) and (c)(5) of this section:

(A) The FDIC-supervised institution may only net a short position against a long position in an investment in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk;

(B) A gross long position in an investment in the FDIC-supervised institution's own capital instrument, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument due to a position in an index may be netted against a short position in the same index;

(C) Long and short positions in the same index without maturity dates are considered to have matching maturities; and

(D) A short position in an index that is hedging a long cash or synthetic position in an investment in the FDIC-supervised institution's own capital instrument, an investment in the capital instrument of an unconsolidated financial institution, or an investment in a covered debt instrument can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the FDIC-supervised institution's Call Report, and the hedge is deemed effective by the FDIC-supervised institution's internal control processes, which have not been found to be inadequate by the FDIC.

* * * * *

Dated: September 11, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 22, 2019.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC on September 19, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–06344 Filed 4–5–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0772; Notice No. 25–19–01–SC]

Special Conditions: Embraer EMB–550 Airplane; Flight Envelope Protection: Normal Load Factor (g) Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes an amendment to special conditions for the Embraer EMB–550 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is associated with an electronic flight control system that prevents the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before April 29, 2019.

ADDRESSES: Send comments identified by Docket No. FAA–2013–0772 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Airplane & Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3158; email *joe.jacobsen@faa.gov.*

SUPPLEMENTARY INFORMATION: