DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

[Docket ID OCC–2013–0016]

RIN 1557–AD74

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulation WW; Docket No. R–1466]

RIN 7100–AE03

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AE04

Liquidity Coverage Ratio: Liquidity Risk Measurement Standards

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

ACTION: Final rule.

SUMMARY: 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) are adopting a final rule that implements a quantitative liquidity requirement consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision (BCBS). The requirement is designed to promote the short-term resilience of the liquidity risk profile of large and internationally active banking organizations, thereby improving the banking sector's ability to absorb shocks arising from financial and economic stress, and to further improve the measurement and management of liquidity risk. The final rule establishes a quantitative minimum liquidity coverage ratio that requires a company subject to the rule to maintain an amount of high-quality liquid assets (the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator of the ratio). The final rule applies to large and internationally active banking organizations, generally, bank holding companies, certain savings and loan holding companies, and depository institutions with $250 billion or more in total assets or $10 billion or more in on-balance sheet foreign exposure and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. The final rule focuses on these financial institutions because of their complexity, funding profiles, and potential risk to the financial system. Therefore, the agencies do not intend to apply the final rule to community banks. In addition, the Board is separately adopting a modified minimum liquidity coverage ratio requirement for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have $50 billion or more in total consolidated assets but that are not internationally active. The final rule is effective January 1, 2015, with transition periods for compliance with the requirements of the rule.

DATES: *Effective Date:* January 1, 2015. Comments must be submitted on the Paperwork Reduction Act burden estimates only by December 9, 2014.

ADDRESSES: You may submit comments on the Paperwork Reduction Act burden estimates only. Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0323, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy 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. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

For further information or to obtain a copy of the collection please contact Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

Board: You may submit comments, identified by Docket R–1466, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: regs.comments@federalreserve.gov.*
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, 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 Web site at *http://www.federalreserve.gov/generalinfo/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

A copy of the PRA OMB submission, including any reporting forms and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. Also, these documents may be requested from the agency clearance officer, whose name appears below.

For further information contact the Federal Reserve Board Acting Clearance Officer, John Schmidt, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: You may submit written comments by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: Comments@FDIC.gov.* Include ''Liquidity Coverage Ratio Final Rule'' on the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Executive Secretary Section, NYA–5046, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* 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.

- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/* including any personal information provided.

For further information or to request a copy of the collection please contact Gary Kuiper, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT:

OCC: Kerri Corn, Director, (202) 649–6398, or James Weinberger, Technical Expert, (202) 649–5213, Credit and Market Risk Division; Linda M. Jennings, National Bank Examiner, (980) 387–0619; Patrick T. Tierney, Assistant Director, or Tiffany Eng, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597; or Tena Alexander, Senior Counsel, or David Stankiewicz, Senior Attorney, Securities and Corporate Practices Division, (202) 649–5510; Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance Horsley, Assistant Director, (202) 452–5239, David Emmel, Manager, (202) 912–4612, Adam S. Trost, Senior Supervisory Financial Analyst, (202) 452–3814, or J. Kevin Littler, Senior Supervisory Financial Analyst, (202) 475–6677, Credit, Market and Liquidity Risk Policy, Division of Banking Supervision and Regulation; April C. Snyder, Senior Counsel, (202) 452–3099, Dafina Stewart, Senior Attorney, (202) 452–3876, Jahad Atieh, Attorney, (202) 452–3900, 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: Kyle Hadley, Chief, Examination Support Section, (202) 898–6532; Eric Schatten, Capital Markets Policy Analyst, (202) 898–7063, Capital Markets Branch Division of Risk Management Supervision, (202) 898–6888; Gregory Feder, Counsel, (202) 898–8724, or Suzanne Dawley, Senior Attorney, (202) 898–6509, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

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I. Overview

A. Background and Summary of the Proposed Rule

On November 29, 2013, 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) invited comment on a proposed rule (proposed rule or proposal) to implement a liquidity coverage ratio (LCR) requirement that would be consistent with the international liquidity standards published by the Basel Committee on Banking Supervision (BCBS).[1] The proposed rule would have applied to nonbank financial companies designated by the Financial Stability Oversight Council (Council) for supervision by the Board that do not have substantial insurance activities (covered nonbank companies), large, internationally active banking organizations, and their consolidated subsidiary depository institutions with total assets of $10 billion or more (each, a covered company).[2] The Board also proposed to implement a modified version of the liquidity coverage ratio requirement (modified LCR) as an enhanced prudential standard for bank holding companies and savings and loan holding companies with $50 billion or more in total consolidated assets that are not internationally active and do not have substantial insurance activities (each, a modified LCR holding company).

The BCBS published the international liquidity standards in December 2010 as a part of the Basel III reform package[3] and revised the standards in January 2013 (as revised, the Basel III Revised Liquidity Framework).[4] The agencies are actively involved in the BCBS and its international efforts, including the development of the Basel III Revised Liquidity Framework.

To devise the Basel III Revised Liquidity Framework, the BCBS gathered supervisory data from multiple jurisdictions, including a substantial amount of data related to U.S. financial institutions, which was reflective of a variety of time periods and types of historical liquidity stresses. These historical stresses included both idiosyncratic and systemic stresses across a range of financial institutions. The BCBS determined the LCR parameters based on a combination of historical data analysis and supervisory judgment.

The proposed rule would have established a quantitative minimum LCR requirement that builds upon the liquidity coverage methodologies traditionally used by banking organizations to assess exposures to contingent liquidity events. The

[1] The BCBS is a committee of banking supervisory authorities that was established by the central bank governors of the G10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OCC, Board, and FDIC actively participate in BCBS and its international efforts. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

[2] 78 FR 71818 (November 29, 2013).

[3] BCBS, ''Basel III: International framework for liquidity risk measurement, standards and monitoring'' (December 2010), available at *http://www.bis.org/publ/bcbs188.pdf* (Basel III Liquidity Framework).

[4] BCBS, ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013), available at *http://www.bis.org/publ/bcbs238.htm.*

proposed rule was designed to complement existing supervisory guidance and the requirements of the Board's Regulation YY (12 CFR part 252) on internal liquidity stress testing and liquidity risk management that the Board issued, in consultation with the OCC and the FDIC, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).[5] The proposed rule also would have established transition periods for conformance with the requirements.

The proposed LCR would have required a covered company to maintain an amount of unencumbered high-quality liquid assets (HQLA amount) sufficient to meet its total stressed net cash outflows over a prospective 30 calendar-day period, as calculated in accordance with the proposed rule. The proposed rule outlined certain categories of assets that would have qualified as high-quality liquid assets (HQLA) if they were unencumbered and able to be monetized during a period of stress. HQLA that are unencumbered and controlled by a covered company's liquidity risk management function would enhance the ability of a covered company to meet its liquidity needs during an acute short-term liquidity stress scenario. A covered company would have determined its total net cash outflow amount by applying the proposal's outflow and inflow rates, which reflected a standardized stress scenario, to the covered company's funding sources, obligations, and assets over a prospective 30 calendar-day period. The net cash outflow amount for modified LCR holding companies would have reflected a 21 calendar-day period. The proposed rule would have been generally consistent with the Basel III Revised Liquidity Framework; however, there were instances where the agencies believed supervisory or market conditions unique to the United States required the proposal to differ from the Basel III standard.

B. Summary of Comments on the Proposed Rule and Significant Comment Themes

Each of the agencies received over 100 comments on the proposal from U.S. and foreign firms, public officials (including state and local government officials and members of the U.S. Congress), public interest groups, private individuals, and other interested parties. In addition, agency staffs held a number of meetings with members of the public and obtained supplementary information from certain commenters. Summaries of these meetings are available on the agencies' public Web sites.[6]

Although many commenters generally supported the purpose of the proposed rule to create a standardized minimum liquidity requirement, most commenters either expressed concern regarding the proposal overall or criticized specific aspects of the proposed rule. The agencies received a number of comments regarding the differences between the proposed rule and the Basel III Revised Liquidity Framework, together with comments on the interaction of this proposal with other rulemakings issued by the agencies. Comments about differences between the proposed rule and the Basel III standard were mixed. Some commenters expressed support for the areas in which the proposed rule was more stringent than the Basel III Revised Liquidity Framework and others stated that having more conservative treatment for assessing the LCR could disadvantage the U.S. banking system. Commenters questioned whether the proposal should impose heightened standards compared to the Basel III Revised Liquidity Framework and requested that the final rule's calculation of the LCR conform to the Basel III standard in order to maintain consistency and comparability internationally. A commenter noted that the proposed rule would create a burden for those institutions required to comply with more than one liquidity standard throughout their global operations. Another commenter argued that the proposed rule's divergence from the Basel III Revised Liquidity Framework would make it more difficult to harmonize with global standards. Commenters also expressed concern about the interaction between the proposed rule and other proposed or recently finalized rules that affect a covered company's LCR, such as the agencies' supplementary leverage ratio[7] and the Commodity Futures Trading Commission's liquidity requirements for derivatives clearing organizations.[8]

Additionally, a few commenters expressed concerns about the overall impact of the requirements, citing the impact of the standard on covered companies' costs, competitiveness, and existing business practices, as well as the impact upon non-financial companies more broadly. As described in more detail below, the agencies have addressed these issues by reducing burdens where appropriate, while ensuring that the final rule serves the purpose of promoting the safety and soundness of covered companies. The agencies found that certain comments concerning the costs and benefits of the proposed rule to be relevant to their deliberations, and, on the basis of these and other considerations, made the changes discussed below.

The proposed rule would have required covered companies to comply with a minimum LCR of 80 percent beginning on January 1, 2015, 90 percent beginning on January 1, 2016, and 100 percent beginning on January 1, 2017, and thereafter. These transition periods were similar to, but shorter than, those set forth in the Basel III Revised Liquidity Framework, and were intended to preserve the strong liquidity positions many U.S. banking organizations have achieved since the recent financial crisis. The proposed rule also would have required covered companies to calculate their LCR daily, beginning on January 1, 2015. A number of commenters expressed concerns with the proposed transition periods as well as the operational difficulties of meeting the proposed requirement for daily calculation of the LCR. Additionally, some commenters expressed concerns regarding the scope of application of the proposed rule, with regard to both the application of the proposed rule to covered nonbank companies and the proposed rule's delineation between covered companies and modified LCR holding companies.

Commenters generally expressed a desire to see a wider range of asset classes included as HQLA or to have some asset classes and funding sources treated as having greater liquidity than proposed. The agencies received comments that highlighted the differences between the types of assets included as HQLA under the U.S. proposal and those that might be included under the Basel III Revised Liquidity Framework. For example, the agencies proposed excluding some asset classes from HQLA that may have qualified under the Basel III Revised Liquidity Framework given the agencies' concerns about their relative lack of liquidity. Many of these comments related to the exclusion in

[5] *See* Board, ''Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations,'' 79 FR 17240 (March 27, 2014) (Board's Regulation YY); OCC, Board, FDIC, Office of Thrift Supervision, and National Credit Union Administration, ''Interagency Policy Statement on Funding and Liquidity Risk Management,'' 75 FR 13656 (March 22, 2010) (Interagency Liquidity Policy Statement).

[6] *See http://www.regulations.gov/index.jsp#!docketDetail;D=OCC-2013-0016* (OCC); *http://www.fdic.gov/regulations/laws/federal/2013/2013_liquidity_coverage_ae04.html* (FDIC); *http://www.federalreserve.gov/newsevents/reform_systemic.htm* (Board).

[7] 79 FR 24528 (May 1, 2014).

[8] 76 FR 69334 (November 8, 2011).

the proposed rule of state and municipal securities from HQLA. Commenters expressed concern that the exclusion of municipal securities from HQLA could lead to higher funding costs for municipalities, which could affect local economies and infrastructure.

Likewise, the agencies' proposed method for determining a covered company's HQLA amount elicited many comments. A number of these comments focused on the treatment of deposits from public sector entities that are required by law to be secured by eligible collateral and would have been treated as secured funding transactions under the proposed rule. Commenters expressed concern that the treatment of secured deposits in the calculation of a covered company's HQLA amount would lead to distortions in the LCR calculation and to reduced acceptance of public deposits by covered companies.

The proposed rule would have required covered companies to hold an amount of HQLA to meet their greatest liquidity need within a prospective 30 calendar-day period rather than at the end of that period. By requiring a covered company to calculate its total net cash outflow amount using its peak cumulative net outflow day, the proposal would have taken into account potential maturity mismatches between a covered company's contractual outflows and inflows during the 30 calendar-day period. The agencies received many comments on the methodology for calculating the peak cumulative net cash outflow amount, specifically in regard to the treatment of non-maturity outflows. Some commenters felt that the approach had merits because it captured potential liquidity shortfalls within the 30 calendar-day period, whereas others argued that that it was overly conservative, unrealistic, and inconsistent with the Basel III Revised Liquidity Framework.

Generally, commenters expressed that the outflow rates used to determine total net cash outflows were too high with respect to specific outflow categories. Commenters also expressed concern that specific outflow rates were applied to overly narrow or overly broad categories of exposures in certain cases. Several commenters requested the agencies to clarify whether the outflow and inflow rates under the final rule are designed to reflect an idiosyncratic stress at a particular institution or general market distress. The agencies received a number of comments on the criteria for determining whether a deposit was an operational deposit and on the definitions of certain related terms. Commenters generally approved of the potential categorization of certain deposits as operational deposits but expressed concern that other deposits were excluded from the category. Similarly, some commenters expressed concern that the outflow rates assigned to committed facilities extended to special purpose entities (SPEs) did not differentiate between different types of SPEs.

Several commenters expressed concern that the proposed modified LCR would have required net cash outflows to be calculated over a 21 calendar-day stress period. Commenters argued that using a 21 calendar-day period would create significant operational burden as it is an atypical period that does not align well with their existing systems and processes. Commenters also expressed concerns regarding the transition periods and the daily calculation requirement applicable to modified LCR holding companies.

C. Overview of the Final Rule and Significant Changes From the Proposal

Consistent with the proposed rule, the final rule establishes a minimum LCR requirement applicable, on a consolidated basis, to large, internationally active banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, and to consolidated subsidiary depository institutions of these banking organizations with $10 billion or more in total consolidated assets.[9] Unlike the proposed rule, however, the final rule will not apply to covered nonbank companies or their consolidated subsidiary depository institutions. Instead, as discussed further below in section I.D, the Board will establish any LCR requirement for such companies by order or rule. The final rule does not apply to foreign banking organizations or U.S. intermediate holding companies that are required to be established under the Board's Regulation YY, other than those companies that are otherwise covered companies.[10]

As discussed in section V of this Supplementary Information section, and consistent with the proposal, the Board also is separately adopting a modified version of the LCR for bank holding companies and savings and loan holding companies without significant insurance operations (or, in the case of savings and loan holding companies, also without significant commercial operations) that, in each case, have $50 billion or more in total consolidated assets, but are not covered companies for the purposes of the final rule.[11]

The final rule requires a covered company to maintain an amount of HQLA meeting the criteria set forth in this final rule (the HQLA amount, which is the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator of the ratio). The agencies recognize that, under certain circumstances, it may be necessary for a covered company's LCR to fall briefly below 100 percent to fund unanticipated liquidity needs.[12] However, a LCR below 100 percent may also reflect a significant deficiency in a covered company's management of liquidity risk. Therefore, consistent with the proposed rule, the final rule establishes a framework for a flexible supervisory response when a covered company's LCR falls below 100 percent. Under the final rule, a covered company must notify the appropriate Federal banking agency on any business day that its LCR is less than 100 percent. In addition, if a covered company's LCR is below 100 percent for three consecutive business days, the covered company must submit to its appropriate Federal banking agency a plan for remediation of the shortfall.[13] These procedures, which are described in further detail in section III of this Supplementary Information section, are intended to enable supervisors to monitor and respond appropriately to the unique circumstances that give rise to a covered company's LCR shortfall.

The agencies emphasize that the LCR is a minimum requirement and organizations that pose more systemic risk to the U.S. banking system or whose liquidity stress testing indicates a need

[9] Like the proposed rule, the final rule does not apply to institutions that have opted to use the advanced approaches risk-based capital rule. *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

[10] 12 CFR 252.153.

[11] Total consolidated assets for the purposes of the proposed rule would have been as reported on a covered company's most recent year-end Consolidated Reports of Condition and Income or Consolidated Financial Statements for Bank Holding Companies, Federal Reserve Form FR Y–9C. Foreign exposure data would be calculated in accordance with the Federal Financial Institutions Examination Council 009 Country Exposure Report. The agencies have retained these standards in the final rule as proposed.

[12] During the transition period, for covered companies, the agencies will consider a shortfall to be a liquidity coverage ratio lower than 80 percent in 2015 and lower than 90 percent in 2016.

[13] During the period when a covered company is required to calculate its LCR monthly, the covered company must promptly consult with the appropriate Federal banking agency to determine whether a plan would be required if the covered company's LCR is below the minimum requirement for any calculation date that is the last business day of the calendar month.

for higher liquidity reserves may need to take additional steps beyond meeting the minimum ratio in order to meet supervisory expectations. The LCR will complement existing supervisory guidance and the more qualitative and internal stress test requirements in the Board's Regulation YY.

Under the final rule, certain categories of assets may qualify as eligible HQLA and may contribute to the HQLA amount if they are unencumbered by liens and other restrictions on transfer and can therefore be converted quickly into cash without reasonably expecting to incur losses in excess of the applicable LCR haircuts during a stress period. Consistent with the proposal, the final rule establishes three categories of HQLA: level 1 liquid assets, level 2A liquid assets and level 2B liquid assets. The fair value, as determined under U.S. generally accepted accounting principles (GAAP), of a covered company's level 2A liquid assets and level 2B liquid assets are subject to haircuts of 15 percent and 50 percent respectively. The amount of level 2 liquid assets (that is, level 2A and level 2B liquid assets) may not comprise more than 40 percent of the covered company's HQLA amount. The amount of level 2B liquid assets may not comprise more than 15 percent of the covered company's HQLA amount.

Certain adjustments have been made to the final rule to address concerns raised by a number of commenters with respect to assets that would have qualified as HQLA. With respect to the inclusion of corporate debt securities as HQLA, the agencies have removed the requirement that corporate debt securities have to be publicly traded on a national securities exchange in order to qualify for inclusion as HQLA. Additionally, in response to requests by several commenters, the agencies have expanded the pool of publicly traded common equity shares that may be included as HQLA. Consistent with the proposed rule, the final rule does not include state and municipal securities as HQLA. As discussed fully in section II.B.2 of this Supplementary Information section, the liquidity characteristics of municipal securities range significantly and many of these assets do not exhibit the characteristics for inclusion as HQLA. With respect to the calculation of the HQLA amount and in response to comments received, the agencies are removing collateralized deposits, as defined in the final rule, from the calculation of amounts exceeding the composition caps, as described in section II.B.5, below.

A covered company's total net cash outflow amount is determined under the final rule by applying outflow and inflow rates, which reflect certain standardized stressed assumptions, against the balances of a covered company's funding sources, obligations, transactions, and assets over a prospective 30 calendar-day period. Inflows that can be included to offset outflows are limited to 75 percent of outflows to ensure that covered companies are maintaining sufficient on-balance sheet liquidity and are not overly reliant on inflows, which may not materialize in a period of stress.

As further described in section II.C of this Supplementary Information section and discussed in the proposal, the measure of net cash outflow and the outflow and inflow rates used in its determination are meant to reflect aspects of historical stress events including the recent financial crisis. Consistent with the Basel III Revised Liquidity Framework and the agencies' evaluation of relevant supervisory information, these net outflow components of the final rule take into account the potential impact of idiosyncratic and market-wide shocks, including those that would result in: (1) A partial loss of unsecured wholesale funding capacity; (2) a partial loss of secured, short-term financing with certain collateral and counterparties; (3) losses from derivative positions and the collateral supporting those positions; (4) unscheduled draws on committed credit and liquidity facilities that a covered company has provided to its customers; (5) the potential need for a covered company to buy back debt or to honor non-contractual obligations in order to mitigate reputational and other risks; (6) a partial loss of retail deposits and brokered deposits from retail customers; and (7) other shocks that affect outflows linked to structured financing transactions, mortgages, central bank borrowings, and customer short positions.

The agencies revised certain elements of the calculation of net cash outflows in the final rule, which are also described in section II.C below. The methodology for determining the peak cumulative net outflow has been amended to address certain comments relating to the treatment in the proposed rule of non-maturity outflows. The revised methodology focuses more explicitly on the maturity mismatch of contractual outflows and inflows as well as overnight funding from financial institutions.

The agencies have also changed the definition of operational services and the list of operational requirements. In making these changes, the agencies have addressed certain issues raised by commenters relating to the types of operational services that would be covered by the rule and the requirement to exclude certain deposits from being classified as operational. Additionally, the agencies have limited the outflow rate that must be applied to maturing secured funding transactions such that the outflow rate should generally not be greater than the outflow rate for an unsecured funding transaction with the same wholesale counterparty. The agencies have also revised the outflow rates for committed credit and liquidity facilities to SPEs so that only SPEs that rely on the market for funding receive the 100 percent outflow rate. This change should address commenters' concerns about inappropriate outflow rates for SPEs that are wholly funded by long-term bank loans and similar facilities and do not have the same liquidity risk characteristics as those that rely on the market for funding.

Consistent with the Basel III Revised Liquidity Framework, the final rule is effective as of January 1, 2015, subject to the transition periods in the final rule. Under the final rule, covered companies will be required to maintain a minimum LCR of 80 percent beginning January 1, 2015. From January 1, 2016, through December 31, 2016, the minimum LCR would be 90 percent. Beginning on January 1, 2017, and thereafter, all covered companies would be required to maintain an LCR of 100 percent. Transition periods are described fully in section IV of this Supplementary Information section.

The agencies made changes to the final rule's transition periods to address commenters' concerns that the proposed transition periods would not have provided covered companies enough time to establish the required infrastructure to ensure compliance with the proposed rule's requirements, including the proposed daily calculation requirement. These changes reflect commenters' concern regarding the operational challenges of implementing the daily calculation requirement, while still requiring firms to maintain sufficient HQLA to comply with the rule. Although the agencies will still require compliance with the final rule starting January 1, 2015, the agencies have delayed implementation of the daily calculation requirement. With respect to the daily calculation requirements, covered companies that are depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody, and any depository institution that is a consolidated subsidiary of such depository institution holding companies that has total consolidated assets equal to $10 billion or more, are required to calculate their LCR on the last business day of the calendar month from January 1, 2015, to June 30, 2015, and beginning on July 1, 2015, must calculate their LCR on each business day. All other covered companies are required to calculate the LCR on the last business day of the calendar month from January 1, 2015, to June 30, 2016, and beginning on July 1, 2016, and thereafter, must calculate their LCR each business day.

As detailed in section V of this Supplementary Information section, in response to comments, the Board is also adjusting the transition periods and calculation frequency requirements for the modified LCR in the final rule. Modified LCR holding companies will not be subject to the final rule in 2015 and will calculate their LCR monthly starting January 1, 2016. Furthermore, the Board is increasing the stress period over which modified LCR net cash outflows are to be calculated from 21 calendar days to 30 calendar days and is amending the methodology required to calculate total net cash outflows under the modified LCR.

The Basel III Revised Liquidity Framework also establishes liquidity risk monitoring mechanisms to strengthen and promote global consistency in liquidity risk supervision. These mechanisms include information on contractual maturity mismatch, concentration of funding, available unencumbered assets, LCR reporting by significant currency, and market-related monitoring tools. At this time, the agencies are not implementing these monitoring mechanisms as regulatory standards or requirements. However, the agencies intend to obtain information from covered companies to enable the monitoring of liquidity risk exposure through reporting forms and information the agencies collect through other supervisory processes.

The final rule will provide enhanced information about the short-term liquidity profile of a covered company to managers, supervisors, and market participants. With this information, the covered company's management and supervisors should be better able to assess the company's ability to meet its projected liquidity needs during periods of liquidity stress; take appropriate actions to address liquidity needs; and, in situations of failure, implement an orderly resolution of the covered company. The agencies anticipate that they will separately seek comment upon proposed regulatory reporting requirements and instructions pertaining to a covered company's disclosure of the final rule's LCR in a subsequent notice under the Paperwork Reduction Act.

The final rule is consistent with the Basel III Revised Liquidity Framework, with some modifications to reflect the unique characteristics and risks of the U.S. market and U.S. regulatory frameworks. The agencies believe that these modifications support the goal of enhancing the short-term liquidity resiliency of covered companies and do not unduly diminish the consistency of the LCR on an international basis.

The agencies note that the BCBS is in the process of reviewing the Net Stable Funding Ratio (NSFR) that was included in the Basel III Liquidity Framework when it was first published in 2010. The NSFR is a standard focused on a longer time horizon that is intended to limit overreliance on short-term wholesale funding, to encourage better assessment of funding risks across all on- and off-balance sheet items, and to promote funding stability. The agencies anticipate a separate rulemaking regarding the NSFR once the BCBS adopts a final international version of the NSFR.

D. Scope of Application of the Final Rule

1. Covered Companies

Consistent with the Basel III Revised Liquidity Framework, the proposed rule would have established a minimum LCR applicable to all U.S. internationally active banking organizations, and their consolidated subsidiary depository institutions with total consolidated assets of $10 billion or more. In implementing internationally agreed upon standards in the United States, such as the capital framework developed by the BCBS, the agencies have historically applied a consistent threshold for determining whether a U.S. banking organization should be subject to such standards. The threshold, generally banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, is based on the size, complexity, risk profile, and interconnectedness of such organizations.[14]

A number of commenters asserted that the agencies' definition of internationally active would apply the quantitative minimum liquidity standard to an inappropriate set of companies. Several commenters argued that the internationally active thresholds would capture several large banking organizations even though the business models, operations, and funding profiles of these organizations have some characteristics that are similar to those bank holding companies that would be subject to the modified LCR proposed by the Board. Commenters stated that it would be more appropriate for all ''regional banks'' to be subject to the modified LCR as described under section V of the Supplementary Information section to the proposed rule. One commenter requested that the agencies not apply the standard based on the foreign exposure threshold, but use a threshold that takes into account changes in industry structure, considerations of competitive equality across jurisdictions, and differences in capital and liquidity regulation.

The Board also proposed to apply the proposed rule to covered nonbank companies as an enhanced liquidity standard pursuant to its authority under section 165 of the Dodd-Frank Act. The Board believed those organizations should maintain appropriate liquidity commensurate with their contribution to overall systemic risk in the United States and believed the proposal properly reflected such firms' funding profiles. One commenter stated that the proposed rule would adversely impact covered nonbank companies that own banks to facilitate customer transactions, and would create a mismatch of regulations that will hamper the ability of such businesses to operate. This commenter further noted that because of their different business models, covered nonbank companies are likely to engage in significantly less deposit-taking than large bank holding companies, which generally translates into less access to one of a few sources of level 1 liquid assets, Federal Reserve Bank balances. The commenter requested specific tailoring of the LCR or a delay in the implementation of the final rule for covered nonbank companies.

One commenter noted that although the proposed rule would have exempted depository institution holding companies with substantial insurance operations and savings and loan holding companies with substantial commercial operations, it would not have exempted depository holding companies with significant retail securities brokerage operations, which the commenter argued also have liquidity risk profiles that should not be covered by the

[14] *See e.g.,* OCC, Board, and FDIC, ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,'' 78 FR 62018 (October 11, 2013).

liquidity requirements. Another commenter suggested that the agencies consider waiving the LCR requirement for certain covered companies, subject to satisfactory compliance with other metrics such as capital ratios, stress tests, or the NSFR.

The final rule seeks to calibrate the net cash outflow requirement for a covered company based on the composition of the organization's balance sheet, off-balance sheet commitments, business activities, and funding profile. Sources of funding that are considered less likely to be affected at a time of a liquidity stress are assigned significantly lower 30 calendar-day outflow rates. Conversely, the types of funding that are historically vulnerable to liquidity stress events are assigned higher outflow rates. Consistent with the Basel III Revised Liquidity Framework, in the proposed rule, the agencies expected that covered companies with less complex balance sheets and less risky funding profiles would have lower net cash outflows and would therefore require a lower amount of HQLA to meet the proposed rule's minimum liquidity standard. For example, under the proposed rule, covered companies that rely to a greater extent on retail deposits that are fully covered by deposit insurance and less on short-term unsecured wholesale funding would have had a lower total net cash outflow amount when compared to a banking organization that was heavily reliant on wholesale funding.

Furthermore, systemic risks that could impair the safety of covered companies were also reflected in the minimum requirement, including provisions to address wrong-way risk, shocks to asset prices, and other industry-wide risks that materialized in the 2007–2009 financial crisis. Under the proposed rule, covered companies that have greater interconnectedness to financial counterparties and have liquidity risks related to risky capital market instruments may have larger net cash outflows when compared to covered companies that do not have such dependencies. Large consolidated banking organizations engage in a diverse range of business activities and have a liquidity risk profile commensurate with the breadth of these activities. The scope and volume of these organizations' financial transactions lead to interconnectedness between banking organizations and between the banking sector and other financial and non-financial market participants.

The agencies believe that the proposed scope of application thresholds were properly calibrated to capture companies with the most significant liquidity risk profiles. The agencies believe that covered depository institution holding companies with total consolidated assets of $250 billion or more have a riskier liquidity profile relative to smaller firms based on their breadth of activities and interconnectedness with the financial sector. Likewise, the foreign exposure threshold identifies firms with a significant international presence, which may also be subject to greater liquidity risks for the same reasons. In finalizing this rule, the agencies are promoting the short-term liquidity resiliency of institutions engaged in a broad variety of activities, transactions, and forms of financial interconnectedness. For the reasons discussed above, the agencies believe that the consistent scope of application used across several regulations is appropriate for the final rule.[15]

The agencies believe that providing a waiver to covered companies that meet alternate metrics would be contrary to the express purpose of the proposed rule to provide a standardized quantitative liquidity metric for covered companies. Moreover, with respect to commenters' requests to exclude certain covered companies with large retail securities brokerage and other non-depository operations from the scope of the final rule, the agencies believe that such companies have heightened liquidity risk profiles due to the range and volume of financial transactions entered into by such organizations and that the LCR is appropriately calibrated to reflect those business models.

The proposed rule exempted depository institution holdings companies and nonbank financial companies designated by the Council for Board supervision with large insurance operations or savings and loan holding companies with large commercial operations, because their business models differ significantly from covered companies. The Board recognizes that the companies designated by the Council may have a range of businesses, structures, and activities, that the types of risks to financial stability posed by nonbank financial companies will likely vary, and that the enhanced prudential standards applicable to bank holding companies may not be appropriate, in whole or in part, for all nonbank financial companies. Accordingly, the Board is not applying the LCR requirement to nonbank financial companies supervised by the Board through this rulemaking. Instead, following designation of a nonbank financial company for supervision by the Board, the Board intends to assess the business model, capital structure, and risk profile of the designated company to determine how the proposed enhanced prudential standards should apply, and if appropriate, would tailor application of the LCR by order or rule to that nonbank financial company or to a category of nonbank financial companies. The Board will ensure that nonbank financial companies receive notice and opportunity to comment prior to determination of the applicability of any LCR requirement.

Upon the issuance of an order or rule that causes a nonbank financial company to become a covered nonbank company subject to the LCR requirement, any state nonmember bank or state savings association with $10 billion or more in total consolidated assets that is a consolidated subsidiary of such covered nonbank company also would be subject to the final rule. When a nonbank financial company parent of a national bank or Federal savings association becomes subject to the LCR requirement by order or rule, the OCC will apply its reservation of authority under § __.1(b)(1)(iv) of the final rule, including applying the notice and response procedures described in § __.1(b)(5) of the final rule, to determine if application of the LCR requirement is appropriate for the national bank or Federal savings association in light of its asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

As in the proposed rule, the final rule does not apply to a bridge financial company or a subsidiary of a bridge financial company, a new depository institution or a bridge depository institution, as those terms are used in the resolution context.[16] The agencies believe that requiring the FDIC to maintain a minimum LCR at these entities would inappropriately constrain the FDIC's ability to resolve a depository institution or its affiliated companies in an orderly manner.[17]

[15] *Id.*

[16] *See* 12 U.S.C. 1813(i); 5381(a)(3).

[17] Pursuant to the International Banking Act (IBA), 12 U.S.C. 3102(b), and OCC regulation, 12 CFR 28.13(a)(1), the operations of a Federal branch or agency regulated and supervised by the OCC are subject to the same rights and responsibilities as a national bank operating at the same location. Thus, as a general matter, Federal branches and agencies are subject to the same laws and regulations as national banks. The IBA and the OCC regulation state, however, that this general standard does not apply when the IBA or other applicable law or regulations provide other specific standards for

A company will remain subject to this final rule until its appropriate Federal banking agency determines in writing that application of the rule to the company is not appropriate. Moreover, nothing in the final rule limits the authority of the agencies under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

As proposed, the agencies are reserving the authority to apply the final rule to a bank holding company, savings and loan holding company, or depository institution that does not meet the asset thresholds described above if it is determined that the application of the LCR would be appropriate in light of a company's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered companies, or risk to the financial system. The agencies also are reserving the authority to require a covered company to hold an amount of HQLA greater than otherwise required under the final rule, or to take any other measure to improve the covered company's liquidity risk profile, if the appropriate Federal banking agency determines that the covered company's liquidity requirements as calculated under the final rule are not commensurate with its liquidity risks. In making such determinations, the agencies will apply the notice and response procedures as set forth in their respective regulations.

2. Covered Depository Institution Subsidiaries

The proposed rule would have applied the LCR requirements to depository institutions that are the consolidated subsidiaries of covered companies and have $10 billion or more in total consolidated assets. Several commenters argued that the agencies should not apply a separate LCR requirement to subsidiary depository institutions of covered companies. Another commenter noted that foreign banking organizations would be subject to separate liquidity requirements for the entire organization, for any U.S. intermediate holding company that the foreign banking organization would be required to form under the Board's Regulation YY, and for depository institution subsidiaries that would be subject to the proposed rule, which, the commenter asserted, could result in unnecessarily duplicative holdings of liquid assets within the organization. In addition, several commenters argued that the separate LCR requirement for depository institution subsidiaries would result in excess liquidity being trapped at the covered subsidiaries, especially if the final rule capped the inflows from affiliated entities at 75 percent of their outflows. To alleviate this burden, one commenter requested that the final rule permit greater reliance on support by the top-tier holding company.

One commenter argued that excess liquidity at the holding company should be considered when calculating the LCR for the subsidiary in order to recognize the requirement that a bank holding company serve as a source of strength for its subsidiary depository institutions. The commenter also argued that requiring subsidiary depository institutions to calculate the LCR does not recognize the relationship between consolidated depository institutions that are subsidiaries of the same holding company and requested that the rule permit a depository institution to count any excess HQLA held by an affiliated depository institution, consistent with the sister bank exemption in section 23A of the Federal Reserve Act.[18]

One commenter argued that the rule should not require less complex banking organizations to calculate the LCR for consolidated subsidiary depository institutions with total consolidated assets of $10 billion or more. Another commenter expressed concern that although subsidiary depository institutions with total consolidated assets between $1 billion and $10 billion would not be required to comply with the requirements of the proposed rule, agency examination staff would pressure such subsidiary depository institutions to conform to the requirements of the final rule. A few commenters requested that the agencies clarify that these subsidiary depository institutions would not be required by agency examination staff to conform to the rule.

In promoting short-term, asset-based liquidity resiliency at covered companies, the agencies are seeking to limit the consequences of a potential liquidity stress event on the covered company and on the broader financial system in a manner that does not rely on potential government support. Large depository institution subsidiaries play a significant role in a covered company's funding structure, and in the operation of the payments system. These large subsidiaries generally also have access to deposit insurance coverage. Accordingly, the agencies believe that the application of the LCR requirement to these large depository institution subsidiaries is appropriate.

To reduce the potential systemic impact of a liquidity stress event at such large depository institution subsidiaries, the agencies believe that such entities should have a sufficient amount of HQLA to meet their own net cash outflows and should not be overly reliant on inflows from their parents or affiliates. Accordingly, the agencies do not believe that the separate LCR requirement for certain depository institution subsidiaries is duplicative of the requirement at the consolidated holding company level, and the agencies have adopted this provision of the final rule as proposed.

The Board is not applying the requirements of the final rule to foreign banking organizations and intermediate holding companies required to be formed under the Board's Regulation YY that are not otherwise covered companies at this time. The Board anticipates implementing an LCR-based standard through a future separate rulemaking for the U.S. operations of some or all foreign banking organizations with $50 billion or more in combined U.S. assets.

3. Companies That Become Subject to the LCR Requirements

The agencies have added § __.1(b)(2) to address the final rule's applicability to companies that become subject to the LCR requirements before and after September 30, 2014. Companies that are subject to the minimum liquidity standard under § __.1(b)(1) as of September 30, 2014 must comply with the rule beginning January 1, 2015, subject to the transition periods provided in subpart F of the final rule. A company that meets the thresholds for applicability after September 30, 2014, based on an applicable regulatory year-end report under § __.1(b)(1)(i) through (b)(1)(iii) must comply with the final rule beginning on April 1 of the following year.

The final rule provides newly covered companies with a transition period for the daily calculation requirement, recognizing that a daily calculation requirement could impose significant operational and technology demands.

Federal branches or agencies, or when the OCC determines that the general standard should not apply. This final rule would not apply to Federal branches and agencies of foreign banks operating in the United States. At this time, these entities have assets that are substantially below the proposed $250 billion asset threshold for applying the proposed liquidity standard to an internationally active banking organization. As part of its supervisory program for Federal branches and agencies of foreign banks, the OCC reviews liquidity risks and takes appropriate action to limit such risks in those entities.

[18] 12 U.S.C. 371c.

Specifically, a newly covered company must calculate its LCR monthly from April 1 to December 1 of its first year of compliance. Beginning on January 1 of the following year, the covered company must calculate its LCR daily.

For example, a company that meets the thresholds for applicability under § __.1(b)(1)(i) through (b)(1)(iii) based on its regulatory report filed for fiscal year 2017 must comply with the final rule requirements beginning on April 1, 2018. From April 1, 2018 to December 31, 2018, the final rule requires the covered company to calculate its LCR monthly. Beginning January 1, 2019, and thereafter, the covered company must calculate its LCR daily.

When a covered company becomes subject to the final rule after September 30, 2014, as a result of an agency determination under § __.1(b)(1)(iv) that the LCR requirement is appropriate in light of the covered company's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system, the company must comply with the final rule requirements according to a transition period specified by the agency.

II. Minimum Liquidity Coverage Ratio

A. The LCR Calculation and Maintenance Requirement

As described above, under the proposed rule, a covered company would have been required to maintain an HQLA amount that was no less than 100 percent of its total net cash outflows.

1. A Liquidity Coverage Requirement

One commenter argued that the proposed rule's requirements would reduce incentives to maintain diversified liquid asset portfolios and other funding sources, which would result in the loss of diversification in banking organizations' sources of funding and liquid asset composition. Another commenter asserted that restoring and strengthening the authorities of the Federal Reserve as the lender of last resort would be a more effective and efficient alternative to bolstering a covered company's liquidity reserves. One commenter stated that the LCR requirement would introduce additional system complexities without taking into account the benefits of long-term funding stability afforded by the NSFR.

The agencies believe that the most recent financial crisis demonstrated that large, internationally active banking organizations were exposed to substantial wholesale market funding risks, as well as contingent liquidity risks, that were not well mitigated by the then-prevailing liquidity risk management practices and liquidity portfolio compositions. For a number of large financial institutions, this led to failure, bankruptcy, restructuring, merger, or only maintaining operations with financial support from the Federal government. The agencies believe that covered companies should not overly rely on wholesale market funding that may be elusive in a time of stress, not rely on expectations of government support, and not rely on asset classes that have a significant liquidity discount if sold during a period of stress. The agencies do not believe that the final rule's minimum standard will constrain the diversity of a covered company's funding sources or unduly restrict the types of assets that a covered company may hold for general liquidity risk purposes. Covered companies are expected to maintain appropriate levels of liquidity without reliance on central banks acting in the capacity of lenders of last resort. With respect to the NSFR, the agencies continue to engage in and support the ongoing development of the ratio as an international standard, and anticipate the standard will be implemented in the United States at the appropriate time. In the meantime, the agencies expect covered companies to maintain appropriate stable structural funding profiles.

For these reasons, the overall structure of the LCR requirement is being adopted as proposed. Under the final rule, a covered company is required to maintain an HQLA amount that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period, in accordance with the calculation requirements for the HQLA amount and total net cash outflows, as discussed below.

2. The Liquidity Coverage Ratio Stress Period

The proposed rule would have required covered companies to calculate the LCR based on a 30 calendar-day stress period. Some commenters requested that the liquidity coverage ratio calculation instead be based on a calendar-month stress period. Another commenter noted that supervisors should be attentive to the possibility that excess liquidity demands can build up just outside the 30 calendar-day window.

Consistent with the Basel III Revised Liquidity Framework, the final rule uses a standardized 30 calendar-day stress period. The LCR is intended to facilitate comparisons across covered companies and to provide consistent information about historical trends. The agencies are retaining the prospective 30 calendar-day period because a calendar month stress period is not compatible with the daily calculation requirement, which requires a forward-looking calculation of liquidity stress for the 30 calendar days following the calculation date, and a 30 calendar-day stress period would provide for an accurate historical comparison. Furthermore, while the LCR would establish one scenario for stress testing, the agencies expect companies subject to the final rule to maintain robust stress testing frameworks that incorporate additional scenarios that are more tailored to the risks within their companies.[19] The agencies also expect covered companies to appropriately monitor and manage liquidity risk both within and beyond the 30-day stress period. Accordingly, the agencies are adopting this aspect of the final rule as proposed.

3. The Calculation Date, Daily Calculation Requirement, and Comments on LCR Reporting

Under the proposed rule, a covered company would have been required to calculate its LCR on each business day as of that date (the calculation date), with the horizon for each calculation ending 30 days from the calculation date. The proposed rule would have required a covered company to calculate its LCR on each business day as of a set time selected by the covered company prior to the effective date of the rule and communicated in writing to its appropriate Federal banking agency.

The proposed rule did not include a proposal to establish a reporting requirement for the LCR. The agencies anticipate separately seeking comment on proposed regulatory reporting requirements and instructions pertaining to a covered company's disclosure of the final rule's LCR in a subsequent notice under the Paperwork Reduction Act.

A number of commenters stated that the daily calculation requirement imposes significant operational burdens on covered companies. These include costs associated with building and testing new information technology systems, developing governance and

[19] Covered companies that are subject to the Board's Regulation YY are required to conduct internal liquidity stress tests that include a minimum of four periods over which the relevant stressed projections extend: Overnight, 30-day, 90-day, and one-year time horizons, and additional time horizons as appropriate. 12 CFR 253.35 (domestic bank holding companies); (12 CFR 235.175 (foreign banking organizations).

internal control frameworks for the LCR, and collecting and reviewing the requisite data to comply with the requirements of the proposed rule. Commenters argued that developing systems is challenging, expensive, and time consuming for those organizations that do not currently have such reporting capabilities in place. For example, one commenter said that capturing the data to perform the LCR calculation on a daily basis would require banking organizations to implement entirely new and custom data systems and mechanics. Several commenters expressed concerns generally that the additional system development costs would outweigh the benefits from the LCR to supervisors.

In addition to the costs of developing new systems, commenters also raised concerns about the time frame between the adoption of the final rule and the effective date of the proposed rule and indicated that there would be insufficient time in which to develop operational capabilities to comply with the proposed rule. For instance, one commenter argued that because the rule was not yet final, there would not be enough time to implement systems before the January 1, 2015 compliance date. Several commenters echoed a similar concern and contended that the burden associated with implementing and testing systems for the daily calculation is heightened by a short time frame. Some of these commenters requested a delay in the implementation of the final rule to better develop operational capabilities for compliance.

Several commenters argued that the requirement to calculate the LCR daily would require large changes to data systems, processes, reporting, and governance and were concerned that their institutions would not have the capability to perform accurately the required calculations. In particular, the commenters expressed concern with the level of certainty required for such calculation and its relation to their disclosure obligations under securities laws. Other commenters observed that there are limits to the number of large scale projects that covered companies can implement at one time, and building LCR reporting systems would require significant resources.

Other commenters preferred a monthly calculation given the significant information technology costs and short time frame until implementation. Further, several commenters stated that much of the data necessary to calculate a daily LCR currently is available only on systems that report monthly, rather than daily. These commenters also expressed concern over developing the necessary internal controls to ensure that the data is sufficiently accurate. Several commenters requested that the agencies require certain ''regional'' banking organizations that met the proposed rule's scope of applicability threshold, but have not been identified as Global Systemically Important Banks (G–SIBs) by the Financial Stability Board, to calculate the LCR on a monthly, rather than daily, basis. Commenters argued that the daily calculation for such organizations is unnecessary and that the monitoring of daily liquidity risk management should be established through the supervisory process. One commenter argued that it may not be necessary to perform detailed calculations every business day during periods of ample liquidity and suggested that the agencies impose the daily requirement only during periods of stress.

Covered companies that would not be subject to supervisory daily liquidity reporting requirements under the Board's information collection and Complex Institution Liquidity Monitoring Report (FR 2052a) liquidity reporting program [20] raised concerns about the time needed to develop systems to comply with a daily LCR requirement. Those companies asserted they should not be subject to a daily calculation or, in the alternative, that they should be provided with additional time to develop operational capabilities relative to those institutions submitting the FR 2052a report. A commenter suggested that covered companies that have not previously been subject to bank or bank holding company liquidity reporting requirements should be given additional time to develop the necessary systems. Another commenter requested that the agencies clarify the mechanics for calculating the LCR and reporting it to regulators. Several commenters requested that, if the final rule would require daily calculation of the LCR, the agencies establish a transition period for firms to implement this calculation methodology.

The agencies recognize that a daily calculation requirement for a new regulatory requirement imposes significant operational and technology demands upon covered companies. However, the agencies continue to believe the daily calculation requirement is appropriate for covered companies under the final rule. Covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposures are large, complex organizations with significant trading and other activities. Moreover, idiosyncratic or market driven liquidity stress events have the potential to become significant in a short period of time even for covered companies that have not been designated as G–SIBs by the Financial Stability Board and that have relatively less complex balance sheets and more consistent funding profiles than G–SIBs in the normal course of business. In contrast to the entities that would be subject to the Board's modified LCR requirement discussed in section V of this Supplementary Information section, such organizations tend to have more significant trading activities, interconnectedness in the financial system, and are a significant source of credit to the areas of the United States in which they operate. Supervisors expect an organization that is a covered company under this rule to have robust, forward-looking liquidity risk monitoring tools that enable the organization to be responsive to changing liquidity risks. These tools are expected to be in place even during periods when the organization considers that it has ample liquidity, so that emerging risks may be identified and mitigated. The agencies also note that during periods of stress, it may be difficult for companies to implement a daily reporting requirement if the necessary technological systems have not previously been established.

Therefore, the agencies continue to believe the daily calculation requirement is appropriate for covered companies under the final rule. However, the agencies recognize that the calculation requirements under this rule, including the daily calculation requirement, may necessitate certain enhancements to a covered company's liquidity risk data collection and monitoring infrastructure. Accordingly, the agencies have changed the proposed rule to include certain transition periods as described fully in section IV of this Supplementary Information section. With these revisions, the agencies believe that the final rule achieves its overall objective of promoting better liquidity management and reducing liquidity risk. To that end, the agencies have sought to achieve a balance between operational concerns and the overall objectives of the LCR by providing covered companies with additional time to implement the daily calculation requirement. Likewise, with respect to the level of precision

[20] Board, ''Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB,'' 79 FR 48158 (August 15, 2014).

required, the agencies believe that the transition period should provide covered companies with an appropriate time frame to upgrade systems, develop controls, train employees, and enhance other operational capabilities so that covered companies will have the requisite operational tools to effectively implement a daily calculation requirement.

With respect to reporting frequencies, the agencies continue to anticipate that they will separately seek comment on proposed regulatory reporting requirements and instructions for the LCR in a subsequent notice.

B. High-Quality Liquid Assets

The agencies received a number of comments on the criteria for HQLA and the designation of the liquidity level for various assets. Under the proposed rule, the numerator of the LCR would have been a covered company's HQLA amount, which would have been the HQLA held by the covered company subject to the qualifying operational control criteria and compositional limitations. These proposed criteria and limitations were meant to ensure that a covered company's HQLA amount would include only assets with a high potential to generate liquidity through monetization (sale or secured borrowing) during a stress scenario.

Consistent with the Basel III Revised Liquidity Framework, the agencies proposed classifying HQLA into three categories of assets: Level 1, level 2A, and level 2B liquid assets. Specifically, the agencies proposed that level 1 liquid assets, which are the highest quality and most liquid assets, would have been included in a covered company's HQLA amount without a limit and without haircuts. Level 2A and 2B liquid assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as level 1 liquid assets. Accordingly, the proposed rule would have subjected level 2A liquid assets to a 15 percent haircut and, when combined with level 2B liquid assets, they could not have exceeded 40 percent of the total HQLA amount. Level 2B liquid assets, which are associated with a lesser degree of liquidity and more volatility than level 2A liquid assets, would have been subject to a 50 percent haircut and could not have exceeded 15 percent of the total HQLA amount. All other classes of assets would not qualify as HQLA.

Commenters expressed concerns about several proposed criteria for identifying the types of assets that qualify as HQLA. Commenters also suggested that the agencies designate certain additional assets as HQLA and change the categorization of certain assets as level 1, level 2A, or level 2B liquid assets. A commenter cautioned that the proposed rule's stricter definition of HQLA compared to the Basel III Revised Liquidity Framework could lead to distortions in the market, such as dramatically increased demand for limited supplies of asset classes and hoarding of HQLA by financial institutions.

The final rule adopts the proposed rule's overall structure for the classification of assets as HQLA and the compositional limitations for certain classes of HQLA in the HQLA amount. As discussed more fully below, the agencies considered the issues raised by commenters and incorporated a number of modifications in the final rule to address commenters' concerns.

1. Liquidity Characteristics of HQLA

Assets that qualify as HQLA should be easily and immediately convertible into cash with little or no expected loss of value during a period of liquidity stress. In identifying the types of assets that would qualify as HQLA in the proposed and final rules, the agencies considered the following categories of liquidity characteristics, which are generally consistent with those of the Basel III Revised Liquidity Framework: (a) Risk profile; (b) market-based characteristics; and (c) central bank eligibility.

a. Risk Profile

Assets that are appropriate for consideration as HQLA tend to have lower risk. There are various forms of risk that can be associated with an asset, including liquidity risk, market risk, credit risk, inflation risk, foreign exchange risk, and the risk of subordination in a bankruptcy or insolvency. Assets appropriate for consideration as HQLA would be expected to remain liquid across various stress scenarios and should not suddenly lose their liquidity upon the occurrence of a certain type of risk. Another characteristic of these assets is that they generally experience "flight to quality" during a crisis, which is where investors sell their other holdings to buy more of these assets in order to reduce the risk of loss and thereby increase their ability to monetize assets as necessary to meet their own obligations.

Assets that may be highly liquid under normal conditions but experience wrong-way risk and that could become less liquid during a period of stress would not be appropriate for consideration as HQLA. For example, securities issued or guaranteed by many companies in the financial sector have been more prone to lose value when the banking sector is experiencing stress and become less liquid due to the high correlation between the health of these companies and the health of the financial sector generally. This correlation was evident during the recent financial crisis as most debt issued by such companies traded at significant discounts for a prolonged period. Because of this high potential for wrong-way risk, and consistent with the Basel III Revised Liquidity Framework, the final rule excludes from HQLA assets that are issued by companies that are primary actors in the financial sector. Identification of these companies is discussed in section II.B.2, below.

b. Market-Based Characteristics

The agencies also have found that assets appropriate to be included as HQLA generally exhibit certain market-based characteristics. First, these assets tend to have active outright sale or repurchase markets at all times with significant diversity in market participants, as well as high trading volume. This market-based liquidity characteristic may be demonstrated by historical evidence, including evidence observed during recent periods of market liquidity stress. Such assets should demonstrate: Low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other appropriate factors. Diversity of market participants, on both the buying and selling sides of transactions, is particularly important because it tends to reduce market concentration and is a key indicator that a market will remain liquid during periods of stress. The presence of multiple committed market makers is another sign that a market is liquid.

Second, assets that are appropriate for consideration as HQLA generally tend to have prices that do not incur sharp declines, even during times of stress. Volatility of traded prices and bid-ask spreads during normal times are simple proxy measures of market volatility; however, there should be historical evidence of relative stability of market terms (such as prices and haircuts) as well as trading volumes during stressed periods. To the extent that an asset exhibits price or volume fluctuation during times of stress, assets appropriate for consideration as HQLA tend to increase in value and experience a flight to quality during these periods of stress because historically market participants move into more liquid assets in times of systemic crisis.

Third, assets that can serve as HQLA tend to be easily and readily valued. The agencies generally have found that an asset's liquidity is typically higher if market participants can readily agree on its valuation. Assets with more standardized, homogenous, and simple structures tend to be more fungible, thereby promoting liquidity. The pricing formula of more liquid assets generally is easy to calculate when it is based upon sound assumptions and publicly available inputs. Whether an asset is listed on an active and developed exchange can serve as a key indicator of an asset's price transparency and liquidity.

c. Central Bank Eligibility

Assets that a covered company can pledge at a central bank as collateral for intraday liquidity needs and overnight liquidity facilities in a jurisdiction and in a currency where the bank has access to the central bank generally tend to be liquid and, as such, are appropriate for consideration as HQLA. In the past, central banks have provided a backstop to the supply of banking system liquidity under conditions of severe stress. Central bank eligibility should, therefore, provide additional assurance that assets could be used in acute liquidity stress events without adversely affecting the broader financial system and economy. However, central bank eligibility is not itself sufficient to categorize an asset as HQLA; all of the final rule's requirements for HQLA must be met if central bank eligible assets are to qualify as HQLA.

d. Comments About Liquidity Characteristics

In their proposal, the agencies requested comments on whether the agencies should consider other characteristics in analyzing the liquidity of an asset. Although several commenters expressed concerns about the agencies' evaluation of the proposed liquidity characteristics to designate certain assets as HQLA, the agencies received only a few comments on the set of liquidity characteristics. One commenter suggested that the agencies evaluate secondary trading levels over time, specifically for level 1 liquid assets. The commenter also recommended that the agencies consider various factors to assess security issuances, including the absolute size of parent issuer holdings, credit ratings, and average credit spreads. Another commenter expressed its belief that the inclusion of an asset as HQLA should be determined based on objective criteria for market liquidity and creditworthiness.

In response to the commenter's concerns, the agencies agree that trading volume is an important characteristic of an asset's liquidity. The agencies believe that high trading volume across dynamic market environments is one of several factors that evidences market-based characteristics of HQLA. The final rule continues to consider trading volume to assess the liquidity of an asset.

In response to the commenter's suggestion for the final rule to include factors such as credit ratings and average credit spreads, the agencies recognize that indicators of credit risk include credit ratings and average credit spreads. The risk profile of an asset also includes many other types of risks. The agencies note that the final rule incorporates assessments of credit risk in certain level 1 and level 2A liquid assets criteria by referring to the risk weights assigned to securities under the agencies' risk-based capital rules. The agencies are not including the additional factors suggested by the commenter because in some cases, it would be legally impermissible, and additionally, the agencies believe the link to risk weights in the risk-based capital rules for level 1 and level 2A qualifying criteria sufficiently captures credit risk factors for purposes of the LCR.[21]

Finally, in response to one commenter's request that the agencies incorporate objective criteria in the liquidity characteristics of the final rule, the agencies highlight that certain objective criteria relating to price decline scenarios are included as qualifying criteria for level 2A and level 2B liquid assets, as discussed in section II.B.2. The agencies believe that the liquidity characteristics in the final rule, combined with certain objective criteria for specific categories of HQLA, provide an appropriate basis for evaluating a variety of asset classes for inclusion as HQLA.

2. Qualifying Criteria for Categories of HQLA

Based on the analysis of the liquidity characteristics above, the proposed rule would have included a number of classes of assets meeting these characteristics as HQLA. However, within certain of the classes of assets that the agencies proposed to include as HQLA, the proposed rule would have set forth a number of qualifying criteria and specific requirements for a particular asset to qualify as HQLA. With certain modifications to address commenters' concerns regarding certain classes of assets, discussed below, the agencies are adopting these criteria and requirements generally as proposed.

a. The Liquid and Readily-Marketable Standard

Most of the assets in the HQLA categories would have been required to meet the proposed rule's definition of "liquid and readily-marketable" in order to be included as HQLA. Under the proposed rule, an asset would have been liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and high trading volumes. The agencies proposed this "liquid and readily-marketable" requirement to ensure that assets included as HQLA would exhibit a level of liquidity that would allow a covered company to convert them into cash during times of stress and, therefore, to meet its obligations when other sources of funding may be reduced or unavailable.

Commenters raised several concerns with the proposed rule's definition of "liquid and readily-marketable." Several commenters urged the agencies to provide more detail on the liquid and readily-marketable standard. One of these commenters highlighted that the definition included undefined terms and suggested that the agencies either provide specific securities or asset classes or refer to instrument characteristics similar to those listed in the Board's Regulation YY. One commenter urged the agencies to pursue a more quantitative approach to identifying securities that would meet the standard. Another commenter noted that the agencies did not provide guidance on how to document that HQLA meets the market-based characteristics or the liquid and readily-marketable standard. Separately, another commenter suggested that the liquid and readily-marketable standard should account for indicators of liquidity other than those related to the secondary market. In particular, the commenter highlighted that covered companies can monetize securities outside of the outright sales market through repurchase transactions and through posting securities as collateral

[21] A credit rating is one potential perspective on credit risk that may be used by a covered company in its assessment of the risk profile of a security. However, covered companies should avoid over reliance upon credit ratings in isolation. In addition, the Dodd-Frank Act prohibits the reference to or reliance on credit ratings in an agency's regulations. Public Law 111–203, section 939A, 124 Stat 1376 (2010).

securing over-the-counter or exchange-traded derivative transactions. Another commenter interpreted the liquid and readily-marketable standard to require a security-by-security analysis incorporating data on market makers and market participants and trading volumes to determine eligibility under the criteria. The commenter contended that such analysis could be burdensome on covered companies with significant trading operations. One commenter requested that the agencies remove this standard for all level 1 and level 2A liquid assets. Another stated that there was a difference between the regulatory text of the proposed rule and the discussion in the Supplementary Information section to the proposed rule, which indicated that HQLA would need to exhibit certain market-based characteristics, such as no sharp price declines, and standardized, homogeneous, and simple securities structures. The commenter stated that these characteristics were not included in the liquid and readily-marketable standard and requested clarification on how much the structure of a security would be questioned by the supervisors of a covered company.

After reviewing the comments, the agencies have determined to retain the proposed definition of ''liquid and readily-marketable'' in the final rule. The agencies believe that defining an asset as liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and high trading volumes provides an appropriate standard for determining whether an asset can be readily sold in times of stress. These elements of the requirement are meant to ensure that assets included as HQLA are traded in deep, active markets to allow a covered company to convert them into cash by sale or repurchase transactions during times of stress. In particular, the agencies believe that an active secondary market for an asset is an indicator of the ease with which a covered company may monetize that asset. In response to a commenter's concern that a covered company may only monetize securities through outright sales to meet the liquid and readily-marketable standard, the agencies are clarifying that a covered company may monetize assets through repurchase transactions in addition to outright sales.

Although one commenter requested that the final rule include specific securities or instrument characteristics to further define ''liquid and readily-marketable,'' the agencies believe that the specific types of securities set forth in the categories of level 1, level 2A, and level 2B liquid assets provide sufficient detail of the types of securities and instruments that may be liquid and readily-marketable and may be considered HQLA. In addition, the final rule retains from the proposed rule certain price decline scenarios to identify certain level 2A and level 2B liquid assets.[22] The agencies believe that price decline scenarios are appropriate for certain types of assets included in level 2A and 2B liquid assets to evaluate the liquidity and market-based characteristics of those assets. As the criteria for these categories of HQLA incorporate price decline scenarios, the agencies do not believe it is necessary to separately include price decline scenarios as part of the liquid and readily-marketable standard.

One commenter requested that the agencies clarify the Supplementary Information section discussion in the proposed rule indicating that HQLA should exhibit standardized, homogeneous, and simple security structures. The agencies believe that the criteria for HQLA set forth in § __.20 of the final rule includes assets that meet these criteria. The final rule continues to require that certain HQLA categories meet the final rule's definition of liquid and readily-marketable. The agencies emphasize that securities with unique, bespoke, or complex structures which are difficult to value on a routine basis, regardless of issuer or capital risk weight, may not meet the liquid and readily-marketable standard.

In response to a commenter's concern about the burden of a security-by-security analysis to demonstrate that a security qualifies as liquid and readily-marketable, the agencies recognize that certain companies may trade or hold a significant number of different securities. Although the exercise of assessing unique securities for the purpose of determining whether they are liquid and readily-marketable may involve operational burden, the agencies believe this analysis and determination is critical to ensuring that only securities that will serve as a reliable source of liquidity during times of stress are included in a company's HQLA. A covered company may choose not to determine whether a security is liquid and readily-marketable for LCR purposes if it determines that the cost of performing the analysis exceeds the benefit of including the security as HQLA. Thus, the agencies decline to remove the liquid and readily-marketable standard for all level 1 and level 2A liquid assets, as requested by one commenter.

Furthermore, in response to requests that the agencies clarify any documentation requirements in determining whether an asset is liquid and readily-marketable, the agencies expect that a covered company should be able to demonstrate to its appropriate Federal banking agency its security-by-security analysis (which may include time-series analyses about the specific security or comparative analysis of similar securities from the same issuer) that HQLA held by the covered company meets the liquid and readily-marketable standard.

b. Financial Sector Entities

Consistent with the Basel III Revised Liquidity Framework, the proposed rule would have provided that assets that are included as HQLA could not be issued by a financial sector entity, because these assets could exhibit similar risks and correlation with covered companies (wrong-way risk) during a liquidity stress period. In the proposed rule, financial sector entities would have included regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or a consolidated subsidiary of any of the foregoing. In addition, under the proposed rule, securities issued by any company (or any of its consolidated subsidiaries) that an agency has determined should, for the purposes of the proposed rule, be treated the same as a regulated financial company, investment company, non-regulated fund, pension fund, or investment adviser, based on its engagement in activities similar in scope, nature, or operations to those entities (identified company) would not have been included as HQLA.

The term regulated financial company under the proposed rule would have included bank holding companies and savings and loan holding companies (depository institution holding companies); nonbank financial companies supervised by the Board; depository institutions; foreign banks; credit unions; industrial loan companies, industrial banks, or other similar institutions described in section 2 of the Bank Holding Company Act (BHC Act); national banks, state member banks, and state nonmember banks (including those that are not depository institutions); insurance companies; securities holding companies (as defined in section 618 of the Dodd-

[22] *See* § __.20(b) and (c).

Frank Act); [23] broker-dealers or dealers registered with the Securities and Exchange Commission (SEC); futures commission merchants and swap dealers, each as defined in the Commodity Exchange Act; [24] or security-based swap dealers defined in section 3 of the Securities Exchange Act.[25] It would also have included any designated financial market utility, as defined in section 803 of the Dodd-Frank Act.[26] The proposed definition would have also included foreign companies that are supervised and regulated in a manner similar to the institutions listed above.[27]

In addition, the proposed definition of regulated financial company would have included a company that is included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site, provided that the top-tier depository institution holding company was subject to the proposed rule (FR Y–6 companies).[28] FR Y–6 companies are typically controlled by the filing depository institution holding company under the BHC Act. Although many of these companies may not be consolidated on the financial statements of a depository institution holding company, the links between the companies are sufficiently significant that the agencies believed that it would have been appropriate to exclude securities issued by FR Y–6 companies (and their consolidated subsidiaries) from HQLA, for the same policy reasons that other regulated financial companies' securities would have been excluded from HQLA under the proposal. The organizational hierarchy chart produced by the NIC Web site reflects (as updated regularly) the FR Y–6 companies a depository institution holding company must report on the form. The agencies proposed this method for identifying these companies in order to reduce burden associated with obtaining the FR Y–6 organizational charts for all depository institution holding companies subject to the proposed rule, because the charts are not uniformly available by electronic means.

Commenters suggested that the proposed definition of ''regulated financial company'' was overly broad. For example, one commenter stated that for the purposes of deposit classification, the definition of ''financial institution'' needs to be limited to those entities that contribute to the risk of interconnectedness to ensure the accurate capture of the underlying risk of the depositor, noting that the NAICS codes for ''Finance and Insurance'' and ''Commercial Banking'' include over 816,000 and 79,000 business, respectively. The commenter stated that, depending on the definition, certain financial institutions may have operational needs and transactional deposits that are more similar to a non-financial institution.[29]

Overall, the agencies believe that the overall scope of the proposed definition of ''regulated financial company'' appropriately captured the types of the companies whose assets could exhibit similar risks and correlation with covered companies during a liquidity stress period. Although the number of financial entities are large, due to the prominence of the financial services industry to the economy of the United States, the agencies continue to believe that the liquidity risks presented by securities and obligations of such companies would be difficult to monetize during a period of significant financial distress, as shown in the recent financial crisis. Accordingly, similar to the proposed rule, the final rule will exclude the securities and obligations of financial sector entities from being HQLA.

In addition to comments regarding the scope of the entities that would have been included under the proposed rule, several commenters expressed concerns regarding the specific inclusion of certain entities.

i. Companies Listed on a Covered Company's FR Y–6

Commenters expressed concern about the definition's inclusion of any company that is included in the organizational chart of a covered company as reported on the Form FR Y–6 and reflected on the NIC Web site within the definition of regulated financial company. These commenters contended that the FR Y–6 is an expansive form that captures a substantial range of activities and investments of depository institution holding companies, including companies in which the covered company has a minority, non-controlling interest, as well as merchant banking investments. Commenters reasoned that merchant banking investments may be non-financial enterprises and may not contribute to the ''wrong-way risk'' contemplated by the agencies in defining regulated financial company. The commenters believed that such entities should not be included as regulated financial companies and requested that the final rule's definition of regulated financial company not include all companies reported by a covered company on the Form FR Y–6.

The agencies recognize that there are certain shortcomings in the scope of the entities that are listed on a covered company's FR Y–6, including the potential capture of non-financial, passive merchant banking subsidiaries. The Board is actively considering options to adjust the reporting mechanism which may be used in determining the population of regulated financial companies. Moreover, because entities listed on a covered company's FR Y–6 that are non-financial, merchant banking investments or that do not meet the definition of control under the BHC Act are not currently separated from other entities controlled by a covered company, the agencies do not believe it would be appropriate at this time to provide a blanket exemption for merchant banking or non-control investments. The Board anticipates that it will revise the reporting requirements used for this purpose in the near future. However, because any revisions to reporting requirements would be subject to public comment, for purposes of the final rule, the agencies are finalizing the definition of regulated financial company as proposed. The agencies do not believe that any change to the definition of regulated financial company would be appropriate without subjecting such a revision to public

[23] 12 U.S.C. 1850a(a)(4).

[24] 7 U.S.C. 1a(28) and (49).

[25] 15 U.S.C. 78c(a)(71).

[26] 12 U.S.C. 5462(4).

[27] Under paragraph (8) of the proposed rule's definition of ''regulated financial company,'' the following would not be considered regulated financial companies: U.S. government-sponsored enterprises; small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*); entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; and central banks, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank.

[28] See National Information Center, A repository of financial data and institution characteristics collected by the Federal Reserve System, available at *http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx.*

[29] The agencies note that the proposed rule would have recognized that financial sector entities have operational needs and deposits that are similar to non-financial entities by treating the deposits of financial sector entities that meet the operational deposit criteria as operational deposits. The non-operational deposits of a financial would have been subject to a higher outflow rate than a non-financial wholesale counterparty due to correlation of liquidity risks between financial sector entities and covered companies. The final rule retains each of these provisions as discussed below under section II.C.3.h.

comment, together with other revisions to the reporting requirements that would be used to identify regulated financial companies.

ii. Foreign Regulated Financial Entities

The definition of regulated financial company under the proposed rule would have included a non-U.S.-domiciled company that is supervised and regulated in a manner similar to the other entities described in the definition, including bank holding companies. One commenter requested that the agencies clarify that the definition of regulated financial company would not include non-U.S. government-sponsored entities and public sector entities. The commenter argued that certain public sector entities are not engaged in a full range of banking activities, but are, however, typically subject to prudential regulation. Two commenters also requested that the preamble to the final rule explain how the ''supervised and regulated in a similar manner'' standard should be construed.

The final rule adopts this provision of the rule as proposed. The agencies are clarifying that, for purposes of the final rule, a foreign company, including a non-U.S. public sector entity, that is similar in structure to a U.S. regulated financial company (e.g., a foreign bank or foreign insurance company) and that is subject to prudential supervision and regulation in a manner that is similar to a U.S. regulated financial company would be considered a regulated financial company under the final rule. In considering the similarity of the supervision and regulation of a foreign company, a covered company can consider whether the non-U.S. activities and operations of the company would be subject to supervision and regulation in the United States and whether such activities are subject to supervision and regulation abroad.

iii. Investment Companies and Investment Advisers

Under the proposed rule, investment companies would have included companies registered with the SEC under the Investment Company Act of 1940 [30] and investment advisers would have included companies registered with the SEC as investment advisers under the Investment Advisers Act of 1940,[31] as well as the foreign equivalent of such companies.

One commenter expressed concern with the proposed rule's treatment of investment companies as financial sector entities. The commenter argued that if an investment company does not invest in financial sector entities, the value of its shares would not correlate with covered companies. The commenter recommended that an investment company's HQLA eligibility should be based on the investment company's investment policies, such that if an investment company has a policy of investing 80 percent of its assets in HQLA or in securities and obligations of non-financial sector entities, its securities would be treated as HQLA of the same level as the lowest level HQLA permitted under the policy.

After considering the commenter's concerns, the agencies decline to adopt the commenter's recommendation in the final rule. Similar to other entities in the financial sector, investment companies have been more prone to lose value and, as a result, become less liquid in times of liquidity stress regardless of the investment company's investment policies or portfolio composition, due to the potentially higher correlation between the health of these companies and the health of the financial markets generally. The agencies believe that a covered company can be exposed to the interconnectedness of financial markets through its investment in investment companies. Thus, consistent with the Basel III Revised Liquidity Framework, the final rule would exclude assets issued by companies that are primary actors in the financial sector from HQLA, including investment company shares.

iv. Non-Regulated Funds

Under the proposed rule, non-regulated funds would have included hedge funds or private equity funds whose investment advisers are required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), and any consolidated subsidiary of such fund, other than a small business investment company, as defined in section 102 of the Small Business Investment Act of 1958.[32]

Commenters expressed concerns about the proposed definition of ''non-regulated fund.'' One of these commenters stated that the proposed definition would have included the undefined terms ''hedge fund'' and ''private equity fund.'' The commenter also argued that the definition should not include portfolio companies that are consolidated subsidiaries of non-regulated funds and those funds that invest primarily in real estate and related assets. The commenter suggested that the definition exclude any fund that does not issue redeemable securities that provide investors with redemption rights in the ordinary course and should also exclude closed-end funds. The commenter also stated that although the definition requires a banking organization to determine whether the investment adviser of a fund is required to file Form PF, this information on whether a particular fund is the subject of a Form PF is not publicly available.

Generally, a manager of a ''private fund'' that is required to register with the SEC as an investment adviser and manages more than $150 million in private fund assets is required to file SEC Form PF. Although the final rule does not define hedge funds or private equity funds, the agencies believe that such terms are commonly understood in the financial services industry and note that the instructions to the SEC's Form PF provide a definition for private equity funds and hedge funds that are captured under the form.[33] Therefore the agencies believe that defining ''non-regulated fund'' by referencing the private equity and hedge funds whose investment advisers are required to file SEC Form PF adequately defines the universe of hedge funds and private equity funds captured under the final rule.

In response to commenter concerns that the definition of ''non-regulated fund'' includes portfolio companies that are consolidated subsidiaries of private funds, the agencies have modified the definition of ''non-regulated fund.'' The agencies recognize that consolidated subsidiaries of private funds may not conduct financial activities, but would have received treatment as financial sector entities under the proposed rule. Accordingly, the final rule's definition of ''non-regulated fund'' no longer includes consolidated subsidiaries of hedge funds and private equity funds whose investment adviser is required to file SEC Form PF.

With respect to the commenter's request to exclude any fund that does not issue redeemable securities and closed-end funds from the definition of non-regulated fund, although investors in these funds are unable to redeem securities and may not appear to present liquidity risk, the agencies believe these obligations and securities do pose similar liquidity risks and will behave similarly to those of other financial entities.

[30] 15 U.S.C. 80a–1 *et seq.*

[31] 15 U.S.C. 80b–1 *et seq.*

[32] 15 U.S.C. 661 *et seq.*

[33] *See* Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operations and Commodity Trading Advisors (Form PF), available at *http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf.*

Finally, the agencies recognize that Form PF filings are not publicly disclosed. However, the agencies expect that a covered company should understand whether its customer is a private equity fund or a hedge fund. The agencies further expect that when identifying HQLA a covered company should undertake the necessary diligence to confirm whether an investment adviser to such fund, which is typically the manager of the fund, is required to file Form PF and meets the final rule's definition of ''non-regulated fund.''

c. Level 1 Liquid Assets

Under the proposed rule, a covered company could have included the full fair value of level 1 liquid assets in its HQLA amount.[34] The proposed rule would have recognized that these assets have the highest potential to generate liquidity for a covered company during periods of severe liquidity stress and thus would have been includable in a covered company's HQLA amount without limit. The proposed rule would have included the following assets as level 1 liquid assets: (1) Federal Reserve Bank balances; (2) foreign withdrawable reserves; (3) securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (4) liquid and readily-marketable securities issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the United States government); (5) certain liquid and readily-marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (6) certain debt securities issued by sovereign entities.

As discussed in more detail below, a number of commenters suggested including additional assets in the level 1 liquid asset category. After considering the comments received, the final rule includes the criteria for the level 1 liquid asset category substantially as proposed.

i. Reserve Bank Balances

Under the Basel III Revised Liquidity Framework, ''central bank reserves'' are included as HQLA. In the United States, Federal Reserve Banks are generally authorized under the Federal Reserve Act to maintain balances only for ''depository institutions'' and for other limited types of organizations.[35] Pursuant to the Federal Reserve Act, there are different kinds of balances that depository institutions may maintain at Federal Reserve Banks, and they are maintained in different kinds of Federal Reserve Bank accounts. Balances that depository institutions must maintain to satisfy a reserve balance requirement must be maintained in the depository institution's ''master account'' at a Federal Reserve Bank or, if the institution has designated a pass-through correspondent, in the correspondent's master account. A ''reserve balance requirement'' is the amount that a depository institution must maintain in an account at a Federal Reserve Bank in order to satisfy that portion of the institution's reserve requirement that is not met with vault cash. Balances in excess of those required to be maintained to satisfy a reserve balance requirement, known as ''excess balances,'' may be maintained in a master account or in an ''excess balance account.'' Finally, balances maintained for a specified period of time, known as ''term deposits,'' are maintained in a term deposit account offered by the Federal Reserve Banks. The proposed rule used the term ''Reserve Bank balances'' as the relevant term to capture central bank reserves in the United States.

Under the proposed rule, all balances a depository institution maintains at a Federal Reserve Bank (other than balances that an institution maintains on behalf of another institution, such as balances it maintains on behalf of a respondent or on behalf of an excess balance account participant) would have been considered level 1 liquid assets, except for certain term deposits as explained below.

Consistent with the concept of ''central bank reserves'' in the Basel III Revised Liquidity Framework, the proposed rule included in its definition of ''Reserve Bank balances'' only those term deposits offered and maintained pursuant to terms and conditions that: (1) Explicitly and contractually permit such term deposits to be withdrawn upon demand prior to the expiration of the term; or that (2) permit such term deposits to be pledged as collateral for term or automatically-renewing overnight advances from a Federal Reserve Bank. Regarding the first point, term deposits offered under the Federal Reserve's Term Deposit Facility that include an early withdrawal feature that allows a depository institution to obtain a return of funds prior to the deposit maturity date, subject to an early withdrawal penalty, would be included in ''Reserve Bank balances'' because such term deposits would be explicitly and contractually repayable on notice. The amount associated with a term deposit that would be included as ''Reserve Bank balances'' is equal to the amount that would be received upon withdrawal of such a term deposit. Those term deposits that do not include this feature would not be included in ''Reserve Bank balances.'' The terms and conditions for each term deposit offering specify whether the term deposits being offered include an early withdrawal feature. Regarding the second point, although term deposits may be pledged as collateral for discount window borrowing, the Federal Reserve's current discount window lending programs do not generally provide term or automatically-renewing overnight advances.

Commenters suggested various assets related to Reserve Bank balances to include as level 1 liquid assets or to be reflected in the level 1 liquid asset amount. One commenter recommended that the final rule include required reserves in the level 1 liquid asset amount, alleging that the proposed rule circumvented Regulation D, which allows covered companies to manage their reserves over a 14-day period.[36] A few commenters argued that the final rule should include vault cash, whether held in branches or ATMs, as a level 1 liquid asset. The commenter argued that the final rule should be consistent with the Basel III Revised Liquidity Framework, which recognizes the intrinsic liquidity value of cash and includes coins and banknotes as level 1 liquid assets. Commenters further contended that vault cash, which can be used to satisfy the bank's reserve requirement under Regulation D, is a fundamental feature of daily liquidity management for banks and should be included as level 1 liquid assets.[37] One commenter requested confirmation whether gold bullion meets the definition of level 1 liquid assets, arguing that it is low risk, highly liquid, has an active outright sale market, high trading volumes, a diverse number of

[34] Assets that meet the criteria of eligible HQLA may be held by a covered company designated as either ''available-for-sale'' or ''held-to-maturity,'' but must be included in the HQLA amount calculation at fair value (as determined under GAAP).

[35] *See* 12 U.S.C. 342.

[36] 12 CFR part 204.

[37] 12 CFR 204.5(a)(1).

market participants, and has historically been a flight-to-quality asset.

After considering the comments, the agencies are adopting the proposed criteria in the final rule with respect to central bank reserves. The agencies are not adopting a commenter's suggestion to include required reserves in the level 1 liquid asset amount because the assets held to satisfy required reserves, whether vault cash or balances maintained at a Federal Reserve Bank, are required for the covered company to manage reserves over the maintenance period pursuant to Regulation D and the agencies do not believe that the assets held to satisfy a covered company's required reserves would entirely be available for use during a liquidity stress event due to the reserve requirements.[38]

The final rule does not include cash, whether held in branches or ATMs, in level 1 liquid assets, as such cash may be necessary to meet daily business transactions and due to logistical concerns associated with ensuring that the cash can be immediately used to meet the covered company's outflows. However, as noted in section II.B.5 of this Supplementary Information section, the final rule does modify the calculation of the HQLA amount. Under the proposed rule, the level 1 liquid asset amount would have equaled the fair value of all level 1 liquid assets held by the covered company as of the calculation date, less required reserves under section 204.4 of Regulation D (12 CFR 204.4). Under the final rule, agencies have clarified that the amount to be deducted from the fair value of eligible level 1 assets is the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5). A reserve balance requirement is the amount that a depository institution must maintain in an account at a Federal Reserve Bank in order to satisfy that portion of the institution's reserve requirement that is not met with vault cash.

The agencies also decline to adopt a commenter's suggestion to include gold bullion as a level 1 liquid asset given the concerns about the volatility in market value of the asset and the logistical factors associated with holding and liquidating the asset.

ii. Foreign Withdrawable Reserves

The agencies proposed that reserves held by a covered company in a foreign central bank that are not subject to restrictions on use (foreign withdrawable reserves) would have been included as level 1 liquid assets. Similar to Reserve Bank balances, foreign withdrawable reserves should be able to serve as a medium of exchange in the currency of the country where they are held. The agencies received no comments on the definition of foreign withdrawable reserves. The final rule includes foreign withdrawable reserves as level 1 liquid assets as proposed.

iii. United States Government Securities

The proposed rule would have included as level 1 liquid assets securities issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Generally, these types of securities exhibited high levels of liquidity even in times of extreme stress to the financial system, and typically are the securities that experience the most flight to quality when investors adjust their holdings. Level 1 liquid assets would have also included securities issued by any other U.S. government agency whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government, provided that they are liquid and readily-marketable.

One commenter suggested that the agencies' inclusion in level 1 liquid assets of only agency securities that are fully and explicitly guaranteed by the full faith and credit of the U.S. government was too narrow and this would increase the demand for Government National Mortgage Association (GNMA) securities by large banking organizations, resulting in increased market pricing for such securities that would impact the profitability of investments at smaller banking organizations. The agencies believe that securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government have credit and liquidity risk that is comparable to securities issued by the U.S. Treasury. Thus, due to the inherent low risk of such securities and obligations, the agencies believe that it is appropriate to classify such securities as level 1 liquid assets. The agencies believe that any increased holdings of such securities by covered companies should not result in significant price increases for the securities due to the requirement of the final rule that each covered company ensure that it maintains policies and procedures that ensure the appropriate diversification of its HQLA by asset type, counterparty, issuer, and other factors. The final rule adopts this provision as proposed and continues to include U.S. government securities as level 1 liquid assets.

iv. Certain Sovereign and Multilateral Organization Securities

The proposed rule would have included as level 1 liquid assets securities that are a claim on, or a claim unconditionally guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank, provided that such securities met the following four requirements.

First, these securities must have been assigned a zero percent risk weight under the standardized approach for risk-weighted assets of the agencies' risk-based capital rules.[39] Generally, securities issued by sovereigns that are assigned a zero percent risk weight have shown resilient liquidity characteristics. Second, the proposed rule would have required these securities to be liquid and readily-marketable, as discussed above. Third, these securities would have been required to have been issued by an entity whose obligations have a proven record as a reliable source of liquidity in the repurchase or sales markets during stressed market conditions. A covered company could have demonstrated a historical record that met this criterion through reference to historical market prices during times of stress, such as the period of financial market stress experienced from 2007 to 2009. Covered companies should also have looked to other periods of systemic and idiosyncratic stress to see if the asset under consideration has proven to be a reliable source of liquidity. Fourth, these securities could not be an obligation of a regulated financial company, non-regulated fund, pension fund, investment adviser, or identified company or any consolidated subsidiary of such entities.

One commenter expressed concern about the inclusion of all sovereign obligations that qualify for a zero percent risk weight as level 1 liquid assets. The commenter argued that a broad range of sovereign debt may receive a zero percent risk weight under the Basel III capital accord and may include sovereign entities whose commitments pose credit, liquidity, or exchange rate risk, and suggested that the agencies include a minimum sovereign rating classification.

The agencies considered the commenter's concerns, but are adopting

[38] 12 CFR 204.5(b)(1).

[39] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve), and 12 CFR part 324 (FDIC).

the criteria for sovereign obligations to be included as level 1 liquid assets as proposed. The agencies believe that sovereign obligations that continue to qualify for a zero percent risk weight have shown resilient liquidity characteristics. The agencies believe that the risk weight assigned to sovereign obligations under the agencies' risk-based capital rules is an appropriate standard and decline to require a minimum sovereign rating classification. The agencies continue to retain the proposed criteria for determining whether sovereign and multilateral organization securities qualify as level 1 liquid assets under the final rule such as requiring them to be liquid and readily-marketable.[40] The agencies believe that these criteria limit the concerns raised by the commenter that capital risk weight alone is insufficient to preclude all illiquid foreign debt issuances. Consistent with the inclusion of level 1 liquid assets as HQLA, the agencies believe that qualifying sovereign securities should continue to be includable in a covered company's HQLA amount without limit.

v. Certain Foreign Sovereign Debt Securities

Under the proposed rule, debt securities issued by a foreign sovereign entity that are not assigned a zero percent risk weight under the standardized approach for risk-weighted assets of the agencies' risk-based capital rules could have served as level 1 liquid assets if they were liquid and readily-marketable, the sovereign entity issued such debt securities in its own currency, and a covered company held the debt securities to meet its cash outflows in the jurisdiction of the sovereign entity, as calculated in the outflow section of the proposed rule. These assets would have been appropriately included as level 1 liquid assets despite having a risk weight greater than zero because a sovereign often is able to meet obligations in its own currency through control of its monetary system, even during fiscal challenges. The agencies received no significant comments on this section of the proposed rule and so the final rule adopts this standard as proposed.

vi. Level 1 Liquid Assets at a Foreign Parent

Several commenters requested that the agencies permit a covered company that is a U.S. subsidiary of a foreign company subject to the LCR in another country to treat assets that are permitted to be included as level 1 liquid assets under the laws of that country as level 1 liquid assets for purposes of the final rule. After considering the commenters' request, the agencies decline to adopt the commenter's request. The agencies believe that assets should exhibit the liquidity characteristics required in the final rule, which have been calibrated for the outflows of U.S. covered companies, to be included as level 1 liquid assets for purposes of the U.S. LCR requirement. The agencies intend to ensure that the requirements for level 1 liquid assets are consistent for all covered companies, regardless of the ownership of an individual covered company. As noted above, the agencies have included certain foreign sovereign obligations as level 1 liquid assets and believe that these asset classes appropriately reflect the outflows of U.S. covered companies.

vii. Deposits by Covered Nonbank Companies in Third-Party Commercial Banks

One commenter requested that the agencies permit covered nonbank companies to include as level 1 liquid assets, subject to a haircut, overnight deposits in third-party commercial banks or holding companies that are subject to the final rule or a foreign equivalent standard, so long as the deposits are not concentrated in any one affiliated group of banks. After considering the commenter's request, the agencies have decided not to adopt the suggestion and believe all covered companies have several investment options to fulfill their HQLA requirement. The agencies recognize that covered nonbank companies do not have access to certain services available to banking entities and may place significant deposits with third-party banking organizations. Such deposits do not meet the agencies' criteria for level 1 liquid assets because during a liquidity stress event many commercial banks may exhibit the same liquidity stress correlation and wrong-way risk discussed above in relation to excluded financial sector entity securities. However, the agencies note that amounts in these deposits may qualify as an inflow, with a 100 percent inflow rate, to offset outflows, depending upon their operational nature.

viii. Liquidity Up-Front Fee

The proposed rule briefly noted there has been ongoing work on the Basel III LCR and central bank operations. The BCBS announced on January 12, 2014, an amendment to the Basel III Revised Liquidity Framework that included allowing capacity from restricted committed liquidity facilities of central banks as HQLA. One commenter stated that any concerns expressed by the banking industry regarding the availability of liquid assets could be addressed by permitting financial institutions to pay the Federal Reserve an up-front fee for a committed liquidity line.

The agencies are considering the merits of including central bank restricted committed facility capacity as HQLA for purposes of the U.S. LCR requirement and may propose at a future date to include such capacity as HQLA.

d. Level 2A Liquid Assets

Under the proposed rule, level 2A liquid assets would have included certain obligations issued or guaranteed by a U.S. government sponsored enterprise (GSE)[41] and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank. Assets in these categories would have been required to be liquid and readily-marketable, as described above, to be considered level 2A liquid assets. The agencies received a number of comments on the treatment of GSE securities under the proposed rule. After reviewing the comments received, for the reasons discussed below, the agencies are adopting the proposed criteria for level 2A liquid assets in the final rule.

i. U.S. GSE Securities

Commenters suggested a variety of approaches to change the final rule's treatment of U.S. GSE securities. Under the proposed rule, U.S. GSE securities are classified as level 2A liquid assets, which are subject to a 15 percent haircut and, when combined with level 2B liquid assets, have a 40 percent maximum composition limit in the HQLA amount, as discussed in section II.B.5 of this Supplementary Information section.

Several commenters requested that the agencies designate debt securities issued and guaranteed by a U.S. GSEs as level 1 liquid assets in the final rule. Commenters also stated that the 15 percent haircut for such obligations was too high. A few commenters recommended that the agencies remove the 40 percent composition cap on level 2 liquid assets for U.S. GSE securities if the final rule does not include U.S. GSE securities as level 1 liquid assets. Other commenters suggested that the agencies

[40] The agencies note that an asset's ability to qualify under this criterion may change over time.

[41] GSEs currently include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, and the Federal Home Loan Bank (FHLB) System.

remove the ''liquid and readily-marketable'' requirement for the inclusion of U.S. GSE securities as level 2A liquid assets because the securities clearly meet these requirements. One commenter suggested a graduated cap approach, whereby U.S. GSE securities in excess of the 40 percent composition limit in the HQLA amount would be subject to a haircut that would increase as the proportion of U.S. GSE securities to total HQLA increases.

To support their request, commenters made various observations about the liquidity characteristics of U.S. GSE securities. Many commenters highlighted that the market for U.S. GSE securities is one of the deepest and most liquid in the world, with over $4 trillion in GSE mortgage backed securities (MBS) outstanding and a daily trading volume in GSE MBS that averages almost $230 billion. In particular, some commenters argued that MBS issued by FNMA and FHLMC are among the highest quality and most liquid assets. A number of commenters mentioned that U.S. GSE securities comprise a significant amount of the liquidity portfolios of banking organizations because they are recognized by the market as trading in deep and liquid markets. Commenters also contended that GSE securities, like U.S. Treasury securities, have the highest potential to generate liquidity for a covered company during periods of severe liquidity stress. For example, one commenter pointed out that during the 2007–2009 financial crisis, demand for FHLB consolidated obligations increased during the dramatic flight-to-quality event.

Commenters also urged the agencies to consider the potential adverse impact of classifying GSE securities as level 2A liquid assets. These commenters argued that the level 2A liquid asset designation would discourage banking organizations from investing in the securities and would therefore decrease liquidity in the secondary mortgage market. A commenter asserted that the 40 percent cap on level 2A and level 2B liquid assets would result in U.S. banking industry positions being concentrated in the U.S. Treasury and U.S. agency markets, rather than being more broadly diversified across those markets and the GSE market. Another commenter suggested that the agencies assess the impact to the value of U.S. GSE securities should banking organizations liquidate their holdings, which could in turn increase mortgage funding costs and decrease the availability of credit for mortgages.

Some commenters argued that other agency guidance and rules consider or imply that U.S. GSE securities are highly liquid. For example, one commenter stated that the agencies have provided previous guidance encouraging institutions to hold an amount of high-quality liquid assets and cited securities issued by U.S. GSEs as an example of such assets and urged the agencies to explain any deviation from this guidance.[42] Another commenter raised the issue that the Board's then-proposed enhanced liquidity standards under section 165 of the Dodd-Frank Act classified U.S. GSE securities as ''fully liquid.''[43]

Commenters also urged the agencies to consider the fact that certain U.S. GSEs currently operate under the conservatorship of the Federal Housing Finance Agency (FHFA) and receive capital support from the U.S. Treasury. These commenters argued that GSE securities should receive level 1 liquid asset designation while the U.S. GSEs receive support from the U.S. government because the obligations are effectively guaranteed by the full faith and credit of the U.S. government. One commenter suggested that, while the U.S. GSEs are in conservatorship, the agencies permit these securities to receive a 10 percent risk weight under the capital rules and permit them to be in level 1 liquid assets.

Finally, commenters compared the treatment of U.S. GSE securities as level 2A liquid assets under the proposed rule to the classification of securities issued by certain multilateral development banks, such as the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Finance Corporation, the German Development Bank, the European Investment Bank, the German Agriculture Bank, and the Asian Development Bank as level 1 liquid assets. Commenters argued that the size and liquidity of the markets for these securities is much less than the size and liquidity of the market for U.S. GSE securities.

The agencies recognize that some securities issued and guaranteed by U.S. GSEs consistently trade in very large volumes and generally have been highly liquid, including during times of stress, as indicated by commenters. The agencies also recognize that certain U.S. GSEs currently operate under the conservatorship of FHFA and receive capital support from the U.S. Treasury. However, the obligations of the U.S. GSEs are currently effectively, but not explicitly, guaranteed by the full faith and credit of the United States. Under the agencies' risk-based capital rules, the obligations and guarantees of U.S. GSEs—including those operating under conservatorship of FHFA—continue to be assigned a 20 percent risk weight, rather than the zero percent risk weight assigned to securities explicitly guaranteed by the full faith and credit of the United States. The agencies have long held the view that obligations of U.S. GSEs should not be accorded the same treatment as obligations that carry the explicit, unconditional guarantee of the U.S. government and that are assigned a zero percent risk weight. Moreover, the agencies feel that the events related to the 2007–2009 financial stress that required these entities to be placed under conservatorship do not support temporarily improving GSE securities' HQLA status.

Consistent with the agencies' risk-based capital rules, the agencies are not assigning the most favorable regulatory treatment to securities issued and guaranteed by U.S. GSEs under the final rule, even while certain GSEs temporarily operate under the conservatorship of FHFA. The final rule assigns GSE securities to the level 2A liquid asset category, as long as they are investment grade consistent with the OCC's investment securities regulation (12 CFR part 1) as of the calculation date and are liquid and readily-marketable. Additionally, consistent with the agencies' risk-based capital rules' higher risk weight for the preferred stock of U.S. GSEs, the final rule excludes such preferred stock from HQLA.

The agencies are aware that certain previous agency guidance and rules recognize the liquid nature of U.S. GSE securities;[44] however, the guidance and rules do not specifically address the types of diversification requirements that are being required by the final rule's inclusion of different levels of HQLA. The final rule continues to recognize U.S. GSE securities as highly liquid instruments that trade in deep and active markets by including them as a level 2A liquid asset.

In response to commenters' suggestions to remove the 40 percent composition cap, or apply a graduated cap to U.S. GSE securities included as level 2A liquid assets, the agencies believe that the proposed 40 percent cap (when combined with level 2B liquid assets) should continue to apply to all level 2A liquid assets, including U.S. GSE securities. In this regard, commenters also expressed concerns

[42] *See* Interagency Liquidity Policy Statement.

[43] *See* 12 CFR 252.35(b)(3).

[44] *See, e.g.,* Interagency Liquidity Policy Statement.

that the cap on level 2A liquid assets would result in concentrated positions in U.S. Treasury and agency markets. The agencies continue to believe that the 40 percent composition cap is appropriate to ensure that level 2 liquid assets comprise a smaller portion of a covered company's total HQLA amount, such that the majority of the HQLA amount is comprised of level 1 liquid assets, which are the assets that have consistently demonstrated the most liquidity during periods of market distress. The designation of certain assets as level 2A liquid assets indicates that the assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as level 1 liquid assets. The agencies believe that the level 2 liquid asset cap appropriately prevents concentrations of less liquid assets and ensures a sufficient stock of the most liquid assets to meet stressed outflows during a period of significant market distress. As a result, level 2A liquid assets, when combined with level 2B liquid assets, cannot exceed 40 percent of the HQLA amount under the final rule.

Commenters expressed concerns that the proposed designation of U.S. GSE securities as level 2A liquid assets would result in broad market consequences, including decreased liquidity in the secondary mortgage market, increased mortgage funding costs, and impact to the fair value of U.S. GSE securities. The agencies do not believe the treatment of U.S. GSE securities will have broad market consequences as the largest market participants generally have already adjusted their funding profile and assets in anticipation of the LCR requirement with little impact on the overall market. Furthermore, the agencies highlight that the final rule does not prohibit covered companies from investing in U.S. GSE securities and instead continues to allow covered companies to participate fully in U.S. GSE securities markets.

ii. Certain Sovereign and Multilateral Organization Securities

The proposed rule also would have included as a level 2A liquid asset a claim on, or a claim guaranteed by, a sovereign entity or a multilateral development bank that was: (1) Not included in level 1 liquid assets; (2) assigned no higher than a 20 percent risk weight under the standardized approach for risk-weighted assets of the agencies' risk-based capital rules;[45] (3) issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and (4) not an obligation of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing. A covered company would have been required to demonstrate that a claim on or claims guaranteed by a sovereign entity or a multilateral development bank had a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions through reference to historical market prices during times of stress.[46] Covered companies should have looked to multiple periods of systemic and idiosyncratic liquidity stress in compiling such records. The agencies did not receive any comments on the proposed treatment of sovereign and multilateral organization securities that would have qualified as level 2A liquid assets under the proposed criteria. Thus, the final rule classifies them as level 2A liquid assets as proposed.

e. Level 2B Liquid Assets

Under the proposed rule, level 2B liquid assets would have included certain publicly traded corporate debt securities and publicly traded shares of common stock that are liquid and readily-marketable. The limitation of level 2B liquid assets to those that are publicly traded was meant to ensure a minimum level of liquidity, as privately traded assets are typically less liquid. Under the proposed rule, the definition of ''publicly traded'' would have been consistent with the definition used in the agencies' regulatory capital rules and would identify securities traded on registered exchanges with liquid two-way markets. A two-way market would have been defined as a market where there are independent bona fide offers to buy and sell, so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame, conforming to trade custom. This definition was designed to identify markets with transparent and readily available pricing, which, for the reasons discussed above, is fundamental to the liquidity of an asset.

The agencies received comments requesting clarification on the types of publicly traded corporate debt securities that may be included in level 2B liquid assets. Several commenters also suggested that the agencies broaden the scope of publicly traded corporate debt securities and publicly traded shares of common stock to be included in level 2B liquid assets. After considering commenters' concerns, the agencies adopted several modifications to the final rule's criteria for level 2B liquid assets, as discussed below.

i. Corporate Debt Securities

Publicly traded corporate debt securities would have been considered level 2B liquid assets under the proposed rule if they met three requirements (in addition to being liquid and readily-marketable). First, the securities would have been required to meet the definition of ''investment grade'' under 12 CFR part 1 as of the calculation date.[47] This standard would ensure that assets that did not meet the required credit quality standard for bank investment would not have been included in HQLA. The agencies believed that meeting this standard is indicative of lower overall risk and, therefore, higher liquidity for a corporate debt security. Second, the securities would have been required to be issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions. A covered company could have demonstrated this record of liquidity reliability and lower volatility during times of stress by showing that the market price of the publicly traded debt securities or equivalent securities of the issuer declined by no more than 20 percent during a 30 calendar-day period of significant stress, or that the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress. As discussed above, a covered company could demonstrate a historical record that meets this criterion through reference to historical market prices and available funding haircuts of the debt security during times of stress. Third, the proposed rule also provided that the debt securities could not be obligations of a regulated financial company,

[45] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

[46] This would be demonstrated if the market price of the security or equivalent securities of the issuer declined by no more than 10 percent or the market haircut demanded by counterparties to secured funding or lending transactions that are collateralized by such security or equivalent securities of the issuer increased by no more than 10 percentage points during a 30 calendar-day period of significant stress.

[47] 12 CFR 1.2(d).

investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing.

The proposed rule would have defined ''publicly traded'' consistent with the definition used in the agencies' regulatory capital rules and would have identified securities traded on registered exchanges with liquid two-way markets. Commenters stated that the proposed rule's definition of ''publicly traded'' would exclude a substantial portion of corporate debt securities because they were not traded on a public market or exchange. Commenters pointed out that unlike equity securities, corporate debt securities are not generally listed on a national securities exchange. Instead, corporate debt securities are generally traded in active, liquid secondary markets. Commenters argued that applying the ''publicly traded'' requirement to corporate debt securities would severely limit the universe of corporate debt securities that could be included as level 2B liquid assets.

To address concerns that the ''publicly traded'' requirement is overly restrictive for corporate debt securities, some commenters suggested that the final rule include non-publicly traded debt if the issuer's equity is publicly traded. These commenters noted that unlisted debt securities of public companies are actively traded in liquid markets.

After considering the comments received, the agencies have decided to remove the ''publicly traded'' requirement for corporate debt securities to be included as level 2B liquid assets. The agencies acknowledge that corporate debt securities are frequently traded in over-the-counter secondary markets and are less frequently listed and regularly traded on national securities exchanges, as required by the ''publicly traded'' definition. Thus, the ''publicly traded'' requirement would have unduly narrowed the scope of corporate debt securities that can be designated as level 2B liquid assets.

The final rule continues to impose certain other requirements that the agencies proposed on level 2B corporate debt securities. First, the final rule continues to require that the securities meet the liquid and readily-marketable standard to be included in level 2B assets. Second, the final rule also continues to require that the securities meet the definition of ''investment grade'' under 12 CFR part 1 as of a calculation date.[48] Third, the securities are required to be issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions. The covered company must demonstrate that the market price of the securities or equivalent securities of the issuer declined by no more than 20 percent or the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress, or that the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress. Lastly, the final rule provides that the debt securities may not be obligations of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing.

ii. Publicly Traded Shares of Common Stock

Under the proposed rule, publicly traded shares of common stock could have been included as level 2B liquid assets if the shares met the five requirements set forth below (in addition to being liquid and readily-marketable).

First, to be considered a level 2B liquid asset under the proposed rule, publicly traded common stock would have been required to be included in: (1) The Standard & Poor's 500 Index (S&P 500); (2) if the stock is held in a non-U.S. jurisdiction to meet liquidity risks in that jurisdiction, an index that the covered company's supervisor in that jurisdiction recognizes for purposes of including the equities as level 2B liquid assets under applicable regulatory policy; or (3) any other index for which the covered company can demonstrate to the satisfaction of its appropriate Federal banking agency that the equity in such index is as liquid and readily-marketable as equities traded on the S&P 500.

As discussed in the Supplementary Information section to the proposed rule, the agencies believed that listing of a common stock in a major stock index is an important indicator of the liquidity of the stock, because such stock tends to have higher trading volumes and lower bid-ask spreads during stressed market conditions than those that are not listed. The agencies identified the S&P 500 as being appropriate for this purpose given that it is considered a major index in the United States and generally includes the most liquid and actively traded stocks.

Second, to be considered a level 2B liquid asset, the publicly traded common stock would have been required to have been issued in: (1) U.S. dollars; or (2) the currency of a jurisdiction where the covered company operated and the stock offset its net cash outflows in that jurisdiction. This requirement was meant to ensure that, upon liquidation of the stock, the currency received from the sale would match the outflow currency.

Third, the common stock would have been required to have been issued by an entity whose common stock has a proven record as a reliable source of liquidity in the repurchase or sales markets during stressed market conditions. Under the proposed rule, a covered company could have demonstrated this record of reliable liquidity by showing that the market price of the common stock or equivalent securities of the issuer declined by no more than 40 percent during a 30 calendar-day period of significant stress, or that the market haircut, as evidenced by observable market prices, of secured funding or lending transactions collateralized by such common stock or equivalent securities of the issuer increased by no more than 40 percentage points during a 30 calendar-day period of significant stress. This requirement was intended to exclude volatile equities from inclusion as level 2B liquid assets, which is a risk to the preservation of liquidity value. As discussed above, a covered company could have demonstrated this historical record through reference to the historical market prices of the common stock during times of stress.

Fourth, as with the other asset categories of HQLA and for the same reasons, common stock included in level 2B liquid assets may not have been issued by a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing. During the recent financial crisis, the common stock of such companies experienced significant declines in value correlated to other financial institutions and the agencies believe that such declines indicate those assets would be less likely to provide substantial liquidity during future periods of stress in the banking system and, therefore, are not appropriate for inclusion in a covered company's HQLA.

[48] 12 CFR 1.2(d).

Fifth, if held by a depository institution, the publicly traded common stock could not have been acquired in satisfaction of a debt previously contracted (DPC). Because of general statutory prohibitions on holding equity investments for their own account,[49] depository institutions subject to the proposed rule would not be able to include common stock as level 2B liquid assets. In general, publicly traded common stock may be acquired by a depository institution to prevent a loss from a DPC. However, in order for a depository institution to avail itself of the authority to hold DPC assets, such as by holding publicly traded common stock, such assets typically must be divested in a timely manner.[50] The agencies believe that depository institutions should make a good faith effort to dispose of DPC publicly traded common stock as soon as commercially reasonable, subject to the applicable legal time limits for disposition. The agencies are concerned that permitting depository institutions to include DPC publicly traded common stock in level 2B liquid assets may provide an inappropriate incentive for depository institutions to hold such assets beyond a commercially reasonable period for disposition. Therefore, the proposal would have prohibited depository institutions from including DPC publicly traded common stock as level 2B liquid assets.

Finally, under the proposed rule, a depository institution could have eligible publicly traded common stock permissibly held by a consolidated subsidiary as level 2B liquid assets if the assets were held to cover the net cash outflows for the consolidated subsidiary. For example, if Subsidiary A holds level 2B publicly traded common stock of $200 in a legally permissible manner and has net outflows of $80, the parent depository institution could not count more than $80 of Subsidiary A's level 2B publicly traded common stock in the parent depository institution's consolidated level 2B liquid assets after the 50 percent haircut discussed below.

The agencies received several comments on the criteria for publicly traded equity securities to be included in level 2B liquid assets. Some commenters suggested that the agencies broaden the scope of eligible equity securities beyond those included in the S&P 500. One of these commenters stated that the proposed rule favors a small group of equity issuers included in the S&P 500, which could lead to market distortions and unforeseeable consequences. Several commenters suggested that the agencies consider other major stock indices for the level 2B liquid asset criteria. For U.S. equities, a few commenters recommended that the final rule include equities that comprise the Russell 3000 index. Another commenter suggested the Russell 1000 index. These commenters provided analysis of the volatility and trading volumes of stocks within these indices showing the comparability of the most and least liquid securities in these indices with the S&P 500.

In addition, although the proposed rule would have provided that common equities in any other index for which the covered company can demonstrate to the satisfaction of the agencies that the index is as liquid and readily-marketable as the S&P 500 may be included in level 2B liquid assets, commenters argued that identifying specific indices in the final rule would allow covered companies to avoid waiting for agency approval of indices and promote certainty for banking organizations structuring secured financing transactions. Accordingly, some commenters suggested that the final rule designate all equities included in major equity indices in G–20 jurisdictions as level 2B liquid assets under the final rule. Finally, other commenters argued that exchange traded funds (ETFs) based on the indices included as HQLA should be included, because the ETFs add incremental liquidity on top of that seen in the market for the underlying equities.

After considering commenters' concerns and the liquidity characteristics of the indices commenters proposed to be included as HQLA, the agencies have determined to adjust the scope of U.S. equities that may be included as level 2B liquid assets. Specifically, the final rule includes common equity securities of companies included in the Russell 1000 index in the criteria for level 2B liquid assets in place of the companies included in the S&P 500. The proposed rule identified the S&P 500 as being appropriate for this purpose, given that it is considered a major index in the United States and generally includes the most liquid and actively traded stocks. The agencies have determined that the Russell 1000 index would be a more appropriate index after considering comments evidencing the similarities in trading volumes, volatilities, and price movements of the two indices. Moreover, stocks that are included in the Russell 1000 index are selected based on predetermined criteria, whereas a committee evaluates and selects stocks for inclusion in the S&P 500. The agencies believe that the systematic selection of stocks for inclusion in the Russell 1000 index, combined with the liquidity characteristics of stocks included in the index, support replacing the S&P 500 index with the Russell 1000 index in the criteria for level 2B liquid assets.

As mentioned above, some commenters recommended including equities in the Russell 3000 index in level 2B liquid assets. The agencies evaluated the Russell 3000 index and were concerned that it includes a wider universe of stocks and captures the equities of certain smaller U.S. companies by market capitalization. As a result, equities in the Russell 3000 index exhibit a greater range of liquidity characteristics and include equities that demonstrate less favorable trading volumes, volatilities, and price changes. Thus, the agencies believe that the Russell 1000 index, which includes a broader set of stocks than the S&P 500, provides an appropriate universe of stocks that may be eligible as level 2B liquid assets.

The agencies emphasize, however, that equities included in the Russell 1000 index must also meet certain other requirements to be level 2B liquid assets, which the final rule adopts as proposed. Thus, to be considered a level 2B liquid asset, an equity included in the Russell 1000 index must meet other requirements provided in the final rule, such as meeting the liquid and readily-marketable standard and being issued by an entity whose shares have a proven record as a reliable source of liquidity in the sales or repurchase market during a stressed scenario.

In response to commenters' requests for the final rule to identify other indices that include equities that may be designated as level 2B liquid assets, the agencies have determined that the final rule should no longer include the provision to allow a covered company to demonstrate that the equity securities included in another index should be eligible for level 2B liquid assets because the final rule includes the significantly broader Russell 1000 index. In addition, the agencies are unaware of another existing index the components of which would be appropriate for inclusion as level 2B liquid assets.

The final rule does not include ETFs that are based on the indices as level 2B liquid assets. The agencies believe that the liquidity characteristics of ETFs are

[49] 12 U.S.C. 24 (Seventh) (national banks); 12 U.S.C. 1464(c) (federal savings associations); 12 U.S.C. 1831a (state banks); 12 U.S.C. 1831e (state savings associations).

[50] *See generally* 12 CFR 1.7 (OCC); 12 U.S.C. 1843(c)(2) (Board); 12 CFR 362.1(b)(3) (FDIC).

not identical to the liquidity characteristics of the underlying index or the individual components of the fund. Rather, ETFs have their own risk profiles, trading volumes, and market-based characteristics separate from the underlying index. Accordingly, the final rule does not include ETFs as level 2B liquid assets.

The proposed rule would have required publicly traded common stocks to have been issued in: (1) U.S. dollars; or (2) the currency of a jurisdiction where the covered company operated and the stock offset its net cash outflows in that jurisdiction in order to be considered a level 2B liquid asset. The final rule adopts the provision as proposed. The agencies clarify that the provision's second requirement limits a covered company to including as level 2B liquid assets equities issued in the currency of a jurisdiction where the covered company operates. For example, a covered company may hold a stock issued in Japanese yen as a level 2B liquid asset only if: (1) The covered company operates in Japan, and (2) the stock is available to support the covered company's yen denominated net cash outflows in Japan.

iii. Assets Securing a Transaction

Lastly, one commenter suggested that there are narrow situations where the agencies should expand level 2B liquid asset recognition for purposes of the LCR denominator, even when those assets are not recognized as HQLA in the LCR numerator. Specifically, the commenter requested that the agencies include additional classes of assets as level 2B liquid assets solely for the purposes of determining the applicable outflow and inflow rates for transactions secured by the asset. The commenter argued that failure to do so would result in anomalous LCR results even with otherwise reliable secured lending transactions. After considering the commenters' suggestion, the agencies believe that assets should be designated consistently as HQLA for purposes of calculating both the LCR numerator and denominator. In determining HQLA designation, the agencies considered the liquidity characteristics of assets to ensure that a covered company's HQLA amount only includes assets with a high potential to generate liquidity during a stress scenario. The agencies believe that such an approach is appropriate for determining the designation of assets as HQLA for all aspects of the LCR calculation, including the determination of outflow and inflow rates for transactions secured by the asset.

f. Assets Recommended for HQLA Designation

A number of commenters requested that the agencies consider designating additional assets as HQLA. In particular, commenters suggested including as HQLA municipal securities, asset-backed securities (ABS), state and local authority housing bonds backed by Federal Housing Association and Department of Veterans Affairs guarantees, covered bonds, private label MBS, and investment company shares. Several commenters also argued that permissible collateral pledged to FHLBs, FHLB letters of credit, and unused borrowing commitments from FHLBs should be considered as HQLA. The agencies considered commenters' requests and have declined to designate additional assets as HQLA for the reasons discussed below.

i. Municipal Securities

Many commenters urged the agencies to include municipal securities as HQLA, noting that the Basel III Revised Liquidity Framework would include them in its definition of HQLA. Commenters raised a number of policy justifications to support the inclusion of investment grade municipal securities as HQLA, either as level 2A or level 2B liquid assets, including assertions that municipal securities exhibit liquidity characteristics consistent with HQLA status and that the exclusion of municipal securities from HQLA could lead to higher funding costs for municipalities, which could affect local economies and infrastructure.

Several commenters contended that U.S. municipal securities should satisfy the proposed rule's qualifying criteria for HQLA. Many of these commenters argued that municipal bonds meet the liquid and readily-marketable requirement of HQLA because they exhibited limited price volatility particularly during the recent financial crisis, high trading volumes, and deep and stable secured funding markets. Commenters also focused on the high credit quality and low historical default rates of these securities. Furthermore, commenters asserted that the risk and liquidity profiles of municipal securities were comparable, if not superior, to the profiles of other types of assets the agencies proposed for inclusion as HQLA, such as corporate bonds, equities, certain foreign sovereign obligations, and certain securities of GSEs. A number of commenters expressed concerns that the proposed rule would have included certain sovereign securities for countries that have smaller GDPs than some U.S. states as HQLA while excluding obligations of U.S. states and local governments. Some of these commenters argued that the credit ratings of certain states compare favorably with those of countries whose obligations could be included as level 1 or level 2A liquid assets. Commenters also contended that municipal securities perform well and experience increased demand during times of stress. Several commenters asserted that banking organizations could liquidate large holdings of municipal securities with minimal market or price disruption during a crisis scenario.

Many commenters asserted that municipal securities have active markets with high trading volumes, a large number of registered broker-dealers who make markets in the municipal securities, and significant diversity in market participants. These commenters maintained that certain large issuers of municipal securities markets have regular and active trading. In particular, commenters argued that municipal securities are actively traded by a number of nonbank financial sector entities and retail customers and have a low degree of interconnectedness with banking organizations. A few commenters acknowledged that the municipal bond market includes numerous, diverse issuers and that certain individual municipal securities may have low trading volumes. However, these commenters argued that the securities typically trade on a per issuer basis rather than a per security basis and urged the agencies to evaluate the municipal security market as a whole when assessing their liquidity characteristics for HQLA status.

Several commenters asserted that many municipal securities exhibit the HQLA characteristics of being easily and readily valued. Some of these commenters highlighted that although municipal securities are not traded on an exchange, most of them can be readily valued on a daily basis from a variety of pricing services. Certain commenters highlighted that municipal securities are eligible collateral for loans at the Federal Reserve discount window.

Many commenters focused on the potential consequences of excluding municipal securities from HQLA. Commenters asserted that their exclusion would discourage banking organizations from purchasing the securities. Consequently, state and local entities would face increased funding costs for infrastructure and essential public services. Commenters stated that municipal securities are a vital source of credit for local communities, and the proposed rule's exclusion of the securities from HQLA would have limited a source of funding for local economies. Some commenters stated that the proposed rule's treatment of municipal securities would have led states and municipalities to pass on increased funding costs for infrastructure and essential public services to local businesses and the general public in the form of increased taxes.

Several commenters asserted that although municipal securities are not typically used as collateral for repurchase agreements, they are rehypothecated by tender options bonds, which did not see significant haircuts or price changes during the recent financial crisis.

Commenters also compared the proposed rule's treatment of municipal securities to the standards of other jurisdictions. A few of these commenters noted that the proposed rule's exclusion of municipal securities was inconsistent with the Basel III Revised Liquidity Framework, which potentially recognizes securities issued by state and municipal governments that qualify for 20 percent risk weighting under the Basel capital standards as level 2A assets. One commenter noted that the European Bank Authority has recommended including certain bonds issued by European local government institutions as HQLA.

Some commenters noted that encouraging covered companies to invest in municipal securities would compel covered companies to diversify their holdings of HQLA with securities that have a varied investor base. Commenters pointed out that the financial sector is underexposed to the municipal securities market and asserted that this diversification would improve the liquidity risk profiles of banking organizations.

Finally, several commenters argued that the agencies could limit municipal securities included as HQLA through a number of criteria including: (1) Only those securities that would be ''investment grade'' under 12 CFR part 1 as of a calculation date; (2) only those securities that have a 20 percent risk-weighting under the agencies risk-based capital rules; or (3) a separate 25 percent composition cap on municipal securities included in a covered company's HQLA amount.

Under the final rule, securities issued by public sector entities, such as a state, local authority, or other government subdivision below the level of a sovereign (including U.S. states and municipalities) do not qualify as HQLA. The goal of the LCR is to ensure that covered companies are able to meet their short-term liquidity needs during times of stress. Inability to meet those liquidity needs proved to be a significant cause of the failure or near failure of several large financial firms during the recent financial crisis. To ensure adequate liquidity, the final rule only includes as HQLA securities that can be easily and immediately convertible into cash with little or no loss of value during a period of stress, either by sale or through a repurchase transaction.

With respect to municipal securities, the agencies have observed that the liquidity characteristics of municipal securities range significantly, and overall, many municipal securities are not ''liquid and readily-marketable'' in U.S. markets as defined in § __.3 of the final rule. For instance, many securities issued by public sector entities exhibit low average daily trading volumes and have generally demonstrated less favorable price changes and volatility characteristics. In addition, the agencies have found that the funding of many municipal securities is very limited in the repurchase market, which indicates that the securities may not be able to be quickly converted into cash during a period of stress. Generally, the agencies believe that covered companies would be limited in their ability to rapidly monetize many municipal securities in the event of a severe systemic liquidity stress scenario.

Several commenters pointed to other characteristics, such as credit quality, default rates, and central bank eligibility, in urging the agencies to include municipal securities as HQLA. As discussed, the final rule considers certain liquidity characteristics, including risk profile, market-based characteristics, and central bank eligibility to identify types of assets that would qualify as HQLA. Although the agencies consider the credit risk and central bank eligibility associated with an asset in determining HQLA eligibility, the agencies also consider other characteristics, such as trading volumes, price characteristics, and the presence of active sales or repurchase markets for the securities at all times. After considering the relevant characteristics taken together, the agencies believe that many municipal securities do not demonstrate the requisite liquidity characteristics to qualify as HQLA under the final rule.

Some commenters questioned the basis for excluding municipal securities from HQLA when the agencies proposed to include corporate bonds, equities, and securities of sovereign countries that have recently experienced financial difficulties. The agencies note that although the credit risk of a security may be an important aspect for determining the liquidity of a class of assets, the agencies also believe that trading volumes and the presence of deep, active sale or repurchase markets for an asset class are important aspects of any potential class of HQLA. As discussed above, the agencies have determined that the liquidity characteristics of other assets, such as corporate bonds, equities, and certain sovereign securities, meet the requirements for HQLA eligibility because of their trading volumes and the presence of deep, active sale or repurchase markets for those assets. For many municipal securities, the agencies have not found that the markets and trading volume is as deep and active on an ongoing basis such that there is a high level of confidence that a banking organization could quickly convert these municipal securities into cash during a severe liquidity stress event. The agencies observe that the final rule's treatment of municipal securities is consistent with the treatment of other assets that also, as a class, significantly vary in trading volume and lack access to deep and active repurchase markets and therefore do not qualify as HQLA, such as covered bonds and ABS.

Commenters also compared the proposed rule's treatment of municipal securities to the potential standards of other jurisdictions and the Basel III Revised Liquidity Framework, which contemplate that certain securities issued by public sector entities such as states and municipalities may be included as HQLA. However, for the reasons discussed above, the agencies believe that many municipal securities are not liquid and readily-marketable in U.S. markets and thus do not exhibit the liquidity characteristics necessary to be included as HQLA under the final rule.

In response to commenters' suggested criteria for including certain municipal securities as HQLA, although some commenters noted that pricing services can offer daily values for certain municipal securities, the agencies recognize that financial data from municipal issuers can be inconsistent and vary in timing. The agencies believe that challenges in data availability can impact the ability of covered companies and supervisors to determine the eligibility of certain municipal securities based on suggested sets of criteria. Furthermore, generally, the agencies have concluded that the criteria suggested by commenters would lead to inclusion of municipal securities that exhibit a range of liquidity characteristics, including those with less favorable characteristics that are not compatible with HQLA eligibility and that would not be a sufficiently reliable source of liquidity for a banking organization during a period of stress.

Finally, as discussed above, commenters expressed concerns about the market impact of excluding municipal securities from HQLA. A few commenters also stated that encouraging covered companies to invest in municipal securities would help diversify the covered companies' holdings. The agencies highlight that the final rule does not prohibit covered companies from investing in municipal securities and diversifying their investment portfolios. The agencies are aware that covered companies continue to actively invest in municipal securities, evidenced by covered companies' increased holdings of municipal securities since the financial crisis, for reasons unrelated to liquidity risk management practices. Under the final rule, covered companies may continue to participate fully in municipal security markets. The agencies continue to believe that municipal securities can be appropriate investments for covered companies and expect the banking sector to continue to participate in this market. Many covered companies did not include municipal securities in their holdings of liquid assets for contingent liquidity stress purposes prior to the LCR, yet continued to invest in municipal securities for yield, credit quality, and other factors; therefore, the agencies do not believe the final rule will have a significant impact on overall demand for municipal securities.

ii. ABS, Covered Bonds, Private Label MBS, and Mortgage Loans

A number of commenters recommended that the agencies designate certain securitization exposures, specifically certain high credit quality ABS, covered bonds, and private label MBS (commercial, multifamily, and residential real estate), as level 2B liquid assets. Commenters asserted that banking organizations are key investors in these securitization products that serve as important long-term financing instruments supporting the economy. These commenters warned that failure to include these securities as HQLA could adversely impact the private U.S. mortgage market.

Some commenters suggested that the final rule include ''high-quality'' ABS as level 2B liquid assets. For example, one commenter suggested that the final rule include a set of criteria to identify high-quality ABS having liquidity characteristics similar to those of corporate debt securities that are included as level 2B liquid assets, so that the ABS meeting those criteria could also be included as level 2B liquid assets. In support of that recommendation, some commenters asserted that certain publicly traded ABS exhibited similar historical performance to investment grade publicly traded corporate debt securities, even during the recent financial crisis. Some commenters asserted that excluding ABS from HQLA could undermine investment in the ABS market and increase the cost of securitization financing available to customers of banking organizations. A commenter requested that the final rule include investment grade senior unsubordinated ABS collateralized or otherwise backed solely by loans originated under the Federal Family Education Loan Program as level 2A liquid assets.

Some commenters recommended that the agencies include covered bonds as level 2B liquid assets. Commenters argued that the proposed rule's exclusion of covered bonds from HQLA deviated from the Basel III Revised Liquidity Framework's designation of certain high credit quality covered bonds as level 2A liquid assets with a 15 percent haircut. One commenter suggested a set of criteria to identify high credit quality covered bonds that could be included as level 2B liquid assets.[51] The commenter suggested that the agencies consider including covered bonds that meet the criteria and have a proven track record as a reliable source of liquidity in a stressed market environment as level 2B liquid assets. Another commenter noted that the risk characteristics of covered bonds are fundamentally different from other securitizations and highlighted that the liquidity of covered bonds in Europe during recent crises was not significantly impaired. One commenter acknowledged that the U.S. covered bond market is not highly developed, but supported including covered bonds as HQLA to encourage development of the market.

Some commenters suggested that the final rule include private label MBS as level 2B liquid assets. A few commenters argued that the proposed rule's exclusion of private label MBS from HQLA deviated from the Basel III Revised Liquidity Framework, which includes certain high credit quality private label residential MBS (RMBS) as level 2B liquid assets with a 25 percent haircut, and suggested that the agencies follow the Basel standard. One of these commenters suggested that the agencies adopt a set of criteria to identify high credit quality RMBS that could be considered level 2B liquid assets that is similar to the criteria the agencies proposed to adopt for corporate debt securities that would have been level 2B liquid assets under the proposed rule. The commenter recommended that the eligible RMBS would qualify for level 2B treatment to the extent that the RMBS could be shown to have a proven track record as a reliable source of liquidity during stressed market environments as demonstrated by: (i) The market price of the RMBS or equivalent securities of the sponsor declining by no more than 20 percent during a 30 calendar-day period of significant stress, or (ii) the market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the RMBS or equivalent securities of the sponsor declining no more than 20 percentage points during a 30-calendar day period of significant stress.

A few commenters stated that in the agencies' proposed rule on credit risk retention, the agencies have proposed to exempt from risk retention certain RMBS backed by ''qualified mortgages'' as defined under the Truth in Lending Act in part because of their credit characteristics and requested that the agencies consider including RMBS backed by ''qualified mortgages'' as HQLA.[52] Some commenters asserted that failing to include RMBS as HQLA could negatively impact the residential mortgage market by impeding the return of private capital. Commenters also requested that mortgage loans be included as HQLA, arguing that the failure to do so could have unintended consequences for the mortgage market.

After considering the comments, the agencies have determined not to include ABS, covered bonds, private label MBS and mortgage loans as level 2B liquid assets. The agencies are aware that specific issuances of ABS, RMBS, or covered bonds may exhibit some liquidity characteristics that are similar

[51] Specifically, the commenter suggested that a covered bond should qualify as a level 2B liquid asset if the security: (1) Is registered under the Securities Act of 1933 or exempt under the SEC's Rule 144A; (2) is senior debt that is issued by a regulated, unaffiliated financial institution located in an Organization for Economic Co-Operation and Development country; (3) grants the holders the right to sell the covered asset pool upon default and that the sale could not be stayed or delayed due to the insolvency of the issuer; and (4) meets the other criteria required for a level 2B liquid asset.

[52] *See* OCC, Board, FDIC, FHFA, SEC, U.S. Department of Housing and Urban Development, ''Credit Risk Retention,'' 78 FR 57989 (September 20, 2013).

to those of assets included as HQLA. However, the agencies continue to believe that ABS, covered bonds, private label MBS, and mortgage loans do not meet the liquid and readily-marketable standard in U.S. markets, and thus do not exhibit the liquidity characteristics necessary to be included as HQLA under the final rule. Evidence from the 2007–2009 financial crisis and the period following indicates that the market demand for a variety of securitization issuances can decline rapidly during a period of stress, and that such demand may not rapidly recover. ABS may be dependent on a diverse range of underlying asset classes, each of which may be impacted in a period of significant stress. Furthermore, the bespoke characteristics of securitization structures may be tailored to a limited range of investors. The ability to monetize securitization issuances and whole loans through or in the repurchase market may be limited in a period of stress.

Moreover, although certain ABS issuances, such as ABS backed by loans under the Federal Family Education Loan Program and RMBS backed solely by securitized ''qualified mortgages'' or mortgages guaranteed by the Federal Housing Authority or the Department of Veterans Affairs, may have lower credit risk, the liquidity risk profile of such securities, including the inability to monetize the issuance during a period of stress, would not warrant treatment as HQLA. The agencies note that ABS and RMBS issuances have substantially lower trading volumes than MBS that are guaranteed by U.S. GSEs and demand for such securities has decreased, as shown by the substantial decline in the number of issuances since the recent financial crisis. The agencies note that the inclusion of RMBS under the Basel III Revised Liquidity Framework was limited to those securitizations where the underlying mortgages were full recourse loans, which is not permissible in a number of states, and therefore would complicate any inclusion of RMBS as HQLA in the United States.

Likewise, with respect to mortgage loans, including qualified mortgage loans or those guaranteed by the Federal Housing Authority or the Department of Veterans Affairs, the agencies note that due to legal requirements for transfer and the lack of use of mortgages as collateral for repurchase agreements, such loans cannot typically be rapidly monetized during a period of financial stress, prohibiting their classification as HQLA. Moreover, although such assets can be pledged to the FHLB, the agencies do not believe that the FHLB should represent the sole method of rapid monetization for any class of assets included as HQLA, as discussed further below.

As one commenter mentioned, the U.S. market for covered bonds is not highly developed, with few issuances. The agencies do not believe that it is appropriate for the agencies to use the LCR as the mechanism for encouraging or developing the liquidity of an asset class. Rather, the LCR is designed to ensure that covered institutions have sufficient liquid assets that already have been proven sources of liquidity in the event of a liquidity crisis. Furthermore, the agencies observe that covered bonds, which are typically issued by companies in the financial sector, exhibit significant risks regarding interconnectedness and wrong-way risk among companies in the financial sector.

Several commenters highlighted that excluding RMBS and covered bonds from HQLA could cause a detrimental impact on the U.S. residential mortgage market. The agencies recognize the importance of capital funding to the U.S. residential mortgage markets and highlight that the final rule does not prohibit covered companies from continuing to invest in ABS, covered bonds, and private label MBS, and does not restrict a covered company from making mortgage loans or loans underlying ABS and covered bonds. As discussed above, the agencies do not expect, and have not observed, that banking organizations base their investment decisions solely on regulatory considerations and do not anticipate that exclusion of these assets from HQLA will significantly deter investment in these assets.

iii. Investment Company Shares

A few commenters requested that the agencies consider including certain investment company shares, such as shares of mutual funds and money market funds (MMFs), as HQLA. Commenters argued that investment companies should not be treated as financial sector entities for purposes of determining whether shares of the investment company may be included as HQLA. As discussed above, the proposed rule would have excluded securities issued by a financial sector entity from HQLA to avoid the potential for wrong-way risk. Commenters suggested that the agencies look through to the investments of the fund to determine HQLA eligibility. In particular, a commenter requested clarification that mutual funds such as open-end GNMA funds should be considered level 1 liquid assets, because the underlying assets are zero percent risk weighted GNMA securities.

Specifically for MMFs, one commenter highlighted that the SEC introduced enhanced liquidity requirements for MMFs in 2010. The commenter contended that the new regulations have sufficiently improved the stability of MMFs to justify their inclusion in HQLA. The commenter also suggested that the agencies include certain high-quality MMFs, such as government MMFs and tax-exempt funds, as HQLA.

After considering these comments, the agencies have determined not to include shares of investment companies, including mutual funds and MMFs, as HQLA. The agencies recognize that certain underlying investments of the investment companies may include high-quality assets. However, similar to securities issued by many companies in the financial sector, shares of investment companies have been prone to lose value and become less liquid during periods of severe market stress or an idiosyncratic event involving the fund's sponsor. As recognized by some commenters, certain shares in MMFs exhibited liquidity stress during the recent financial crisis. Further, the recently finalized SEC rules regarding money markets may impose some barriers on investors' ability to withdraw all of their funds during a stress.[53] Therefore, the agencies do not believe that shares of investment companies demonstrate the liquidity characteristics necessary to be included as HQLA.

iv. FHLB Collateral and Commitments

Certain commenters urged the agencies to consider including collateral pledged to FHLBs and unused borrowing capacity from FHLBs as HQLA. One commenter supported the agencies' proposal to treat as unencumbered those HQLA currently pledged to a U.S. GSE that are subject to a blanket, but not asset-specific, lien, where potential credit secured by the HQLA is not currently extended. However, the commenter requested that the agencies also consider including any assets that are pledged to FHLBs in support of FHLB advance availability as HQLA, rather than only those assets that are currently specified as level 1, level 2A, and level 2B liquid assets. The commenter contended that FHLB-eligible collateral is highly liquid because it can be readily converted into cash advances from a FHLB. Separately,

[53] *See* SEC, ''Money Market Fund Reform; Amendments to Form PF,'' 79 FR 47736 (August 14, 2014).

a few commenters recommended that the agencies include FHLB collateralized advance availability, FHLB letters of credit, or FHLB borrowing capacity as HQLA. The commenters emphasized that depository institutions have the ability to access liquidity from FHLBs even during times of stress and therefore argued that FHLB capacity would be a reliable source of liquidity during a crisis.

The agencies have considered the commenters' suggestions and have determined not to include as HQLA collateral pledged to FHLBs that are not otherwise HQLA under the proposed rule, FHLB letters of credit, or FHLB collateralized advance availability. In determining the types of assets that would qualify as HQLA, the agencies considered certain liquidity characteristics that are reflected in the criteria in § __.20 of the final rule, as discussed above. The agencies have determined that assets, including those that are considered permissible collateral for FHLB advances, must meet the criteria set forth in § __.20 of the final rule to qualify as HQLA, including low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other appropriate factors. As discussed above, although certain collateral, such as mortgages, may be accepted by the FHLB, a covered company may not be able to rapidly liquidate a portfolio of such assets other than as collateral for the extension of credit by the FHLB. The agencies do not believe that it would be appropriate to rely on the extension of credit by the FHLB as the sole method of monetization during a period of market distress.

Separately, the agencies believe that FHLB collateralized advance availability and FHLB letters of credit should not be included as HQLA. The LCR is designed to encourage the holding of liquid assets that may be immediately and reliably converted to cash in times of liquidity stress as borrowing capacity may be constrained, particularly borrowing capacity tied to lower quality assets. The agencies observe that reliance on market borrowing capacity has proved problematic in the past for many covered companies during periods of severe market stress. Accordingly, the LCR is designed to ensure that companies hold sufficient assets to cover outflows during a period of market distress. Thus the final rule would not include such borrowing capacity as HQLA.

v. Including Other Securities

One commenter requested that the agencies adopt in the final rule provisions from the Board's Regulation YY's liquidity risk-management requirements that permit covered institutions to hold certain "highly liquid assets" for purposes of its liquidity stress tests under that rule. Unlike the proposed rule, the Board's Regulation YY includes certain government securities, cash, and any other assets that the bank holding company demonstrates to the Board are highly liquid. Specifically, the commenter requested that the agencies incorporate each of the criteria set forth in Regulation YY for assets that are demonstrated to be "highly liquid" and to also permit assets that meet such criteria to qualify as HQLA in the final rule.

The proposed rule and Regulation YY were designed to complement one another. Whereas the Regulation YY's internal liquidity stress-test requirements provide a view of an individual firm under multiple scenarios, and include assumptions tailored to the idiosyncratic aspects of the company's liquidity profile, the standardized measure of liquidity adequacy under the proposed rule would have facilitated a transparent assessment of covered companies' liquidity positions under a standard stress scenario and comparison across covered companies. Due to the tailoring of the liquidity stress assumptions under Regulation YY to the risk profile of the company, Regulation YY provided companies discretion to determine whether an asset would be liquid under a particular scenario. Although the criteria set forth in Regulation YY share broad themes with the final rule's requirements for determining HQLA, the agencies believe that the final rule's standardized asset requirements are appropriate for determining the assets that would be easily and immediately convertible to cash with little or no loss of value during a period of liquidity stress and are designed to provide for comparability across covered companies due to the standardized outflow assumptions. Thus, the final rule does not incorporate specific criteria from Regulation YY.

3. Requirements for Inclusion as Eligible HQLA

For HQLA to be eligible to be included in the HQLA amount (LCR numerator), the proposed rule would have required level 1 liquid assets, level 2A liquid assets and level 2B liquid assets to meet all the operational requirements and generally applicable criteria set forth in § __.20(d) and (e) of the proposed rule. Because certain assets may have met the high-quality liquid asset criteria set forth in § __ .20(a)–(c) of the proposed rule, but may not have met the operational or generally applicable criteria requirements (and thus not be eligible to be included in the calculation of the HQLA amount), the agencies are adding a new construct in the final rule (eligible HQLA). The purpose of this addition is to more clearly draw a distinction between those assets that are HQLA under § __.20 (a)–(c) of the final rule and eligible HQLA which also meet the operational, generally applicable criteria, and maintenance of U.S. eligible requirements which have been adopted in § __.22 of the final rule. In other words, only eligible HQLA meeting all the necessary requirements set forth in § __.22 are to be included in the calculation steps to determine the HQLA amount. For the purpose of consistency and ease of reference, this Supplementary Information section also uses this distinction between HQLA and eligible HQLA when referring to the requirements that the proposed rule would have implemented.

The final rule continues to permit a covered company to include assets in each HQLA category as of a calculation date without regard to the asset's residual maturity. For all HQLA, the residual maturity of the asset will be reflected in the asset's fair value and should not have an effect on the covered company's ability to monetize the asset.

a. Operational Requirements

Under the proposed rule, an asset that a covered company could have included in its HQLA amount would have needed to meet a set of operational requirements. These operational requirements were intended to better ensure that a covered company's eligible HQLA can be liquidated in times of stress. Several of these requirements related to the monetization of an asset, meaning the receipt of funds from the outright sale of an asset or from the transfer of an asset pursuant to a repurchase agreement. A number of commenters requested clarification on the operational requirements. The final rule retains the proposed operational requirements and clarifies certain aspects of the requirements as discussed below.

i. Operational Capability To Monetize HQLA

The proposed rule would have required a covered company to have the operational capability to monetize the HQLA held as eligible HQLA. This capability would have been demonstrated by: (1) Implementing and maintaining appropriate procedures and systems to monetize the asset at any time in accordance with relevant standard settlement periods and procedures; and (2) periodically monetizing a sample of eligible HQLA that reasonably reflects the composition of the covered company's total eligible HQLA portfolio, including with respect to asset type, maturity, and counterparty characteristics. This requirement was designed to ensure a covered company's access to the market, the effectiveness of its processes for monetization, the availability of the assets for monetization, and to minimize the risk of negative signaling during a period of actual stress. The agencies would have monitored such procedures, systems, and periodic sample liquidations through their supervisory process.

One commenter requested that the agencies clarify that a covered company may demonstrate its operational capacity to monetize HQLA through its ordinary business activities. The commenter claimed that requiring monetization solely to demonstrate access to the market for purposes of the rule could lead the covered company to incur a profit and loss for a transaction that lacks a business purpose. A separate commenter questioned whether actual sales of assets were required to meet the requirement that a covered company have the operational capacity to monetize HQLA.

Commenters requested that the agencies include additional methods of monetization. One commenter argued that monetization of an asset should include transfer of the asset in exchange for cash in the settlement of an overnight reverse repurchase agreement. The commenter clarified that the counterparty of the overnight reverse repurchase agreement could be a Federal Reserve Bank or another entity that provides the reliable monetization of assets held under the reverse repurchase agreement. The commenter contended that such assets should be eligible HQLA even when they do not meet all other requirements related to the monetization of the asset.

After considering commenters' concerns, the agencies are retaining the proposed requirement that a covered company demonstrate its operational capacity to monetize HQLA by periodically monetizing a sample of the assets either through an outright sale or pursuant to a repurchase agreement. The agencies expect actual sales or repurchase agreements to occur for a covered company to demonstrate periodic monetization. Furthermore, as requested by commenters and as discussed above, the agencies clarify that monetization includes receiving funds pursuant to a repurchase agreement. To the extent that a covered company monetizes certain assets, such as U.S. Treasury securities, on a regular, frequent basis through business-as-usual activities, the company may rely on evidence of sales during the ordinary course of business and repurchase transactions of those assets to demonstrate its operational capability to monetize them. However, the agencies are aware that a company may monetize certain assets on a sporadic or less frequent basis due to the nature of the assets or business. The agencies expect that in order to meet the operational capability requirement for eligible HQLA, the covered company monetize those types of assets through specific steps that go beyond ordinary business activities. In particular, to meet the requirement, the agencies expect a covered company to more thoroughly demonstrate the periodic monetization of assets that exhibit less favorable liquidity characteristics than other HQLA.

Under the proposed and final rules, reverse repurchase agreements subject to a legally binding agreement at the calculation date are secured lending transactions and these transactions do not count as HQLA. The assets that are provided to the covered company by some overnight reverse repurchase agreements may potentially meet the operational requirements for eligible HQLA described in the rule. The agencies do not believe that the presence of the overnight reverse repurchase agreement and the anticipated exchange of the assets for cash is sufficient in itself to meet the monetization standard, as for operational or business reasons such transactions may be required to be rolled over on an ongoing basis. The agencies are clarifying that in order to meet this monetization standard, covered companies must show that they are not rolling over the overnight reverse repurchase agreement indefinitely and must hold or use the cash received from the maturing transaction for a sustained period; or the covered company must periodically monetize the underlying asset through outright sale or transfer pursuant to a repurchase agreement.

Another commenter expressed concern that the requirement to periodically monetize HQLA conflicted with a previous interagency policy statement on liquidity risk management that provided that ''affirmative testing . . . may be impractical.'' [54] This statement in the 2010 Interagency Liquidity Policy Statement referred to a banking organization's required contingency funding plan (CFP) that set forth strategies for addressing liquidity shortfalls in emergency scenarios. The policy statement acknowledged that while affirmative testing of certain components of the CFP may be impractical, ''institutions should be sure to test operational components of the CFP.'' Therefore, the proposed rule's requirement that a covered company demonstrate its operational capability to monetize assets did not conflict with the previous interagency policy statement.

[54] *See* Interagency Liquidity Policy Statement.

ii. HQLA Under the Control of the Liquidity Management Function

Under the proposed rule, a covered company would have been required to implement policies that required all eligible HQLA to be under the control of the management function of the covered company that is charged with managing liquidity risk. To do so, a covered company would have been required either to segregate the HQLA from other assets, with the sole intent to use them as a source of liquidity, or to demonstrate its ability to monetize the HQLA and have the resulting funds available to the risk management function, without conflicting with another business or risk management strategy. Thus, if an HQLA had been used to hedge a specific transaction, such as holding an asset to hedge a call option that the covered company had written, it could not have been included in the covered company's eligible HQLA if the sale of the asset or its use in a repurchase transaction would have conflicted with another business or risk management strategy. If the use of the asset in the repurchase transaction would not have conflicted with the hedge, the HQLA may have been eligible under the proposed rule. If HQLA had been used as a general macro hedge, such as interest rate risk of the covered company's portfolio, it could still have been included as eligible HQLA. This requirement was intended to ensure that a central function of a covered company had the authority and capability to liquidate eligible HQLA to meet its obligations in times of stress without exposing the covered company to risks associated with specific transactions and structures that had been hedged. There were instances during the recent financial crisis where unencumbered assets of some firms were not available to meet liquidity demands because the firms' treasuries did not have access to such assets.

A few commenters requested that the agencies clarify the requirement for segregating assets. One commenter questioned whether an electronic flag was adequate to demonstrate segregation or whether separate accounts are required. Another commenter requested clarification on whether segregated assets could be placed in multiple consolidated subsidiaries. The agencies continue to believe that a covered company may demonstrate that the eligible HQLA is under the control of the liquidity risk management function by segregating the HQLA with the sole intent to use the HQLA as a source of liquidity. Although the agencies have not adopted a preferred method of showing such segregations, a covered company should be able to demonstrate that the segregated assets are under the control of the management function charged with managing liquidity risk at the covered company. The agencies expect a covered company to be able to demonstrate that the chosen form of segregation facilitates the liquidity management function's use of the assets for liquidity purposes.

iii. Termination of Transaction Hedging HQLA

The proposed rule would have required a covered company to have included in its total net cash outflow amount the amount of cash outflow that would have resulted from the termination of any specific transaction hedging eligible HQLA. The proposal would have required a covered company to include the impact of the hedge in the outflow because if the covered company were to liquidate the asset, it would be required to close out the hedge to avoid creating a risk exposure. This requirement was not intended to apply to general macro hedges such as holding interest rate derivatives to adjust internal duration or interest rate risk measurements, but was intended to cover specific hedges that would become risk exposures if the asset were sold. The agencies did not receive comments on this operational requirement. However, the agencies are clarifying that, consistent with the Basel III Revised Liquidity Framework, the amount of the outflow resulting from the termination of the hedging transaction should be deducted from the fair value of the applicable eligible HQLA instead of being included as an outflow in the LCR denominator. Section __.22(a)(3) of the final rule has been amended to clarify this requirement.

iv. Policies and Procedures To Determine Eligible HQLA Composition

Under the proposed rule, a covered company would have been required to implement and maintain policies and procedures that determined the composition of the assets held as eligible HQLA on a daily basis by: (1) Identifying where its eligible HQLA were held by legal entity, geographical location, currency, custodial or bank account, and other relevant identifying factors; (2) determining that the assets included as eligible HQLA continued to qualify as eligible HQLA; and (3) ensuring that the HQLA held by a covered company as eligible HQLA are appropriately diversified by asset type, counterparty, issuer, currency, borrowing capacity or other factors associated with the liquidity risk of the assets.

The agencies also recognized that significant international banking activity occurs through non-U.S. branches of legal entities organized in the United States and that a foreign branch's activities may give rise to the need to hold eligible HQLA in the jurisdiction where it is located. While the agencies believed that holding HQLA in a geographic location where it is needed to meet liquidity needs such as those envisioned by the LCR was appropriate, they were concerned that other factors such as taxes, rehypothecation rights, and legal and regulatory restrictions may encourage certain companies to hold a disproportionate amount of their eligible HQLA in locations outside the United States where unforeseen impediments may prevent timely repatriation of HQLA during a liquidity crisis. Nonetheless, establishing quantitative limits on the amount of eligible HQLA that can be held abroad and still count towards a U.S. domiciled legal entity's LCR requirement is complex and may be overly restrictive in some cases. Therefore, the agencies proposed to require a covered company to establish policies to ensure that eligible HQLA maintained in foreign locations was appropriate with respect to where the net cash outflows could arise. By requiring that there be a correlation between the eligible HQLA held outside of the United States and the net cash outflows attributable to non-U.S. operations, the agencies intended to increase the likelihood that eligible HQLA would be available to a covered company in the United States and to avoid repatriation concerns from eligible HQLA held in another jurisdiction.

Commenters did not express significant concerns about the requirement to implement and maintain policies and procedures to determine the composition of the assets in eligible HQLA.

The agencies incorporated two clarifying changes in the final rule. Although the proposed rule would have required a covered company to have policies and procedures to determine its eligible HQLA composition on a daily basis, the final rule clarifies that the requirement applies on each calculation date. The agencies incorporated the modification to clarify that the requirement applies on each date a covered company calculates its LCR, subject to the transition provisions in subpart F of the final rule. The agencies also emphasized in § __.22(a)(5) of the final rule that the methodology a covered company uses to determine the eligibility of its HQLA must be documented and must be applied consistently. For example, a covered company cannot make inconsistent determinations in terms of eligible HQLA requirements for HQLA with the same operational characteristics, either across different assets or across time. Additionally, a covered company cannot treat the same asset as eligible HQLA for one part of the final rule, while not treating it as eligible HQLA for another part of the final rule.

4. Generally Applicable Criteria for Eligible HQLA

Under the proposed rule, assets would have been required to meet the following generally applicable criteria to be considered as eligible HQLA.

a. Unencumbered

The proposed rule required that an asset be unencumbered in order for it to be included as eligible HQLA. First, the asset would have been required to be free of legal, regulatory, contractual, or other restrictions on the ability of a covered company to monetize the asset. The agencies believed that, as a general matter, eligible HQLA should only include assets that could be converted easily into cash. Second, the asset could not have been pledged, explicitly or implicitly, to secure or provide credit-enhancement to any transaction, except that the asset could be pledged to a central bank or a U.S. GSE to secure potential borrowings if credit secured by the asset has not been extended to the covered company or its consolidated subsidiaries. This exception was meant to account for the ability of central banks and U.S. GSEs to lend against the posted HQLA or to return the posted HQLA, in which case a covered company could sell or engage in a repurchase agreement with the assets to receive cash. This exception was also meant to permit collateral that is covered by a blanket (rather than asset-specific) lien from a U.S. GSE to be included as eligible HQLA.

The final rule includes a clarifying change to the proposed requirement. The final rule adopts the proposed exception that an asset may be considered unencumbered if the asset is pledged to a central bank or a U.S. GSE to secure potential borrowings and credit secured by the asset has not been extended to the covered company or its consolidated subsidiaries. Under the final rule, the agencies clarify that the assets may also be considered unencumbered if the pledge of these assets is not required to support access to the payment services of a central bank. In certain circumstances, a central bank may have the ability to encumber the pledged assets to avoid losses that may occur when a troubled institution fails to fulfill its payments. The agencies are concerned that such a scenario is more likely to occur during a period of market stress. Thus, the agencies believe that assets pledged by a covered company to access a central bank's payment services are considered encumbered. This provision of the final rule would apply only to assets that a covered company is required to pledge to receive access to the payment services of a central bank, and would not encompass assets that are voluntarily pledged by a covered company to support additional services that may be offered by the central bank, such as overdraft capability.

One commenter expressed concerns that segregated funds held by a covered company pursuant to SEC's customer protection rule 15c3–3 (Rule 15c3–3) would be considered encumbered assets. The commenter noted that Rule 15c3–3 is an SEC rule requiring the segregation of customer assets and places limits on the broker-dealer's use of customer funds. After reviewing the commenter's concerns, the agencies believe that funds held in a Rule 15c3–3 segregated account should be considered encumbered assets. Rule 15c3–3 requires a covered company to set aside assets in a segregated account to ensure that broker-dealers have sufficient assets to meet the needs of their customers. Accordingly, the assets in Rule 15c3–3 segregated accounts are not freely available to the covered company to meet its liquidity needs and are not considered unencumbered for purposes of the final rule. However, while these accounts are excluded from eligible HQLA, the agencies are including treatment of an inflow amount with respect to certain amounts related to broker-dealer segregated accounts as detailed in § __.33(g) of the final rule.

Some commenters noted that the subsidiaries of some covered companies are subject to the SEC's proposed rules to implement liquidity requirements on broker-dealers and security-based swap dealers that use the alternative net capital computation methodology. The SEC's proposed rule would be a potential regulatory restriction on the transfer of HQLA and the commenter expressed concern that the proposed rule would lead to broad disqualification of the HQLA of SEC-regulated entities. The agencies believe it is appropriate that in cases where legal restrictions exist that do not allow the transfer of HQLA between entities, that only HQLA that is equal to the amount of the net outflows of that legal entity should be included in the consolidated LCR, as discussed further below in section II.B.4.c and II.B.4.d. However, the agencies clarify that in cases where such restrictions would result in an amount of HQLA subject to restrictions on transfer that is less than the amount of net outflows as calculated under the final rule for the legal entity, the covered company may include all of the HQLA of the legal entity subject to the restriction in its consolidated LCR HQLA amount, assuming that the HQLA meets the operational requirements specified above, as well as other requirements in the final rule.

One commenter requested that the agencies clarify that securities acquired through reverse repurchase agreements that have not been rehypothecated and are legally and contractually available for a covered company's use are unencumbered for purposes of the rule. Two commenters requested that the agencies clarify that all borrowed assets are legally and contractually available for the covered company's use. The agencies clarify that borrowed securities, including those that are acquired through reverse repurchase agreements, that have not been rehypothecated may be considered unencumbered if the covered company has rehypothecation rights with respect to the securities and the securities are free of legal, regulatory, contractual, or other restrictions on the ability of the covered company to monetize them and have not been pledged to secure or provide credit-enhancement to any transaction, with certain exceptions. The agencies highlight that HQLA, including assets received through reverse repurchase agreements and other borrowed assets, must meet all requirements set forth in § __.22 of the final rule to qualify as eligible HQLA.

b. Segregated Client Pool Securities

Under the proposed rule, an asset included as eligible HQLA could not have been a client pool security held in a segregated account or cash received from a repurchase agreement on client pool securities held in a segregated account. The proposed rule defined a client pool security as one that is owned by a customer of a covered company and is not an asset of the organization, regardless of the organization's hypothecation rights to the security. Because client pool securities held in a segregated account are not freely available to meet all possible liquidity needs of the covered company, they should not count as a source of liquidity.

Commenters did not raise significant concerns on the exclusion of assets in client pool securities from HQLA. The agencies have therefore largely adopted the proposed requirement in the final rule.

c. Treatment of HQLA Held by U.S. Consolidated Subsidiaries

Under the proposal, HQLA held in a legal entity that is a U.S. consolidated subsidiary of a covered company would have been included as eligible HQLA subject to specific limitations depending on whether the subsidiary was subject to the proposed rule and was therefore required to calculate a LCR under the proposed rule.

If the consolidated subsidiary was subject to a minimum LCR under the proposed rule, then a covered company could have included eligible HQLA held in the consolidated subsidiary in an amount up to the consolidated subsidiary's net cash outflows, as calculated to meet its LCR requirement. The covered company could also have included in its HQLA amount any additional amount of HQLA if the monetized proceeds from that HQLA would be available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. Regulatory restrictions would include, for example, sections 23A and 23B of the Federal Reserve Act [55] and Regulation W.[56] Supervisory restrictions may include, but would not be limited to, enforcement actions, written agreements, supervisory directives or requests to a particular subsidiary that would directly or indirectly restrict the

[55] 12 U.S.C. 371c, 371c–1.

[56] 12 CFR part 223.

subsidiary's ability to transfer the HQLA to the parent covered company.

If the consolidated subsidiary was not subject to a minimum LCR under § __.10 of the proposed rule, a covered company could have included the HQLA held in the consolidated subsidiary in an amount up to the net cash outflows of the consolidated subsidiary that would have been included in the covered company's calculation of its LCR, plus any additional amount of HQLA held by the consolidated subsidiary the monetized proceeds from which would be available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

Section __.22(b)(3) of the final rule adopts the treatment of HQLA held by U.S. consolidated subsidiaries as proposed. This treatment is consistent with the Basel III Revised Liquidity Framework and ensures that assets in the pool of eligible HQLA can be freely monetized and the proceeds can be freely transferred to a covered company in times of a liquidity stress. In response to a commenter's request for clarification, the agencies clarify that a covered company is required only to apply the statutory, regulatory, contractual, or supervisory restrictions that are in effect as of the calculation date.

d. Treatment of HQLA Held by Non-U.S. Consolidated Subsidiaries

Consistent with the Basel III Revised Liquidity Framework, the proposed rule provided that a covered company could have included eligible HQLA held by a non-U.S. legal entity that is a consolidated subsidiary of the covered company in an amount up to: (1) The net cash outflows of the non-U.S. consolidated subsidiary that are included in the covered company's net cash outflows, plus (2) any additional amount of HQLA held by the non-U.S. consolidated subsidiary that is available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. The proposed rule would have required covered companies with foreign operations to identify the location of HQLA and net cash outflows in foreign jurisdictions and exclude any HQLA above the amount of net cash outflows for those jurisdictions that is not freely available for transfer due to statutory, regulatory, contractual or supervisory restrictions. Such transfer restrictions would have included LCR requirements greater than those that would be established by the proposed rule, counterparty exposure limits, and any other regulatory, statutory, or supervisory limitations.

One commenter supported the proposed rule's approach to permitting a covered company to include as eligible HQLA a certain level of HQLA of its non-U.S. consolidated subsidiary. One commenter argued that the final rule should permit a covered company to include as eligible HQLA assets held in a non-U.S. consolidated subsidiary that qualify as HQLA in the host jurisdiction of that subsidiary. The commenter contended that jurisdictions adopting the Basel III Revised Liquidity Framework would consider certain assets as HQLA depending on the liquidity characteristics of the assets in the market of the relevant jurisdiction. This approach, the commenter noted, is also consistent with the recommendation of the European Banking Authority for the treatment of HQLA in jurisdictions outside of the Eurozone.

Another commenter requested that the agencies acknowledge that HQLA held in foreign entities that are not subject to prudential regulation or capital requirements are less likely to present repatriation issues.

After reviewing commenters' concerns, the agencies have determined to adopt the proposed liquidity requirements for non-U.S. consolidated subsidiaries without change. The agencies have declined to adopt a commenter's suggestion that the final rule permit a covered company's eligible HQLA to include the HQLA of its non-U.S. consolidated subsidiaries as defined in the host jurisdiction of the subsidiary. The agencies recognize that jurisdictions will likely vary in their adoption of the Basel III Revised Liquidity Framework. However, the final rule was designed to implement the LCR standard as appropriate for the United States and its markets, and, for the purposes of the LCR in the United States, only those assets that meet the liquidity characteristics and criteria of the final rule can be included as HQLA. The agencies decline to differentiate between foreign entities that are subject to prudential regulation or capital requirements and those that are not for purposes of determining whether HQLA is more or less subject to risk of restriction on transfer from those jurisdictions. The agencies believe that generally HQLA held in foreign entities may encounter challenges during a severe period of stress that prevent the timely repatriation of assets. Furthermore, the agencies do not believe it would be appropriate to provide favorable regulatory treatment for assets held in a jurisdiction where there is less, rather than more, explicit prudential regulation.

e. Maintenance of Eligible HQLA in the United States

The agencies believe it is appropriate for a covered company to hold eligible HQLA in a particular geographic location in order to meet local liquidity needs there. However, they do not believe it is appropriate for a covered company to hold a disproportionate amount of eligible HQLA in locations outside the United States, given that unforeseen impediments may prevent timely repatriation of liquidity during a crisis. Therefore, under the proposal, a covered company would have been generally expected to maintain in the United States an amount and type of eligible HQLA that is sufficient to meet its total net cash outflow amount in the United States.

A commenter requested that the agencies confirm that that the general expectation that a covered company maintain in the United States an amount and type of HQLA that is sufficient to meet its total net cash outflow amount in the United States would be monitored through a supervisory approach.

The final rule maintains the requirement that a covered company is generally expected to maintain as eligible HQLA an amount and type of eligible HQLA in the United States that is sufficient to meet its total net cash outflow amount in the United States. In response to the commenter's request for clarification, the agencies expect to monitor this requirement through the supervisory process.

f. Exclusion of Certain Rehypothecated Assets

Under the proposed rule, assets that a covered company received under a rehypothecation right where the beneficial owner has a contractual right to withdraw the asset without remuneration at any time during a 30 calendar-day stress period would not have been included in HQLA. This exclusion extended to assets generated from another asset that was received under such a rehypothecation right. If the beneficial owner had such a right and were to exercise it within a 30 calendar-day stress period, the asset would not be available to support the covered company's liquidity position.

The agencies have included a clarifying change to the proposed requirement in the final rule. The final rule provides that any asset which a covered company received with rehypothecation rights would not be considered eligible HQLA if the counterparty that provided the asset, or the beneficial owner, has a contractual right to withdraw the asset without paying non-de minimis remuneration at any time during the 30 calendar days following the calculation date.

g. Exclusion of Assets Designated To Cover Operational Costs

In the proposed rule, assets specifically designated to cover operational costs could not be included as eligible HQLA. The agencies believe that assets specifically designated to cover costs such as wages or facility maintenance generally would not be available to cover liquidity needs that arise during stressed market conditions.

The agencies did not receive comment on this provision and are adopting the proposed requirement in § __.22(b)(6) of the final rule without change. The treatment of outflows for operational costs are discussed in section II.C.3.l of this Supplementary Information section.

5. Calculation of the HQLA Amount

Instructions for calculating the HQLA amount, including the calculation of the required haircuts and caps for level 2 liquid assets, were set forth in § __.21 of the proposed rule. The agencies received several comments relating to the calculation of the HQLA amount, particularly relating to the calculations of the adjusted level 1, adjusted level 2A, and adjusted level 2B liquid asset amounts that are used to calculate the adjusted excess HQLA amount and that incorporate the unwind of certain secured transactions as described below. After considering the comments, the agencies adopted the HQLA amount calculation instructions largely as proposed, with two modifications to the treatment of collateralized deposits and reserve balance requirements. The final rule sets forth instructions for calculating the HQLA amount in § __.21.

Under the final rule, the HQLA amount equals the sum of the level 1, level 2A and level 2B liquid asset amounts, less the greater of the unadjusted excess HQLA amount or the adjusted excess HQLA amount, as described below.

a. Calculation of Liquid Asset Amounts

For the purposes of calculating a covered company's HQLA amount under the proposed rule, each of the level 1 liquid asset amount, the level 2A liquid asset amount, and the level 2B liquid asset amount would have been calculated using the fair value of the eligible level 1 liquid assets, level 2A liquid assets, or level 2B liquid assets, respectively, as determined under GAAP, multiplied by the appropriate haircut factor prescribed for each level of HQLA.

Under the proposed rule, the level 1 liquid asset amount would have equaled the fair value of all level 1 liquid assets held by the covered company as of the calculation date, less required reserves under section 204.4 of Regulation D (12 CFR 204.4). Consistent with the Basel III Revised Liquidity Framework, and as discussed in section II.B.2 of this Supplementary Information section, the proposed rule would have applied a 15 percent haircut to level 2A liquid assets and a 50 percent haircut to level 2B liquid assets. These haircuts were meant to recognize that level 2 liquid assets generally are less liquid, have larger haircuts in the repurchase markets, and may have more volatile prices in the outright sales markets, particularly in times of stress. Thus, the level 2A liquid asset amount would have equaled 85 percent of the fair value of the level 2A liquid assets held by the covered company as eligible HQLA, and the level 2B liquid asset amount would have equaled 50 percent of the fair value of the level 2B liquid assets held by the covered company as eligible HQLA.

The agencies are adopting under § __.21(b) of the final rule the calculation of the level 1, level 2A and level 2B liquid asset amounts largely as proposed, with one clarification. In the calculation of the level 1 liquid asset amount, the agencies have clarified that the amount to be deducted from the fair value of all eligible level 1 liquid assets is the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5), not its entire reserve requirement. Therefore, under the final rule, the level 1 liquid asset amount equals the fair value of all level 1 liquid assets that are in the covered company's eligible HQLA as of the calculation date, less the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5). Similarly, the level 2A liquid asset amount equals 85 percent of the fair value of all level 2A liquid assets, and the level 2B liquid asset amount equals 50 percent of the fair value of all level 2B liquid assets, that are held by the covered company as of the calculation date that are eligible HQLA. All assets that are eligible HQLA at the calculation date are therefore to be included in these three liquid asset amounts.

b. Calculation of Unadjusted Excess HQLA Amount

Consistent with the Basel III Revised Liquidity Framework, the proposed rule would have capped the amount of level 2 liquid assets that could be included in the HQLA amount. Specifically, level 2 liquid assets could account for no more than 40 percent of the HQLA amount and level 2B liquid assets could account for no more than 15 percent of the HQLA amount. Under § __.21 of the proposed rule, if the amounts of level 2 liquid assets or level 2B liquid assets had exceeded their respective caps, the excess amounts as calculated under the proposed rule would have been deducted from the sum of the level 1 liquid asset, level 2A liquid asset, and level 2B liquid asset amounts. The level 2 caps were meant to ensure that level 2 liquid assets, which may provide less liquidity as compared to level 1 liquid assets, comprise a smaller portion of a covered company's total HQLA amount such that the majority of the HQLA amount is composed of level 1 liquid assets.

The unadjusted excess HQLA amount, under the proposed rule, equaled the sum of the level 2 cap excess amount and the level 2B cap excess amount. The calculation of the unadjusted excess HQLA amount applied the 40 percent level 2 liquid asset cap and the 15 percent level 2B liquid asset cap at the calculation date by subtracting from the sum of the level 1, level 2A and level 2B liquid asset amounts, the amount of level 2 liquid assets that is in excess of the limits. The unadjusted HQLA excess amount would have enforced the cap limits at the calculation date without unwinding any transactions.

The methods of calculating the level 2 cap excess amount and level 2B cap excess amounts were set forth in § __.21(d) and (e) of the proposed rule, respectively. Under those provisions, the level 2 cap excess amount would have been calculated by taking the greater of: (1) The level 2A liquid asset amount plus the level 2B liquid asset amount that exceeds 0.6667 (or 40/60, which is the ratio of the maximum allowable level 2 liquid assets to the level 1 liquid assets) times the level 1 liquid asset amount; or (2) zero. The calculation of the level 2B cap excess amount would have been calculated by taking the greater of: (1) The level 2B liquid asset amount less the level 2 cap excess amount and less 0.1765 (or 15/85, which is the maximum ratio of allowable level 2B liquid assets to the sum of level 1 and level 2A liquid assets) times the sum of the level 1 and level 2A liquid asset amount; or (2) zero. Subtracting the level 2 cap excess amount from the level 2B liquid asset amount when applying the 15 percent level 2B cap is appropriate because the level 2B liquid assets should be excluded before the level 2A liquid assets when applying the 40 percent level 2 cap.

Several commenters requested that the agencies modify the level 2 and level 2B liquid assets caps, arguing that the agencies have not provided any analysis on the appropriateness of the caps. In particular, these commenters argued that the caps could cause banking organizations to ''hoard'' level 1 liquid assets, reducing the liquidity and volume of level 2A and level 2B liquid assets.

The agencies continue to believe that the majority of a covered company's HQLA amount should consist of the highest quality liquid assets, namely, level 1 liquid assets. In establishing the requirement that the level 1 liquid asset amount should represent at least 60 percent of the HQLA amount, the agencies are seeking to ensure that a covered company will be able to rapidly meet its liquidity needs in a period of stress. The agencies recognize that covered companies may make investment decisions pertaining to individual assets within HQLA categories and the agencies believe that there is adequate availability of level 1 liquid assets. In choosing the assets that would have qualified as level 1 liquid assets under the proposed rule, the agencies considered whether there would be adequate availability of such assets during a stress period, to ensure the appropriateness of the asset's designation as the highest quality asset under the proposed rule. Further, given the liquidity characteristics of the asset classes included in level 2B liquid assets, the agencies continue to believe that these assets should constitute no more than 15 percent of a covered company's HQLA amount. Therefore the final rule adopts the unadjusted calculations as proposed in § __.21(c)–(e).

c. Calculation of Adjusted Excess HQLA Amount

The agencies believed that the proposed level 2 caps and haircuts should apply to the covered company's HQLA amount both before and after the unwinding of certain types of secured transactions where eligible HQLA is exchanged for eligible HQLA in the next 30 calendar days, in order to ensure that the HQLA amount is appropriately diversified and not the subject of manipulation. The proposed calculation of the adjusted excess HQLA amount on this basis sought to prevent a covered company from being able to manipulate its eligible HQLA by engaging in transactions such as certain repurchase or reverse repurchase transactions because the HQLA amount, including the caps and haircuts, would be calculated both before and after unwinding those transactions.

Under the proposed rule, to determine its adjusted HQLA excess amount, a covered company would have been required to unwind all secured funding transactions, secured lending transactions, asset exchanges, and collateralized derivatives transactions, as defined by the proposed rule, in which eligible HQLA, including cash, were exchanged and that would have matured within 30 calendar days of the calculation date. The unwinding of these transactions and the calculation of the adjusted excess HQLA amount was intended to prevent a covered company from having a substantial amount of transactions that would have created the appearance of a significant level 1 liquid asset amount at the beginning of a 30 calendar-day stress period, but that would have matured by the end of the 30 calendar-day stress period. For example, absent the unwinding of these transactions, a covered company that held only level 2 liquid assets could have appeared to be compliant with the level 2 liquid asset composition cap at the calculation date by borrowing on an overnight term a level 1 liquid asset (such as cash or U.S. Treasuries) secured by level 2 liquid assets. While doing so would have lowered the covered company's amount of level 2 liquid assets and increased its amount of level 1 liquid assets, the covered company would have had a concentration of level 2 liquid assets above the 40 percent cap after the transaction was unwound. Therefore, the calculation of the adjusted excess HQLA amount and, if greater than unadjusted excess HQLA amount, its subtraction from the sum of the level 1, level 2A, and level 2B liquid asset amounts, would have prevented a covered company from avoiding the level 2 liquid asset cap limitations.

In order to calculate the adjusted excess HQLA amount, the proposed rule would have required a covered company, for this purpose only, to calculate adjusted level 1, level 2A, and level 2B liquid asset amounts. The adjusted level 1 liquid asset amount would have been the fair value, as determined under GAAP, of the level 1 liquid assets that are held by a covered company upon the unwinding of any secured funding transaction, secured lending transaction, asset exchanges, or collateralized derivatives transaction that matures within a 30 calendar-day period and that involves an exchange of eligible HQLA, or cash. Similarly, the adjusted level 2A and adjusted level 2B liquid asset amounts would only have included the unwinding of those transactions involving an exchange of eligible HQLA or cash. After unwinding all the appropriate transactions, the asset haircuts of 15 percent and 50 percent would have been applied to the level 2A and 2B liquid assets, respectively.

The adjusted excess HQLA amount calculated pursuant to § __.21(g) of the proposed rule would have been comprised of the adjusted level 2 cap excess amount and adjusted level 2B cap excess amount calculated pursuant to § __.21(h) and § __.21(i) of the proposed rule, respectively.

The adjusted level 2 cap excess amount would have been calculated by taking the greater of: (1) The adjusted level 2A liquid asset amount plus the adjusted level 2B liquid asset amount minus 0.6667 (or 40/60, which is the maximum ratio of allowable level 2 liquid assets to level 1 liquid assets) times the adjusted level 1 liquid asset amount; or (2) zero. The adjusted level 2B cap excess amount would be calculated by taking the greater of: (1) The adjusted level 2B liquid asset amount less the adjusted level 2 cap excess amount less 0.1765 (or 15/85, which is the maximum ratio of allowable level 2B liquid assets to the sum of level 1 liquid assets and level 2A liquid assets) times the sum of the adjusted level 1 liquid asset amount and the adjusted level 2A liquid asset amount; or (2) zero. The adjusted excess HQLA amount would have been the sum of the adjusted level 2 cap excess amount and the adjusted level 2B cap excess amount.

One commenter requested that the agencies remove the unwind requirement from the rule because of the operational complexity required to calculate the covered institution's HQLA both before and after the unwind. Another commenter asked whether the agencies have considered permitting covered companies to calculate the value of their HQLA under the International Financial Reporting Standards method of accounting rather than GAAP.

The agencies believe that it is crucial for a covered company to assess the composition of its HQLA amount both on an unadjusted basis and on a basis adjusted for certain transactions that directly impact the composition of eligible HQLA. The agencies believe that these calculations are justified in order to ensure an HQLA amount of adequate quality of composition and diversification and to ensure that covered companies actually have the ability to monetize such assets during a stress period. The agencies do not believe that it would be appropriate to use alternative methods of accounting beyond GAAP in determining the HQLA amount. The agencies note that for regulatory reporting purposes, generally, a covered company must report data using GAAP. It would likely increase burden on covered companies that typically apply GAAP, which includes the vast majority of covered companies, to use another method of accounting to calculate HQLA. In addition, to permit certain covered companies to use an alternate method of accounting would reduce the comparability of the information across covered companies. As noted above, the LCR is intended to be a standardized liquidity metric, designed to promote a consistent and comparable view of the liquidity of covered companies. The agencies are finalizing the adjusted excess HQLA amount calculation with two amendments to the proposed rule. First, the agencies are clarifying that, in a manner similar to the calculation of the level 1 liquid asset amount, the adjusted level 1 liquid asset amount (used solely for the purpose of calculating the adjusted excess HQLA amount) must include the deduction of the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5). Second, the agencies are exempting certain secured funding transactions from inclusion in the unwind as described below.

d. Unwind Treatment of Collateralized Deposits

A number of commenters pointed out that certain deposits are legally required to be collateralized. For instance, deposits placed by states and municipalities, known as preferred deposits, are often required to be collateralized under state law. Commenters further pointed out that in some instances, deposits are required to be collateralized by specific collateral which would not have been HQLA under the proposed rule. Additionally, federal law requires certain corporate trust deposits to be collateralized.[57] Several commenters highlighted that these types of collateralized deposits would have been treated as secured funding transactions under the proposed rule, requiring a covered company to unwind these deposit relationships when determining the adjusted excess HQLA amount. Commenters argued that the unwind treatment effectively leads covered companies to exclude from their HQLA amounts both the cash from the deposits, which would be eligible HQLA, and also any collateral pledged to secure the deposit.

Several commenters pointed out that the agencies proposed the unwind treatment of secured transactions to ensure that banking organizations do not manipulate their HQLA amounts through repurchase and reverse repurchase transactions. These commenters contended that covered companies would not use preferred deposits and collateralized corporate trust deposits to inflate their HQLA amounts because of the long-term nature of the banking relationships. Commenters expressed the opinion that collateralized deposits represent stable, relationship-based deposits and are generally placed in connection with certain operational services provided by the bank. These commenters maintained that collateralized deposits are very different in nature from other secured funding transactions, such as repurchase agreements where collateralization is a function of the transaction between counterparties, rather than imposed by a third party, and should not raise the concerns the agencies were seeking to address with the unwind calculation relating to the manipulation of the HQLA amount.

Commenters urged the agencies to exclude collateralized deposits from the requirement to unwind secured funding transactions for the purposes of determining a covered company's adjusted excess HQLA amount. These commenters contended that the proposed unwind treatment of municipal fund deposits would have a major impact, limiting the choice of banks from which state and municipal treasurers could obtain treasury management and other banking services. Certain commenters asserted that the proposed rule would lead banks to accept limited municipal fund deposits, thereby increasing the costs to municipalities who rely on earning credits generated by deposits to pay for banking services. Commenters also were concerned that applying the unwind mechanism to preferred public sector deposits would discourage banks from accepting these deposits because of the potential negative impact on their LCR calculations. This in turn could raise the cost of capital for municipalities and undermine public policy goals of infrastructure maintenance and development. These commenters stated that banking organizations likely would have to limit the amount of preferred deposits and collateralized corporate trust deposits they accept, further reducing the interest paid on preferred deposits and corporate trust deposits, or eliminating earnings credits extended to state and municipal depositors. Furthermore, as preferred deposits may be collateralized with municipal securities, commenters contended that banks' decreased appetite for accepting municipal fund deposits would also lead to reduced investments in municipal securities.

Finally, several commenters requested that, if the agencies do not exclude collateralized deposits from the secured transaction unwind, that the agencies should apply a maximum outflow for such deposits that (for example, 15 or 25 percent), irrespective of the collateral being used to secure the deposit.

In response to commenters' concerns, the final rule does not require a covered company to unwind certain secured funding transactions that are collateralized deposits. As several commenters noted, the proposed unwind methodology was intended to prevent a covered company from manipulating the composition of its HQLA amount by engaging in transactions such as repurchase or reverse repurchase agreements that could ultimately unwind within the 30 calendar-day stress period. The agencies are aware that certain preferred deposits and corporate trust deposits are required to be collateralized under applicable law and agree with commenters that the longer-term, deposit banking relationships associated with preferred deposits and collateralized corporate trust deposits can be different in nature from shorter-term repurchase and reverse repurchase agreements. After considering commenters' concerns, the agencies believe that certain collateralized deposits do not raise the concerns the agencies were seeking to address with the unwind calculation. The agencies believe that a covered company would be unlikely to pursue these collateralized deposit relationships for the purposes of manipulating the composition of their HQLA amounts. Therefore, the final rule does not require a covered company to unwind secured funding transactions that are collateralized deposits as defined in the final rule when determining its adjusted excess HQLA amount. The agencies highlight that these deposits continue to be subject to an outflow assumption, as addressed in section II.C.3.j.(ii) of this Supplementary Information section.

[57] Pursuant to OCC regulations, a national bank or federal savings association may place funds for which the bank is a fiduciary on deposit in the bank (such deposits are often referred to as ''self-deposits''). The regulations require that the bank set aside collateral to secure self-deposits to the extent they are not insured by the FDIC. *See* 12 CFR 9.10(b) (national banks); 12 CFR 150.300–50.320 (federal savings associations).

In the final rule, the agencies included a definition for collateralized deposits in order to implement the exclusion of these specific types of transactions from the unwind calculation and to identify the transactions as potentially eligible for certain outflow rates. The final rule defines collateralized deposits as either: (1) A deposit of a public sector entity held at the covered company that is secured under applicable law by a lien on assets owned by the covered company and that gives the depositor, as holder of the lien, priority over the assets in the event the covered company enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding, or (2) a deposit of a fiduciary account held at the covered company for which the covered company is a fiduciary and sets aside assets owned by the covered company as security under 12 CFR 9.10 (national banks) or 12 CFR 150.300 through 150.320 (Federal savings associations) and that gives the depositor priority over the assets in the event the covered company enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

e. Unwind Treatment of Transactions Involving Eligible HQLA

One commenter requested that the agencies clarify that only transactions that are conducted by or for the benefit of the liquidity management function receive unwind treatment when a covered company calculates its adjusted excess HQLA amount. The commenter expressed the view that the proposed rule did not limit the unwind methodology to only transactions involving the eligible HQLA that were under the control of the liquidity management function for purposes of § __.20(d)(2) in the proposed rule. This commenter urged that transactions undertaken outside of the liquidity management function would be reflected in the calculation of net cash outflows and should not be incorporated in the HQLA amount calculation. Moreover, the commenter contended that excluding secured funding transactions that are not under the liquidity management function is consistent with the agencies' intent to capture only those transactions that a covered company may use to manipulate its HQLA amount. Lastly, the commenter noted that the Basel III Revised Liquidity Framework only applied the unwind methodology to transactions that met operational requirements.

In response to the commenter's request, the agencies are clarifying that a covered company should apply the unwind treatment to secured funding transactions (other than secured funding transactions that are collateralized deposits), secured lending transactions, asset exchanges and collateralized derivatives where the maturity of the transaction within 30 calendar days of the calculation date will involve the covered company providing an asset that is eligible HQLA or cash and the counterparty providing an asset that will be eligible HQLA or cash. Eligible HQLA meet the operational requirements set forth in § __.22 of the final rule, including the requirement that the eligible HQLA are under the control of the liquidity management function. Consistent with the Basel III Revised Liquidity Framework, the agencies believe that a covered company should not be required to unwind transactions involving assets that do not meet or will not meet these operational requirements when calculating its adjusted excess HQLA amount. A covered company should, however, consider all such transactions in determining its net cash outflow amount under the final rule.

Consistent with the Basel III Revised Liquidity Framework and § __.32(j)(1) of the final rule, secured funding transactions maturing within 30 calendar days of the calculation date that involve the exchange of eligible HQLA are those where the HQLA securing the secured funding transaction would otherwise qualify as eligible HQLA if they were not already securing the particular transaction in question.

Similarly, and consistent with § __.33(f)(1) of the final rule, secured lending transactions that involve the exchange of eligible HQLA are those where the assets securing the secured lending transaction are: (1) Eligible HQLA at the calculation date, or (2) would be eligible HQLA at the calculation date if they had not been reused to secure a secured funding transaction, or delivered in an asset exchange, maturing within 30 calendar days of the calculation date and which is also being unwound in determining the adjusted level 1, adjusted level 2A, and adjusted level 2B liquid asset amounts.

Consistent with § __.32(j)(3) and § __.33(f)(2) of the final rule, asset exchange transactions involving the exchange of eligible HQLA are those where the covered company will, at the maturity of the asset exchange transaction within 30 calendar days of the calculation date: (1) Receive assets from the asset exchange counterparty that will be eligible HQLA upon receipt, and (2) the assets that the covered company must post to the counterparty are either: (a) eligible HQLA at the calculation date, or (b) would be eligible HQLA at the calculation date if they were not already securing a secured funding transaction, or delivered in an asset exchange, that will mature within 30 calendar days of the calculation date and which is also being unwound in determining the adjusted level 1, adjusted level 2A, and adjusted level 2B liquid asset amounts.

f. Example HQLA Calculation

The following is an example calculation of the HQLA amount that would be required under the final rule. Note that the given liquid asset amounts and adjusted liquid asset amounts already reflect the level 2A and 2B haircuts.

(a) Calculate the liquid asset amounts (§ __.21(b))

The following values are given:

Fair value of all level 1 liquid assets that are eligible HQLA: 17
Covered company's reserve balance requirement: 2
Level 1 liquid asset amount (§ __.21(b)(1)): 15
Level 2A liquid asset amount: 25
Level 2B liquid asset amount: 140
Sum of level 1, level 2A, and level 2B liquid asset amounts: 180

(b) Calculate unadjusted excess HQLA amount (§ __.21(c))

Step 1: Calculate the level 2 cap excess amount (§ __.21(d)):

Level 2 cap excess amount = Max (level 2A liquid asset amount + level 2B liquid asset amount—0.6667*level 1 liquid asset amount, 0)
= Max (25 + 140 − 0.6667*15, 0)
= Max (165—10.00, 0)
= Max (155.00, 0)
= 155.00

Step 2: Calculate the level 2B cap excess amount (§ __.21(e)).

Level 2B cap excess amount = Max (level 2B liquid asset amount—level 2 cap excess amount—0.1765*(level 1 liquid asset amount + level 2A liquid asset amount), 0)
= Max (140 − 155.00—0.1765*(15+25), 0)
= Max (− 15—7.06, 0)
= Max (− 22.06, 0)
= 0

Step 3: Calculate the unadjusted excess HQLA amount (§ __.21(c)).

Unadjusted excess HQLA amount = Level 2 cap excess amount + Level 2B cap excess amount
= 155.00 + 0
= 155

(c) Calculate the adjusted liquid asset amounts, based upon the unwind of certain transactions involving the exchange of eligible HQLA or cash (§ __.21(f)).

The following values are given:

Adjusted level 1 liquid asset amount: 120
Adjusted level 2A liquid asset amount: 50
Adjusted level 2B liquid asset amount: 10

(d) Calculate adjusted excess HQLA amount (§ __.21(g)).

Step 1: Calculate the adjusted level 2 cap excess amount (§ __.21(h)).

Adjusted level 2 cap excess amount = Max (adjusted level 2A liquid asset amount + adjusted level 2B liquid asset amount—0.6667*adjusted level 1 liquid asset amount, 0)
= Max (50 + 10—0.6667*120, 0)
= Max (60—80.00, 0)
= Max (−20.00, 0)
= 0

Step 2: Calculate the adjusted level 2B cap excess amount (§ __.21(i)).

Adjusted level 2B cap excess amount = Max (adjusted level 2B liquid asset amount—adjusted level 2 cap excess amount—0.1765*(adjusted level 1 liquid asset amount + adjusted level 2A liquid asset amount, 0)
= Max (10—0—0.1765*(120+50), 0)
= Max (10—30.00, 0)
= Max (−20.00, 0)
= 0

Step 3: Calculate the adjusted excess HQLA amount (§ __.21(g)).

Adjusted excess HQLA amount = adjusted level 2 cap excess amount + adjusted level 2B cap excess amount
= 0 + 0
= 0

(e) Determine the HQLA amount (§ __.21(a)).

HQLA Amount = Level 1 liquid asset amount + level 2A liquid asset amount + level 2B liquid asset amount—Max (unadjusted excess HQLA amount, adjusted excess HQLA amount)
= 15 + 25 + 140—Max (155, 0)
= 180—155
= 25

C. Net Cash Outflows

Subpart D of the proposed rule established the total net cash outflows (the denominator of the LCR), which sets the minimum dollar amount that is required to be offset by a covered company's HQLA amount. As set forth in the proposed rule, a covered company would have first determined outflow and inflow amounts by applying a standardized set of outflow and inflow rates to various asset and liability balances, together with off-balance-sheet commitments, as specified in §§ __.32 and 33 of the proposed rule. These outflow and inflow rates reflected key aspects of liquidity stress events including those experienced during the most recent financial crises. To identify when outflow and inflow amounts occur within the 30 calendar-day period following the calculation date, a covered company would have been required to employ a set of maturity assumptions, as set forth in § __.31 of the proposed rule. A covered company would have then calculated the largest daily difference between cumulative inflow amounts and cumulative outflow amounts over a period of 30 calendar days following a calculation date (the peak day approach) to arrive at its total net cash outflows.

The agencies received comments requesting modification to the calculation of net cash outflows and to the maturity assumptions set forth in the proposed rule. In addition, commenters argued that some of the proposed outflow and inflow rates should be adjusted. To address commenters' concerns, the agencies are modifying the net outflow calculation by including an add-on, as well as modifying the provisions on determining maturity. With respect to outflow and inflow rates, the agencies are generally finalizing the rule as proposed with few changes.

1. The Total Net Cash Outflow Amount

Under the proposed rule, the total net cash outflow amount would have equaled the largest daily difference between cumulative inflow and cumulative outflow amounts, as calculated over the 30 calendar days following a calculation date. For purposes of this calculation, outflows addressed in § __.32(a) through § __.32(g)(2) of the proposed rule that did not have a contractual maturity date would have been assumed to occur on the first day of the 30 calendar-day period. These outflow amounts included those for unsecured retail funding, structured transactions, net derivatives, mortgage commitments, commitments, collateral, and certain brokered deposits. Also, the proposed rule treated transactions in § __.32(g)(3) through § __.32(l) as maturing on their contractual maturity date or on the first day of the 30 calendar-day period, if such transaction did not have a contractual maturity date. These transactions included certain brokered deposits, unsecured wholesale funding, debt securities, secured funding and asset exchanges, foreign central bank borrowings, and other contractual and excluded transactions. Inflows, which would have been netted against outflows on a daily basis, included derivatives, retail cash, unsecured wholesale funding, securities, secured lending and asset exchanges, and other inflows. Inflows from transactions without a stated maturity date would have been excluded under the proposed rule based on the assumption that the inflows from such non-maturity transactions would occur after the 30 calendar-day period. Allowable inflow amounts were capped at 75 percent of aggregate cash outflows.

The proposed rule set the denominator of the LCR as the largest daily net cumulative cash outflow amount within the following 30 calendar-day period rather than using total net cash outflows over a 30 calendar-day period, which is the method employed by the Basel III Revised Liquidity Framework. The agencies elected to employ this peak day approach to take into account potential maturity mismatches between a covered company's outflows and inflows during the 30 calendar-day period; that is, the risk that a covered company could have a substantial amount of contractual inflows that occur late in a 30 calendar-day period while also having substantial outflows that occur early in the same period. Such mismatches have the potential to threaten the liquidity position of the organization during a time of stress and would not be apparent under the Basel III Revised Liquidity Framework denominator calculation. By requiring the recognition of the largest net cumulative outflow day within the 30 calendar-day period, the proposed rule aimed to more effectively capture a covered company's liquidity risk and foster more sound liquidity management.

As noted above, cumulative cash inflows would have been capped at 75 percent of aggregate cash outflows in the calculation of total net cash outflows. This limit would have prevented a covered company from relying exclusively on cash inflows, which may not materialize in a period of stress, to cover its liquidity needs and ensure that covered companies maintain a minimum HQLA amount to meet unexpected liquidity demands during the 30 calendar-day period.

Comments related to the method of calculation of the total net cash outflow amount in § __.30 of the proposed rule focused around two general concerns: the peak day approach calculation and the 75 percent inflow cap.

a. Peak Day Approach

Commenters expressed mixed views on the requirement to calculate the total net cash outflow amount using the largest daily difference between cumulative cash outflows and inflows. Some commenters recognized the concerns of the agencies in addressing the risk that a banking organization may not have sufficient liquidity to meet all its obligations throughout the 30 calendar-day period. One commenter supported the approach, noting the importance of measuring a covered company's ability to withstand the largest liquidity demands within a 30 calendar-day period. However, several commenters expressed concern that the approach deviated too far from the Basel III Revised Liquidity Framework and was unrealistic or impractical in assuming that cash flows without contractual maturity dates would occur on the first day of a 30 calendar-day period, thereby effectively rendering a 30-day liquidity standard a one-day standard. Some of these commenters suggested that the agencies adopt a different treatment for non-maturity outflows, such as assuming that the outflows occur consistently throughout the month, i.e., a straight-line approach, or more rapidly at the beginning of the month, i.e., a front-loaded approach. Further, a number of commenters asserted that the peak day approach created operational complexities and requested that the agencies perform additional diligence before implementing this requirement in the final rule.

Many commenters argued that the peak day approach was a significant departure from the Basel III Revised Liquidity Framework that could have international competitive repercussions, as U.S. covered companies could be required to hold more HQLA than their foreign counterparts. Several commenters indicated that requirements to determine net cash outflows using the ''worst day'' over the 30 calendar-day period was not contemplated in the Basel III Revised Liquidity Framework, and thus should not be incorporated into the final rule. Other commenters were concerned about the international challenges that could result from a divergence and argued that the peak day approach should first be implemented internationally to provide a greater acceptance and understanding of the requirement. A few commenters requested that the agencies conduct a quantitative study and analysis to form the basis of any net cash outflow calculation that addresses maturity mismatches.

Commenters indicated that assumptions underlying the net cumulative peak day approach were unrealistic, involved significant operational challenges, and could cause unintended consequences. Commenters argued that deposits with indeterminate maturities, including operational deposits, could not all be drawn on the first day of a stress scenario because a banking organization does not have the necessary operational capability to fulfill such outflow requests. Several commenters had specific concerns relating to retail deposits being drawn on the first day of a 30 calendar-day period, arguing that such an assumption materially overstates a banking organization's liquidity needs in the early portion of a 30 calendar-day period. Another commenter stated that the largest U.S. banking organizations did not experience a 100 percent runoff on any single day for any class of deposits during the most recent financial crisis and that such a runoff would be impossible because withdrawals of that magnitude could not be processed by the U.S. Automated Clearing House system. Commenters further argued that certain assumptions were unrealistic by stating that no market would even be deep enough to absorb the volume of HQLA monetized to meet the assumed outflows. Another commenter argued that the proposed rule could reduce banking organizations' provision of non-deposit, non-maturity funding, such as floating rate demand notes, due to the higher outflow assumption and the accelerated maturity assumption.

The agencies are addressing commenters' concerns by modifying the proposed net cumulative peak day approach. First, as in the proposed rule, a covered company would calculate its outflow and inflow amounts by applying the final rule's standardized set of outflow and inflow rates to various asset and liability balances, together with off-balance-sheet commitments. However, unlike the proposed rule and in response to commenters' concerns, the modified calculation does not assume that all transactions and instruments that do not have a contractual maturity date have an outflow amount on the first day of the 30 calendar-day period. Instead, the calculation would use an add-on approach that would substantively achieve the proposal's goal of addressing potential maturity mismatches between a covered company's outflows and inflows.

The add-on approach involves two steps. First, cash outflows and inflows over the 30 calendar-day period are aggregated and netted against one another, with the aggregated inflows capped at 75 percent of the aggregated outflows. This first step is similar to the method for calculating net cash outflows in the Basel III Revised Liquidity Framework. The second step calculates the add-on, which requires a covered company to identify the largest single-day maturity mismatch within the 30 calendar-day period by calculating the daily difference in cumulative outflows and inflows that have set maturity dates, as specified by § __.31 of the final rule, within the 30 calendar-day period. The day with the largest difference reflects the net cumulative peak day. The covered company then calculates the difference between that peak day amount and the net cumulative outflow amount on the last day of the 30 calendar-day period for those same outflow and inflow categories that have maturity dates within the 30 calendar-day period. This difference equals the add-on.

In calculating the add-on, both the net cumulative peak day amount and the net cumulative outflow amount on the last day of the 30 calendar-day period cannot be less than zero. The categories of inflows and outflows included in the add-on calculation comprise those categories that are the most likely to expose covered companies to maturity mismatches within the 30 calendar-day period, such as repurchase agreements and reverse repurchase agreements with financial sector entities, whereas outflows such as non-maturity retail deposits are not a part of the add-on calculation. The final rule clarifies that the only non-maturity outflows included in the calculation of the add-on are those that are determined to have a maturity date of the day after the calculation date, pursuant to § __.31(a)(4) as described below.

The amounts calculated in steps one and two are then added together to determine the total net cash outflow. This approach ensures that the final rule avoids potential unintended consequences by eliminating the proposed rule's assumption that all non-maturity outflows occur on the first day of a 30 calendar-day period while still achieving the underlying goal of recognizing maturity mismatches. The agencies recognize that the revised approach involves calculations and operational complexity not contemplated by the Basel III Revised Liquidity Framework and could potentially require some covered companies to hold more HQLA than under the Basel III Revised Liquidity Framework. However, the agencies have concluded that the liquidity risks posed by maturity mismatches are significant and must be addressed to ensure that the LCR in the U.S. will be a sufficiently rigorous measure of a covered company's liquidity resiliency.

Table 1 illustrates the final rule's determination of the total net cash outflow amount using the add-on approach. Using Table 1, which is populated with similar values as the corresponding table in the proposed rule, a covered company would implement the first step of the add-on approach by aggregating the cash outflow amounts in columns (A) and (B), as calculated under § __.32, and subtract from that aggregated amount the lesser of 75 percent of that aggregated amount and the aggregated cash inflow amounts in columns (D) and (E), as calculated under § __.33. The second step of the add-on approach calculates the add-on. The covered company would cumulate the cash outflows determined under § __.32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) (column C) and cash inflows determined under § __.33(c), (d), (e), and (f) (column F) that have maturity dates pursuant to § __.31 for each day within the 30 calendar-day period. The covered company would then determine (G), the net cumulative cash outflows, by subtracting column (F) from column (C) for each day. The net cumulative peak day amount would be the largest value of column (G). The greater of that peak value and zero less the greater of the day 30 value of column (G) and zero is the add-on. To determine the total net cash outflow amount, the covered company would add the aggregated net cash outflow amount calculated in the first step and the add-on.

TABLE 1—DETERMINATION OF TOTAL NET CASH OUTFLOW USING THE ADD-ON APPROACH

	Non-maturity outflows and outflows that have a maturity date pursuant to section 31, but not under sections 32(g), (h)(1), (h)(2), (h)(5), (j), (k), (l)	Outflows determined under sections 32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date pursuant to section 31	Cumulative outflows determined under sections 32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date pursuant to section 31	Inflows that have a maturity date pursuant to section 31, but not under sections 33(c), (d), (e), and (f)	Inflows determined under sections 33(c), (d), (e), and (f) that have a maturity date pursuant to section 31	Cumulative inflows determined pursuant to sections 33(c), (d), (e), and (f) that have a maturity date pursuant to section 31	Net cumulative maturity outflows
	A	B	C	D	E	F	G
Day 1		100	100		90	90	10
Day 2		20	120		5	95	25
Day 3		10	130		5	100	30
Day 4		15	145		20	120	25
Day 5		20	165		15	135	30
Day 6		0	165		0	135	30
Day 7		0	165		0	135	30
Day 8		10	175		8	143	32
Day 9		15	190		7	150	40
Day 10		25	215		20	170	45
Day 11		35	250		5	175	75
Day 12		10	260		15	190	70
Day 13		0	260		0	190	70
Day 14		0	260		0	190	70
Day 15		5	265		5	195	70
Day 16		15	280		5	200	80
Day 17		5	285		5	205	80
Day 18		10	295		5	210	85
Day 19		15	310		20	230	80
Day 20		0	310		0	230	80
Day 21		0	310		0	230	80
Day 22		20	330		45	275	55
Day 23		20	350		40	315	35
Day 24		5	355		20	335	20
Day 25		40	395		5	340	55
Day 26		8	403		125	465	−62
Day 27		0	403		0	465	−62
Day 28		0	403		0	465	−62
Day 29		5	408		10	475	−67
Day 30		2	410		5	480	−70
Total	300	410		100	480		

Total Net Cash Outflows = Aggregated Outflows − MIN (.75*Aggregated Outflows,Aggregated Inflows) + Add-On.
= 300 + 410 − MIN (100 + 480, .75 * (300 + 410)) + (MAX (0,85) − MAX(0, −70)).
= 710 − 532.5 + (85 − 0).
= 262.5.

b. Inflow Cap

Under the proposed rule, a covered company's total cash inflow amount would have been capped at 75 percent of its total cash outflows. This was designed to ensure that covered companies would hold a minimum HQLA amount equal to at least 25 percent of total cash outflows. The agencies received a number of comments on this provision of the proposed rule, including requests for modifications to the cap. However, for the reasons discussed below, the agencies are adopting this provision of the rule largely as proposed, except for a modification relating to the netting of certain foreign currency derivative transactions.

One commenter noted that while there is a recognizable policy rationale for the 75 percent inflow cap, application of the rule in all circumstances may result in unwarranted or unintended outcomes. Some commenters suggested application of the inflow cap to individual types of inflows rather than as a restriction on the entire LCR denominator. For instance, one commenter recommended that the agencies make a distinction between contractual and contingent inflows, and only apply the inflow cap to the latter category. The commenter also noted that the application of the cap could cause asymmetric treatment of certain categories of transactions that may be perceived as being linked in the normal course of business. For example, the commenter suggested that the inflow leg of a foreign exchange swap transaction should not be subject to the 75 percent inflow cap. Rather, the full amount of the inflow leg should be counted and netted against the corresponding outflow leg in the net derivative outflow amount (under § __.32(c) of the proposed rule). Other commenters requested that loans of securities to cover customer short positions be exempt from the 75 percent inflow cap in the final rule where the covered company obtains the security through a repurchase agreement because all related transactions would unwind simultaneously and net out. Commenters opined that the application of the proposed rule's inflow cap would result in a net liquidity outflow across the secured transactions despite the transactions' symmetry and result in an overestimation of net outflows, instead of full recognition of secured lending inflows where the banking organization has the contractual right and practical ability to terminate the loan and receive cash back from a counterparty in response to a change in offsetting customer positions.

Other commenters indicated that the release of previously segregated funds held to comply with Rule 15c3–3 should not be subject to the 75 percent inflow cap, but should be given full inflow credit.[58] Another commenter noted that certain covered nonbank companies cannot deposit excess cash in Federal Reserve Banks, and instead tend to deposit such funds in third-party commercial banks. This commenter recommended that the inflows from such deposits should not be subject to the 75 percent cap. Several commenters requested that the agencies eliminate the application of inflow caps for covered subsidiaries of covered companies in the calculation of the subsidiaries' own LCR.

The agencies continue to believe the total inflow cap is a key requirement of the LCR calculation because it ensures covered companies hold a minimum HQLA amount equal to 25 percent of total cash outflows that will be available during a stress period. The agencies believe it is critical for firms to maintain on-balance sheet assets to meet outflows and not be overly reliant on inflows that may not materialize in a stress scenario. The agencies decline to significantly modify this provision to relax the cap on inflows because, without it, a covered company may be holding an amount of HQLA that is not commensurate with the risks of its funding structure under stress conditions. Reducing the inflow cap and allowing covered companies to rely more heavily on inflows to offset outflows likely would increase the interconnectedness of the financial system, as a substantial amount of inflows are from other financial institutions. Consequently, the agencies are retaining the limitation of inflows at 75 percent of total cash outflows in the final rule. No inflow cap will apply to the calculation of the maturity mismatch add-on.

Notwithstanding the agencies' general view regarding the inflow cap, the agencies have made a change to the proposed rule in response to the comments received. Certain foreign currency exchange derivative cash flows are to be treated on a net basis and have therefore effectively been removed from the gross inflow cap calculation. This change is described in more detail in section II.C.3.c of this Supplementary Information section.

2. Determining Maturity

Section __.31 of the proposed rule would have required a covered company to identify the maturity date or date of occurrence of a transaction that is the most conservative when calculating inflow and outflow amounts; that is, the earliest possible date for outflows and the latest possible date for inflows. In addition, under § __.30 of the proposed rule, a covered company's total net outflow amount as of a calculation date would have included outflow amounts for certain instruments that do not have contractual maturity dates and outflows and inflows that mature prior to or on a day 30 calendar days or less after the calculation date. Section __.33 of the proposed rule would have expressly excluded instruments with no maturity date from a covered company's total inflow amount.

The proposed rule described how covered companies would have determined whether certain instruments mature or transactions occur within the 30 calendar-day period when calculating outflows and inflows. The proposed rule also would have required covered companies to take the most conservative approach when determining maturity with respect to any options, either explicit or embedded, that would have modified maturity dates and with respect to any notice periods. If such an option existed for an outflow instrument or transaction, the proposed rule would have directed a covered company to assume that the option would be exercised at the earliest possible date. If such an option existed for an inflow instrument or transaction, the proposed rule would have required covered companies to assume that the option would be exercised at the latest possible date. In addition, the proposed rule would have provided that if an option to adjust the maturity date of an instrument is subject to a notice period, a covered company would have been required to either disregard or take into account the notice period, depending upon whether the instrument was an outflow or inflow instrument and whether the notice requirement belonged to the covered company or its counterparty.

Many commenters expressed concern that the proposed requirements for determining maturity with respect to options may conflict with the legal agreements underlying those transactions. One commenter argued that the proposed rule would have assumed that covered companies would disregard customer contractual 30-day notice periods. The commenter requested that commitment outflows that are subject to a mandatory notice period of more than 30 days not be subject to an outflow amount because the notice period practically prevents an outflow and therefore the notice period should be recognized. Other commenters requested clarification as to whether an acceleration provision that may be exercised in the event of a default or other remote contingencies, such as the right to call certain funding facilities, would count as an option for the purposes of determining maturity. Another commenter argued that the proposed requirements for determining maturity should have taken into account the timing of a redemption period and whether or not the period had lapsed. Commenters also objected to the application of the ''nearest possible date'' assumption to commitment outflows supporting debt maturing within a 30 calendar-day period because it would assume that such commitment outflows would occur on the first day of a 30 calendar-day period rather than the debt instrument's actual maturity date.

Several commenters indicated that the assumptions underlying the requirements in § __.31 of the proposed rule were counterintuitive and not consistent with economic behavior. For instance, one commenter argued that requiring a covered company to assume that options are always exercised would imply that the covered company must always disadvantage itself in a stress scenario. Another commenter observed that no market expectation exists for a covered company to exercise a call option on long-term debt in a stressed environment and such behavior was not evident in the recent financial crisis, and therefore should not be an assumption of the final rule.

Several commenters requested that the agencies clarify the treatment of legal notice periods for obligations such

[58] 17 CFR 240.15c3–3.

as wholesale deposit agreements or revolving credit facilities. Another commenter argued that in times of stress, certain customers with non-maturity obligations, including retail or operational deposits, engage in ''flight to quality behavior,'' making it unlikely that all such customers would liquidate their positions simultaneously. Other commenters recognized that while covered companies might make certain disadvantageous decisions to benefit retail customer relations, they and their wholesale counterparties should be assumed to act rationally with respect to exercising options, and should be assumed to abide by their contractual obligations.

Commenters expressed concern that the maturity assumptions employed in the proposed rule overstated near-term liquidity risk. Several commenters argued that the maturity assumptions of the proposed rule would require that certain maturity deposits, including brokered time deposits, be treated as non-maturity deposits because the customer was provided an accommodation to allow for early withdrawal. These commenters requested that the agencies undertake an empirical analysis of the maturity assumptions for such instruments. Another commenter argued that the combination of a peak cumulative net cash outflow or ''worst day'' denominator requirement with the maturity assumptions were unrealistic and would have overstated a banking organization's liquidity risk. Several commenters requested clarification that a covered company would not be required to assume to have exercised call options or rights to redeem its own debt on wholesale funding instruments and long-term debt issued by the covered company.

The agencies have considered the comments and have modified the provisions on determining maturity in the final rule to ensure that all option types are addressed. The modifications result in a more accurate reflection of likely market behavior during a time of liquidity stress, based on comments and the agencies' observations. The provisions in the final rule for determining maturity remain conservative. The final rule contains the following maturity assumptions for options: (a) For an investor or funds provider holding an option to reduce the maturity of a transaction subject to § __.32, assume the option will be exercised; (b) for an investor or funds provider holding an option to extend the maturity of a transaction subject to § __.32, assume the option will not be exercised; (c) for a covered company holding an option to reduce the maturity of a transaction subject to § __.32, assume the option will be exercised; (d) for a covered company holding an option to extend the maturity of a transaction subject to § __.32, assume the option will not be exercised; (e) for a borrower holding an option to extend the maturity of a transaction subject to § __.33, assume the option will be exercised; (f) for a borrower holding an option to reduce the maturity of a transaction subject to § __.33, assume the option will not be exercised; (g) for a covered company holding an option to reduce the maturity of a transaction subject to § __.33, assume the option will not be exercised; and (h) for a covered company holding an option to extend the maturity of a transaction subject to § __.33, assume the option will be exercised.

The final rule makes an exception for longer-term callable bonds and treats the original maturity of the instrument as the maturity for purposes of the LCR. The final rule provides that when a bond issued by a covered company has an original maturity greater than one year and the call option held by the covered company does not go into effect until at least six months after the issuance, the original maturity of the bond will determine the maturity for purposes of the LCR. The agencies have adjusted this provision in the final rule because they have concluded that covered companies would not likely be susceptible during a period of liquidity stress to significant market pressure to exercise these call options. Similarly, the agencies are amending the maturity provisions of the final rule so that a covered company does not have to presume acceleration of the maturity of its obligation where the covered company holds an option permitting it to repurchase its obligation from a sovereign entity, U.S. GSE, or public sector entity. In those circumstances, the maturity of the obligation under the final rule will be the original maturity of the obligation. This change reflects the fact that, for example, the agencies believe there is less reputational pressure to exercise an option to redeem FHLB advances early.

Another of the final rule's modifications of the proposed maturity determination requirements clarifies how a covered company should address certain outflows and inflows that do not have maturity dates, as these were not explicitly addressed in the proposed rule. Under the proposed rule, all non-maturity inflows would have been excluded from the LCR. Under the final rule, transactions, except for operational deposits, subject to § __.32(h)(2), (h)(5), (j), or (k), or § __.33(d) or (f) that do not have maturity dates will be considered to have a maturity date on the first calendar day after the calculation date. This change will primarily affect certain transactions with financial sector entities. The maturity of these transactions is often referred to as ''open.'' The agencies believe these transactions are similar to overnight deposits from financial institutions and for purposes of the LCR, are treating them the same. Therefore, for these types of ''open'' transactions with financial sector entities and other transactions subject to § __.32(h)(2), (h)(5), (j), or (k), or § __.33(d) or (f) that do not have maturity dates and are not operational deposits, the final rule provides that for purposes of the LCR, the maturity date will be the first calendar day after the calculation date.

An additional change in the final rule for determining maturity pertains to matched secured lending transactions or asset exchanges with a contractual maturity of 30 days or less that generate an inflow to the covered company in the form of collateral (inflow-generating asset exchange) and the company then uses the received collateral in a secured funding transaction or asset exchange with a contractual maturity of 30 days or less that results in an outflow from the covered company in the form of collateral (outflow-generating asset exchange) (see section II.C.4.f below). In the final rule, the maturity date of secured lending transactions or inflow-generating asset exchanges will be the later of the contractual maturity date of the secured lending transaction or inflow-generating asset exchange and the maturity date of the secured funding transaction or outflow-generating asset exchange for which the received collateral was used. This treatment is a clarifying change consistent with the intent of the proposed rule, which was to prevent a covered company from recognizing inflows resulting from secured lending transactions or asset exchanges earlier in the 30 calendar-day period than outflows resulting from secured funding transactions or asset exchanges, even though the collateral needed to cover the maturing secured lending transaction or asset exchange will not be available until the related outflow occurs.

The final rule also adds to the maturity provisions of the proposed rule a clarification that any inflow amount available under § __.33(g) will be deemed to occur on the day on which the covered company or its consolidated subsidiary calculates the release of assets under statutory or regulatory requirements for the protection of customer trading assets, such as Rule 15c3–3, consistent with the covered company's or consolidated subsidiary's past practice with respect to such calculation. Under the final rule, this inflow will be assumed to occur on the date of the next regular calculation. Therefore if, for example, a broker-dealer performs this calculation on a daily basis, the inflow would occur on the first day of the 30 calendar-day period, but if a broker-dealer typically performs the calculation on a weekly basis, the inflow would occur on the date of the next regularly scheduled calculation. This maturity determination provision is necessary because of the inclusion of the related inflow under § __.33(g) of the final rule, which was added in response to comments received by the agencies, as discussed below in section II.C.4.g.

Several commenters requested that the agencies clarify that time deposits that can be withdrawn at any time (subject to the forfeiture of interest) would be subject to the earliest possible maturity date assumption under the proposal, while deposits that cannot be withdrawn (but for death or incompetence) would be assumed to mature on the applicable maturity date. The agencies are clarifying that, for purposes of the final rule, deposits that can only be withdrawn in the event of death or incompetence are assumed to mature on the applicable maturity date, and deposits that can be withdrawn following notice or the forfeiture of interest are subject to the rule's assumptions for non-maturity transactions.

Though not resulting in a change in the final rule, the agencies are clarifying that remote contingencies in funding contracts that allow acceleration, such as withdrawal rights arising solely upon death or incompetence or material adverse condition clauses, are not considered options for determining maturity. The agencies did not change the treatment of notice periods in the final rule as commenters requested because reputational considerations may drive a covered company's behavior with regard to notice periods. Further, these reputational considerations exist for all types of counterparties, including wholesale and not just retail, and regardless of whether there are contractual provisions favoring the covered company. Regarding commenters' arguments that the proposed requirements for determining maturity do not reflect a likely flight to quality during a period of liquidity stress, the agencies believe that such behavior cannot be relied upon and may not occur for all institutions, so the conservative assumptions in the proposed and final rule with respect to maturity are appropriate. The agencies understand that the requirements for determining maturity may not comport with the stated requirements for call options in some legal agreements, but believe that the conservative assumptions in the final rule ensure a more accurate assessment of a covered company's liquidity resiliency through the LCR. Similarly, the agencies believe that taking a more conservative view of likely behavior during a liquidity stress event is critical to achieving this goal. With respect to commenters' request that the agencies provide data for the maturity assumptions in the final rule, the agencies note that during the recent financial crisis, many options were exercised in a manner that was disadvantageous to the banking organization or financial institution to protect its market reputation.

3. Outflow Amounts

The proposed rule set forth outflow categories for calculating cash outflows and their respective outflow rates, each as described below. The outflow rates were designed to reflect the 30 calendar-day stress scenario that formed the basis of the proposed rule, and included outflow assumptions for the following categories: (a) Unsecured retail funding; (b) structured transactions; (c) net derivatives; (d) mortgage commitments; (e) commitments; (f) collateral; (g) brokered deposits for retail customers or counterparties; (h) unsecured wholesale funding; (i) debt securities; (j) secured funding; (k) foreign central bank borrowing; (l) other contractual outflows; and (m) excluded amounts for intragroup transactions. The agencies proposed outflow rates for each category, ranging from zero percent to 100 percent, in a manner generally consistent with the Basel III Revised Liquidity Framework. Under the proposed rule, the outstanding balance of each category of funding or obligation that matured within 30 calendar days of the calculation date (under the maturity assumptions described above in section II.C.2) would have been multiplied by these outflow rates to arrive at the applicable outflow amount.

a. Retail Funding Outflow Amount

The proposed rule defined retail customers or counterparties to include individuals and certain small businesses. Under the proposal, a small business would have qualified as a retail customer or counterparty if its transactions had liquidity risks similar to those of individuals and were managed by a covered company in a manner comparable to the management of transactions of individuals. In addition, to qualify as a small business, the proposed rule would have required that the total aggregate funding raised from the small business be less than $1.5 million. If an entity provides $1.5 million or more in total funding, has liquidity risks that are not similar to individuals, or the covered company manages the customer like a corporate customer rather than an individual customer, the entity would have been a wholesale customer under the proposed rule.

The proposed rule included in the category of unsecured retail funding retail deposits (other than brokered deposits) that are not secured under applicable law by a lien on specifically designated assets owned by the covered company and that are provided by a retail customer or counterparty. The proposed rule divided unsecured retail funding into subcategories of: (i) Stable retail deposits, (ii) other retail deposits, and (iii) funding from a retail customer or counterparty that is not a retail deposit or a brokered deposit provided by a retail customer or counterparty, each of which would have been subject to the outflow rates set forth in § __.32(a) of the proposed rule, as explained below. Outflow rates would have been applied to the balance of each unsecured retail funding outflow category regardless of maturity date.

i. Stable Retail Deposits

The proposed rule defined a stable retail deposit as a retail deposit, the entire amount of which is covered by deposit insurance, and either: (1) Held in a transactional account by the depositor, or (2) where the depositor has another established relationship with a covered company, such that withdrawal of the deposit would be unlikely.[59] Under the proposed rule, the established relationship could have been another deposit account, a loan, bill payment services, or any other service or product provided to the depositor, provided that the banking organization demonstrates to the satisfaction of its appropriate Federal banking agency that the relationship would make withdrawal of the deposit highly unlikely during a liquidity stress event. The proposed rule assigned stable retail deposit balances an outflow rate of 3 percent.

[59] For purposes of the proposed rule, ''deposit insurance'' was defined to mean deposit insurance provided by the FDIC and did not include other deposit insurance schemes.

ii. Other Retail Deposits

The proposed rule categorized all deposits from retail customers that are not stable retail deposits, as described above, as other retail deposits. Supervisory data supported a higher outflow rate for deposits that are partially FDIC-insured as compared to entirely FDIC-insured. The agencies proposed an outflow rate of 10 percent for those retail deposits that are not entirely covered by deposit insurance or that otherwise do not meet the proposed criteria for a stable retail deposit.

iii. Other Unsecured Retail Funding

Under the proposed rule, the other unsecured retail funding category included funding provided by retail customers or counterparties that is not a retail deposit or a retail brokered deposit and received an outflow rate of 100 percent. This outflow category was intended to capture all other types of retail funding that were not stable retail deposits or other retail deposits, as defined by the proposal.

iv. Comments on Retail Funding Outflows

Comments related to the unsecured retail funding outflow category addressed applicable definitions, the types of transactions that would qualify as retail funding, the treatment of retail maturities, requirements related to deposit insurance, applicable outflow rates, and requests for additional information from the agencies.

Several commenters requested a broadening of the definition of retail customer or counterparty to include additional entities and to exclude certain transactions from the other unsecured retail funding category. For example, two commenters argued that the proposed $1.5 million limit on aggregate funding, which would apply to small businesses in the retail customer or counterparty definition, should be raised to $5 million, which would be consistent with annual receipts criteria used by the U.S. Small Business Administration's definition for small business. Other commenters requested a broadening of the retail funding category to include certain trusts and other personal fiduciary accounts, such as personal and charitable trusts, estates, certain payments to minors, and guardianships formed by retail customers, because they exhibit characteristics of retail funding. Another commenter argued that revocable trusts should qualify as retail funding because such trusts have risk characteristics similar to that of individuals, in that the grantor keeps control of the assets and has the option to terminate the trust at any point in the future.

One commenter stated that a 3 percent outflow rate in cases where the entire deposit is covered by deposit insurance was appropriately low, but that a 10 percent outflow rate did not sufficiently reflect the stability of deposits partially covered by deposit insurance. Another commenter requested zero outflows relating to prepaid cards issued by nonbank money transmitter subsidiaries because they are functionally regulated by individual states and are subject to collateral requirements similar to those for secured transactions. This commenter indicated that certain non-deposit, prepaid retail products covered by FDIC insurance that is deemed to ''pass-through'' the holder of the account to the owner of the funds should merit an outflow rate significantly less than 100 percent, as these products are similar to retail deposits and have exhibited stability throughout economic cycles, including during the recent financial crisis.

Some commenters also requested that the definition of deposit insurance be expanded beyond FDIC insurance to include foreign deposit insurance programs where (i) insurance is prefunded by levies on the institutions that hold insured deposits; (ii) the insurance is backed by the full faith and credit of the national government; (iii) the obligations of the national government are assigned a zero percent risk weight under the agencies' risk-based capital rules; and (iv) depositors have access to their funds within a reasonable time frame. The commenters also requested that the outflow rate assigned to partially-insured deposits reflect the benefit of partial insurance, rather than treating the entire deposit as uninsured. This would lead to treatment of the portion of a deposit that is below the $250,000 FDIC insurance limit as a stable retail deposit subject to a 3 percent outflow, and any excess balance as a less stable retail deposit subject to the 10 percent outflow rate.

Finally, some commenters requested the agencies share the empirical data that was the basis for the proposed rule's retail funding outflow requirements. Specifically, commenters requested information regarding the stability of insured deposits, partially insured deposits, term deposits, and deposits without a contractual term during the recent financial crisis.

v. Final Rule

In considering the comments on retail funding outflows, the agencies continue to believe that the outflow rates applicable to stable deposits and other retail deposits, 3 percent and 10 percent, respectively, are appropriate based on supervisory data and for the reasons outlined in the proposed rule and, accordingly, have retained those outflow rates in the final rule.[60] The agencies used substantial supervisory data, including data reflecting the recent financial crisis, to inform the outflow rates. This data indicated that depositors withdrawing funds usually withdraw the entire amount, and not just the amount that is not covered by FDIC insurance. As a result, the agencies are retaining the treatment of partially insured retail deposits.

In response to comments received about other retail funding, the agencies have reconsidered the 100 percent outflow rate in § __.32(a)(3) of the proposed rule. In the final rule, the agencies have lowered the outflow rate to 20 percent for deposits placed at the covered company by a third party on behalf of a retail customer or counterparty that are not brokered deposits, where the retail customer or counterparty owns the account and where the entire amount is covered by deposit insurance. In addition, partially insured deposits placed at the covered company by a third party on behalf of a retail customer or counterparty that are not brokered deposits and where the retail customer or counterparty owns the account receive a 40 percent outflow rate under the final rule. The 20 percent and 40 percent outflow rates are designed to be consistent with the final rule's treatment of wholesale deposits, which the agencies believe have similar liquidity risk as deposits placed on behalf of a retail customer or counterparty. Finally, all other funding from a retail customer or counterparty that is not a retail deposit, a brokered deposit provided by a retail customer or counterparty, or a debt instrument issued by the covered company that is owned by a retail customer or counterparty, which includes items such as unsecured prepaid cards, receives a 40 percent outflow rate. The agencies believe these changes better reflect the liquidity risks of categories of unsecured retail funding that have liquidity characteristics that more closely align with certain types of third-party funding in § __.32(g) of the proposed rule.

Additionally, the final rule clarifies that the outflow rates for retail funding apply to all retail funding, regardless of whether that funding is unsecured or secured. This reflects the nature of retail

[60] 78 FR 71835–71836.

funding, which is less likely to involve a secured transaction, and the relatively low outflow rates already assigned to the funding.

The agencies decline to revise most of the definitions and key terms employed in the retail funding section of the proposed rule. With respect to the commenters' request to raise the limit on aggregate funding that applies to small businesses, the annual receipts criteria within the U.S. Small Business Administration's definition for small business would include businesses that are large and sophisticated and should not be treated similarly to retail customers or counterparties in terms of liquidity risks. The agencies therefore continue to believe that $1.5 million is the appropriate limit. The agencies considered whether foreign deposit insurance systems should be given the same treatment as FDIC deposit insurance in the final rule. The agencies believe there would be operational difficulties in evaluating a foreign deposit insurance system for the purposes of a U.S. regulatory requirement. For the reasons discussed in the preamble to the proposed rule, the agencies are recognizing only FDIC deposit insurance in defining stable retail deposits.[61]

However, the agencies have concluded that certain trusts pose liquidity risks substantially similar to those posed by individuals, and the agencies are modifying the final rule to clarify that living or testamentary trusts that have been established for the benefit of natural persons, that do not have a corporate trustee, and that terminate within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years (in states that have a rule against perpetuities) can be treated as retail customers or counterparties. The agencies believe that these trusts are ''alter egos'' of the grantor and thus should be treated the same as an individual for purposes of the LCR. If the trustee is a corporate trustee that is an investment adviser, whether or not required to register as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), however, the trust will be treated as a financial sector entity.

Apart from the changes to the final rule discussed above, the agencies have finalized the rule as proposed with regard to retail funding and believe that the changes incorporated appropriately capture the key liquidity characteristics of the retail funding market.

[61] 78 FR 71836.

b. Structured Transaction Outflow Amount

The proposed rule's structured transaction outflow amount, set forth in § __.32(b) of the proposed rule, would have captured obligations and exposures associated with structured transactions sponsored by a covered company, without regard to whether the structured transaction vehicle that is the issuing entity is consolidated on the covered company's balance sheet. The proposed rule assigned as an outflow rate for each structured transaction sponsored by the covered company the greater of: (1) 100 Percent of the amount of all debt obligations of the issuing entity that mature 30 days or less from a calculation date and all commitments made by the issuing entity to purchase assets within 30 calendar days or less from the calculation date, and (2) the maximum contractual amount of funding the covered company may be required to provide to the issuing entity 30 calendar days or less from such calculation date through a liquidity facility, a return or repurchase of assets from the issuing entity, or other funding agreement. The agencies proposed the 100 percent outflow rate because such transactions, including potential obligations arising out of commitments to an issuing entity, whether issued directly or sponsored by covered companies, caused severe liquidity demands at covered companies during times of stress as observed during the recent financial crisis.

Comments regarding § __.32(b) of the proposed rule focused on specific structured transactions (such as bank customer securitization credit facilities and those vehicles where a banking organization securitizes its own assets) and requested clarification around which types of transactions should be treated as a structured transaction under § __.32(b) and which transactions should be treated as facilities under § __.32(e)(1)(vi) of the proposed rule. A commenter noted that the agencies did not draw a distinction between a structured transaction vehicle that is consolidated on the covered company's balance sheet and transactions that are sponsored, but not owned by the covered company. The commenter argued that the proposed rule would impact all private label MBS that are sponsored by a covered company by assigning a 100 percent outflow rate to the obligations of the issuing entity that mature in 30 calendar days or less. Moreover, the commenter also requested clarification as to whether variable interest entity (VIE) liabilities relating to SPEs that are to be included in the net cash outflow of a covered company can be offset with cash flows from the assets in the SPE even if they are not consolidated on the covered bank's balance sheet.

Some commenters also indicated that those securitizations that meet the definition of ''traditional securitization'' in the agencies' regulatory capital rules, where the sponsor securitizes its own assets, should be exempt from the outflow amount in § __.32(b), so long as the covered company does not extend credit or liquidity support. These commenters relied on the fact that the issuing entity would have no legal obligation to make a payment on a security as a result of a shortfall of cash from underlying assets, irrespective of whether the covered company is required to consolidate the issuing entity onto its balance sheet to justify the exemption request.

Several commenters also expressed concern regarding the proposed rule's assumption of a significant cash outflow on the first day of the 30 calendar-day period (without a corresponding inflow that would be assumed to occur at a later date) and that the proposed rule did not include a clear explanation for this assumption. Commenters requested that the outflow be deemed to occur on the scheduled maturity date of the debt. Several commenters also expressed concern that potential double counting of outflow amounts could occur in that transactions captured under § __.32(e)(1)(vi) of the proposed rule could also be subject to § __.32(b) without further clarification.

The agencies continue to believe the 100 percent outflow rate applicable to structured transactions sponsored by a covered company is generally reflective of the liquidity risks of such transactions. Structured transactions can be a source of unexpected funding requirements during a liquidity crisis, as demonstrated by the experience of various financial firms during the recent financial crisis. This outflow rate is also generally consistent with the outflow for commitments made to financial counterparties and SPEs that issue commercial paper and other securities, as provided in § __.32(e) of the final rule and discussed below.

The agencies recognize that banking regulations may prohibit some covered companies from providing certain forms of support to funds that are sponsored by covered companies.[62] However, the

[62] *See, e.g.,* OCC, Board, FDIC, and SEC, ''Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Certain Relationships With, Hedge Funds and Private Equity Funds,'' 79 FR 5536, 5790 (January 31, 2014); OCC, Board, and FDIC, ''Interagency Policy

100 percent outflow rate recognizes that covered companies may still provide significant support to structured transactions that they sponsor while complying with regulatory requirements that prohibit certain forms of support.

To address the commenters' concern regarding potential double counting of outflow amounts, the final rule excludes from the outflows in § __.32(e)(1)(vii) through (viii) those commitments described in the structured transaction outflow amount section. Although the structured transaction outflow amount and the commitment outflow amount sections (§ __.32(b) and § __.32(e), respectively) are similar in that both apply outflow rates to commitments made to an SPE, the structured transaction outflow amount also includes outflows beyond contractual commitments because a sponsor may provide support despite the absence of such a commitment.

The agencies are making a clarifying change in the final rule by applying the structured transaction outflow amount provision only to issuing entities that are not consolidated with the covered company. If the issuing entity is consolidated with the covered company, then the commitments from the covered company to that entity would be excluded under § __.32(m) as intragroup transactions. However, even though the commitments would be excluded, any outflows and inflows of the issuing entity would be included in the covered company's outflow and inflows because they are consolidated.

The agencies did not define the term ''sponsor'' in the proposed rule and are not defining it in the final rule because the agencies believe that the term is generally understood within the marketplace. Furthermore, the agencies intend § __.32(b) to apply to all covered companies that would have explicit or implicit obligations to support a structured transaction of an issuing entity that is not consolidated by the covered company during a period of liquidity stress. Generally, the agencies consider covered companies to be sponsors when they have significant control or influence over the structuring, organization, or operation of a structured transaction.

The agencies agree with commenters' concern that the maturity assumptions in the proposed rule would cause structured transaction payments to fall on the first day of the 30 calendar-day period and that this treatment would not be appropriate. The changes to the peak day approach described above in section II.C.1 of this Supplementary Information section would result in structured transaction payments not being assumed to occur on the first day of a 30 calendar-day window because they are not included in the calculation of the add-on. Instead, these commitments would be assumed to occur on the transaction's scheduled maturity date. Finally, the agencies believe that the definitions and key terms employed in this section of the proposed rule accurately capture the key characteristics related to structured transactions sponsored by a covered company and decline to provide a different treatment for the funding of VIE liabilities that are part of a structured securitization, structured securitizations involving SPEs, structured securitization credit facilities to finance the receivables owned by a corporate entity, or where the sponsor securitizes its own assets. Likewise, private label MBS that meet the definition of a structured transaction will be subject to this provision because of the liquidity risks incumbent in such transactions. Accordingly, the agencies are adopting as final this provision of the rule as proposed with the clarifying change regarding consolidated issuing entities.

c. Net Derivative Outflow Amount

The proposed rule would have defined a covered company's net derivative cash outflow amount as the sum of the payments and collateral that a covered company would make or deliver to each counterparty under derivative transactions, less the sum of payments and collateral due from each counterparty, if subject to a valid qualifying master netting agreement.[63] This calculation would have incorporated the amounts due to and from counterparties under the applicable transactions within 30 calendar days of a calculation date. Netting would have been permissible at the highest level permitted by a covered company's contracts with a counterparty and could not include offsetting inflows where a covered company is already including assets in its HQLA that the counterparty has posted to support those inflows. If the derivative transactions were not subject to a qualifying master netting agreement, then the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount and the derivative cash inflows for that counterparty would be included in the net derivative cash inflow amount, without any netting and subject to the proposed rule's cap on total inflows. Under the proposed rule, the net derivative cash outflow amount would have been calculated in accordance with existing valuation methodologies and expected contractual derivatives cash flows. In the event that the net derivative cash outflow for a particular counterparty was less than zero, such amount would have been required to be included in a covered company's net derivative cash inflow amount for that counterparty.

A covered company's net derivative cash outflow amount would not have included amounts arising in connection with forward sales of mortgage loans or any derivatives that are mortgage commitments subject to § __.32(d) of the proposed rule. However, net derivative cash outflows would have included outflows related to derivatives that hedge interest rate risk associated with mortgage loans and commitments.

Many commenters were concerned that the treatment of derivative transactions created an asymmetric treatment for certain offsetting derivative transactions (such as foreign exchange swaps) because covered companies would be required to compute the cash flows on a gross basis with a cash outflow and a cash inflow subject to the 75 percent inflow cap as described above, even if in practice the settlement occurred on a net basis. Accordingly, these commenters proposed that foreign exchange transactions that are part of the same swap should be treated as a single transaction on a net basis.

For the reasons discussed in the proposal, the agencies continue to believe the 100 percent outflow rate applicable to net derivative outflows is reflective of the liquidity risks of these transactions and therefore are retaining this outflow rate in the final rule. The agencies are, however, making a significant change to how this outflow rate is applied to foreign currency exchange derivative transactions to address concerns raised by commenters.

Specifically, foreign currency exchange derivative transactions that meet certain criteria can be netted under

on Banks/Thrifts Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates,'' OCC Bulletin 2004–2, Federal Reserve Supervisory Letter 04–1, FDIC FIL–1–2004 (January 5, 2004).

[63] Under the proposal, a ''qualifying master netting agreement'' was defined as a legally binding agreement that gives the covered company contractual rights to terminate, accelerate, and close out transactions upon the event of default and liquidate collateral or use it to set off its obligation. The agreement also could not be subject to a stay under bankruptcy or similar proceeding and the covered company would be required to meet certain operational requirements with respect to the agreement, as set forth in section 4 of the proposed rule. This is the same definition as under the agencies' regulatory capital rules. See 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

the provisions of § __.32(c)(2) of the final rule. Cash flows arising from foreign currency exchange derivative transactions that involve a full exchange of contractual cash principal amounts in different currencies between a covered company and a counterparty within the same business day may be reflected in the net derivative cash outflow amount for that counterparty as a net amount, regardless of whether those transactions are covered by a qualifying master netting agreement. Thus, the inflow leg of a foreign currency exchange derivative transaction in effect is not subject to the 75 percent inflow cap as long as it settles on the same date as the corresponding outflow payment of that derivative transaction.[64]

d. Mortgage Commitment

The proposed rule would have required a covered company to apply an outflow rate of 10 percent for all commitments for mortgages primarily secured by a first or subsequent lien on a one-to-four family property that can be drawn upon within 30 calendar days of a calculation date.

One commenter was concerned about the treatment of VIE liabilities (and particularly non-consolidated VIEs). Specifically, this commenter requested that MBS VIE liabilities be excluded from the outflow calculation or if included, that these outflow amounts be netted against the estimated cash inflows from linked assets in the securitization trust, even if those assets are not on the company's balance sheet. Additionally, the commenter requested that mortgage commitment outflows be netted against sales from projected to-be-announced inflows. Further, the commenter requested clarification regarding cash outflows for commercial and multifamily loans and whether outflows for partially funded loans would be limited to the amount of the loan that is scheduled to be funded during the 30 calendar-day period or the entire unfunded amount of the loan.

The agencies are adopting the mortgage commitment outflow rates of the proposed rule, with the following clarifications that address concerns raised by commenters. For the reasons discussed in the proposal, the agencies continue to believe that the 10 percent outflow rate applicable to mortgage commitments reflects the liquidity risks of these transactions and have adopted this outflow rate in the final rule. In response to the comment regarding the netting of mortgage commitment amounts against certain transactions, such as VIE liabilities, the forward sale of projected to-be-announced mortgage inflows, and GSE standby facilities, the agencies are clarifying that such inflows may not be netted against the overall mortgage commitment amount. The agencies believe that in a crisis, such inflows may not fully materialize, and thus do not believe that such inflows should be allowed under the final rule or netted against the mortgage commitment outflow amount.

Also, the agencies are confirming that the outflow amount for mortgage commitments is based upon the amount the covered company has contractually committed for its own originations of retail mortgages that can be drawn upon 30 calendar days or less from the calculation date and not the entire unfunded amount of commitments that cannot be drawn within 30 calendar days.

e. Commitments Outflow Amount

The commitment category of outflows under the proposed rule would have included the undrawn portion of committed credit and liquidity facilities provided by a covered company to its customers and counterparties that could have been drawn down within 30 calendar days of the calculation date. The proposed rule would have defined a liquidity facility as a legally binding agreement to extend funds at a future date to a counterparty that is made expressly for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. A liquidity facility also would have included an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing asset-backed commercial paper. Liquidity facilities would have excluded general working capital facilities, such as revolving credit facilities for general corporate or working capital purposes. Facilities that have aspects of both credit and liquidity facilities would have been deemed to be liquidity facilities for the purposes of the proposed rule. An SPE would have been defined as a company organized for a specific purpose, the activities of which are significantly limited to those appropriate to accomplish a specific purpose, and the structure of which is intended to isolate the credit risk of the SPE.

The proposed rule would have defined a credit facility as a legally binding agreement to extend funds upon request at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes. Under the proposed rule, a credit facility would not have included a facility extended expressly for the purpose of refinancing the debt of a counterparty that is otherwise unable to meet its obligations in the ordinary course of business. Under the proposed rule, a liquidity or credit facility would have been considered committed when the terms governing the facility prohibited a covered company from refusing to extend credit or funding under the facility, except where certain conditions specified by the terms of the facility—other than customary notice, administrative conditions, or changes in financial condition of the borrower—had been met. The undrawn amount for a committed credit or liquidity facility would have been the entire undrawn amount of the facility that could have been drawn upon within 30 calendar days of the calculation date under the governing agreement, less the fair value of level 1 liquid assets or 85 percent of the fair value of level 2A liquid assets, if any, that secured the facility. In the case of a liquidity facility, the undrawn amount would not have included the portion of the facility that supports customer obligations that mature more than 30 calendar days after the calculation date. A covered company's proportionate ownership share of a syndicated credit facility would have been included in the appropriate category of wholesale credit commitments.

Section __.32(e) of the proposed rule would have assigned various outflow amounts to commitments that are based on the counterparty type and facility type. First, in contrast to the outflow rates applied to other commitments, those commitments between affiliated depository institutions that are subject to the proposed rule would have received an outflow rate of zero percent because the agencies expect that such institutions would hold sufficient liquidity to meet their obligations and would not need to rely on committed facilities. In all other cases, the outflow rates assigned to committed facilities were meant to reflect the characteristics of each class of customers or counterparties under a stress scenario, as well as the reputational and legal risks that covered companies face if they were to try to restructure a commitment during a crisis to avoid drawdowns by customers.

An outflow rate of 5 percent was proposed for retail facilities because

[64] This treatment is consistent with the Frequently Asked Questions on Basel III's January 2013 Liquidity Coverage Ratio framework (April 2014), available at *http://www.bis.org/publ/bcbs284.htm.*

individuals and small businesses would likely have a lesser need for committed credit and liquidity facilities in a stress scenario when compared to institutional or wholesale customers (that is, the correlation between draws on such facilities and the stress scenario of the LCR is considered to be lower). An outflow rate of 10 percent was proposed for credit facilities and 30 percent for liquidity facilities to entities that are not financial sector entities based on their typically longer-term funding structures and lower correlation of drawing down the commitment during times of stress. The proposed rule would have assigned a 50 percent outflow rate to credit and liquidity facilities committed to depository institutions, depository institution holding companies, and foreign banks (other than commitments between affiliated depository institutions). Commitments to all other regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies (or to a consolidated subsidiary of any of the foregoing) would have been assigned a 40 percent outflow rate for credit facilities and 100 percent for liquidity facilities. The agencies proposed a 100 percent outflow rate for a covered company's credit and liquidity facility commitments to SPEs given SPEs' sensitivity to emergency cash and backstop needs in a short-term stress environment, such as those experienced during the recent financial crisis.

The agencies also proposed that the amount of level 1 or level 2A liquid assets securing the undrawn portion of a commitment would have reduced the outflow associated with the commitment if certain conditions were met. The amount of level 1 or level 2A liquid assets securing a committed credit or liquidity facility would have been the fair value (as determined under GAAP) of all level 1 liquid assets and 85 percent of the fair value (as determined under GAAP) of level 2A liquid assets posted or required to be posted upon funding of the commitment as collateral to secure the facility, provided that: (1) The pledged assets had met the criteria for HQLA as set forth in § __.20 of the proposed rule during the applicable 30 calendar-day period; and (2) the covered company had not included the assets in its HQLA amount as calculated under subpart C of the proposed rule during the applicable 30 calendar-day period.

The comments on § __.32(e) were generally focused on: (i) SPEs; (ii) dual use facilities; and (iii) other concerns such as calibration of the outflow rates. At a high level, commenters asserted that the treatment for SPEs was overly harsh, that the approach for financing vehicles that employed both credit and liquidity facilities should conform to the Basel III Revised Liquidity Framework, and that a host of specific entities, such as central counterparties (CCPs) and financial market utilities, deserved unique treatments.

i. Special Purpose Entities Comments

Overall, commenters asserted that the agencies had defined SPEs too broadly for purposes of § __.32(e) of the proposed rule, and argued that a 100 percent outflow rate was too high, recommending instead a ''look-through'' approach depending on the type of counterparty that sponsors or owns the SPE; for example, whether the counterparty is an operating company that develops or manages real estate, a securitization facility that functions as a financing vehicle, a CCP, a Tender Option Bond (TOB) issuer, a fund subject to the Investment Company Act of 1940 (40 Act Fund), or a commercial paper facility. Commenters argued that funding provided through an SPE should receive the outflow specified in § __.32(e) for the ''underlying'' counterparty rather than the 100 percent outflow rate applied to SPEs. A few commenters also requested that the agencies distinguish between those SPEs intended to be captured by § __.32(e)(vi) of the proposed rule that were a source of liquidity stress in the last financial crisis and those SPEs that a borrower uses to finance, through a securitization credit facility, the receivables owned by a corporate entity (a so-called ''bank customer securitization credit facility''). These commenters proposed the agencies look through to the sponsor or owner of the SPE and set the outflow rates for the undrawn amounts based on the sponsor at: 50 percent for depository institutions, depository institution holding companies, or foreign banks; 40 percent for regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies; and 10 percent for other wholesale customers. Commenters proposed specific criteria to define bank customer securitization credit facilities, which provided guidelines related to the sponsor, financing, customers, underlying exposures, and other particular aspects of this type of SPE. These commenters also stated that failure to implement their suggestion and retention of the proposed rule's treatment of SPEs would reduce the provision of credit in the U.S. economy by restricting access to securitized lines of credit, a major source of funding.

Other commenters requested that the look-through approach be applied to the undrawn amount of credit commitments of any bank customer securitization credit facility irrespective of whether it is funded by the bank or through an asset-backed commercial paper conduit facility that is set up by the sponsoring borrower for the sole purpose of purchasing and holding financial assets, because these facilities function as a substitute or complement to traditional revolving credit facilities. These commenters argued that such securitizations act as a ''credit enhancement'' by allowing the borrower to borrow against a pool of bankruptcy remote assets. Further, these commenters argued that such borrowing structures left lenders less exposed to counterparty credit risk than a traditional revolving facility because the amount drawn on such facilities in a stressed environment would be wholly limited by a borrowing base derived from the underlying eligible financial assets.

Commenters argued that certain SPEs, such as SPEs established to hold specific real estate assets, have a similar risk profile to conventional commercial real estate borrowers and therefore should receive a lower outflow rate. Commenters argued that these SPE structures are passive, with all decisions made by the operating company parent, rather than the SPE itself. They further argued that this structure enhances the ability to finance a real estate project because the lender receives greater comfort that the primary asset will be shielded from many events that might prevent the lender from foreclosing on its loan and that the punitive treatment in the proposed rule will hamper this type of financing. Some commenters requested that SPEs that own and operate commercial and multi-family real estate be assigned a much lower outflow rate or no outflow rate. Moreover, commenters further argued that commitments to SPEs established to ring-fence the liabilities of a real estate development project do not merit a 100 percent outflow rate because in practice, the drawdowns (in crises and in normal times) could only amount to a modest portion of the overall unfunded commitment over a 30 calendar-day period due to contractual milestones reflected in the loan documentation (e.g., obtaining permits, completing a certain percentage of the project, selling or renting a certain percentage of units, or that a certain stage of the real estate development project has been completed). These commenters requested that the agencies limit the undrawn amount of such facilities to the amount that could legally be withdrawn during the next 30 calendar days.

Another commenter expressed concern over the outflow rate applied to TOBs, stating that TOBs did not draw on liquidity facilities during the recent crisis because they rely on the remarketing process for the liquidity needed to satisfy TOB holders exercising the tender option. The commenter argued that the outflow rate should be lower for TOBs because such programs are significantly over-collateralized, and a liquidation of underlying bonds would cover liquidity needed to satisfy TOB investors, even in an environment when bond prices are falling. The commenter requested that the outflow rate be set at a maximum of 30 percent. Another commenter expressed concern that the proposed rule assigned unduly high outflow rates to mutual funds and their foreign equivalents, which are subject to statutory limitations on borrowed funds, and suggested that the outflow rate for non-financial sector companies (10 percent and 30 percent for committed credit and liquidity facilities, respectively) would be more appropriate for such funds.

ii. Dual Use Facilities Comments

Some commenters were concerned about key terms and definitions referenced in § __.32(e) of the proposed rule. For example, one commenter requested clarity regarding how to treat certain commercial paper backup facilities arguing that it was unclear how the proposed rule should be applied because most commercial paper backup facilities (that is, liquidity facilities) can also serve other general corporate purposes (akin to credit facilities). Commenters requested that multipurpose commitment facilities (which have aspects of both liquidity and credit facilities) should not automatically default to a liquidity facility and argued for employing the treatment of the Basel III Revised Liquidity Framework, which sets a portion of the undrawn amount of a commitment as a committed credit facility. Another commenter requested that the outflow rate for commitment outflows be applied to the borrowing base (rather than the commitment amount) where a covered company would not as a practical matter fund the full amount of the commitment beyond the amount of collateral that is available in the LCR's 30-day measurement period.

iii. Other Commitment Outflows Comments

Commenters also expressed concern that the treatment of commitment outflows in the proposed rule could have adverse effects on the U.S. economy by reducing the provision of credit to businesses. In particular, commenters stated that the proposed rule's 10 percent outflow rate for undrawn, committed credit facilities, regardless of borrower rating, was far higher than necessary and would negatively impact a covered company's LCR due to the underlying size of the commitments. According to these commenters, this outflow rate could have a ''far-reaching'' impact on a covered company's ability to lend to small and medium enterprises. Accordingly, the commenters requested a zero percent outflow assumption for commitments to highly rated companies.

Some commenters requested that a number of other specific commitment facilities receive a lower outflow rate than provided in § __.32(e) of the proposed rule. For instance, one commenter noted that 40 Act Funds and their foreign equivalents have aspects that limit liquidity risks such as tenor, asset quality, diversification minimums and repayment provisions. Accordingly, the commenter argued, such commitments should be assigned a 10 percent outflow rate. One commenter requested that the outflow rate assigned to commitments used for the issuance of commercial paper be raised in light of the fact that commercial paper was a significant liquidity strain during the most recent crisis. The same commenter suggested that the outflow rate for liquidity facilities used to support the issuance of certain types of securities, such as auction rate securities, should be raised to 100 percent due to the drawdown rates of such facilities observed during the crisis.

A few commenters requested that commitments provided to CCPs should be treated in the same manner as commitments to regulated financial companies due to the requirement that CCPs comply with the principles for financial market infrastructures, which require CCPs to establish and maintain sufficient liquidity resources.[65] Two commenters requested that committed facilities offered by covered companies to CCPs be separately categorized with an outflow rate below the proposed rate of 100 percent due to their low historical drawdown rates and the Dodd-Frank Act's express clearing mandate, requiring that certain transactions be cleared through a CCP.[66] One commenter noted that the Basel III leverage ratio provides a specific delineation of commitments to CCPs and credit conversion factors and indicated that these reflect the operational realities of these commitments and requested the agencies to make a similar delineation in the LCR. This commenter also proposed to define credit facility as ''a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes and a qualified central counterparty facility for general operational purposes such as managing a clearing member unwind or disruption of services by a depository or payment system. Credit facilities do not include facilities extended expressly for the purpose of refinancing the debt of a counterparty that is otherwise unable to meet its obligations in the ordinary course of business (including through its usual sources of funding or other anticipated sources of funding).''

One commenter requested that the agencies conduct an empirical analysis of historic drawdown rates to calibrate drawdown assumptions. Another commenter requested that the agencies, at a minimum, clarify that commitments to financial market utilities that have not been designated by the Council as systemically important ''be treated no worse than commitments to 'regulated financial companies' for purposes of LCR outflow assumptions.''

In addition, one commenter claimed that bonds backed by letters of credit cannot be properly valued for purposes of the 30 calendar-day period because the process of drawing upon such a letter of credit usually requires notice of 30 days or more. The commenter requested that only the value of the debt maturing within the 30-day window be included in the outflow estimate.

v. Final Rule

The agencies are clarifying the definition of liquidity facility in the final rule by eliminating the requirement that the liquidity facility be made ''expressly'' for the purpose of refinancing debt. The definition in the final rule is intended to include

[65] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures* (April 2012), available at *http://www.bis.org/publ/cpss101a.pdf.*

[66] Pursuant to sections 723(a)(3) and 763(a) of the Dodd-Frank Act, certain swaps must be cleared through a CCP. 7 U.S.C. 2(h), 15 U.S.C. 78c-3.

commitments that are being used to refinance debt, regardless of whether there is an express contractual clause. This change captures the intent of the proposed rule by focusing on the function of the commitment.

The agencies are clarifying the treatment of letters of credit issued by a covered company. To the extent a letter of credit meets the definition of credit facility or liquidity facility, it will be treated as such. Thus, a covered company will have to review letters of credit to determine whether they should be treated as commitments in the LCR.

The agencies are also clarifying the differences among the types of commitments that are covered by § __.32(b), (d), and (e) of the proposed rule, which are consistent with the final rule. Section __.32(b) relates to a covered company's commitments to structured transactions that the covered company itself has sponsored. These commitments may take the form of committed liquidity facilities, but may also take the form of less formal support. In the final rule, § __.32(b) commitments have been expressly carved out of § __.32(e)(vii) and (viii). Section __.32(d) relates only to a covered company's commitments to originate retail mortgage loans. All other outflow amounts related to committed credit and liquidity facilities are subject to the provisions in § __.32(e) of the final rule.

In response to the aforementioned comments about commitment outflows amounts, the agencies have adopted changes in the final rule to the outflow amounts for commitments to SPEs (§ __.32(e)(1)) and the treatment for assessing the undrawn amount of a credit or liquidity facility (§ __.32(e)(2)).

The agencies agree with commenters that not all SPEs are exposed to the highest degree of liquidity risk. To that end, the agencies are clarifying that certain SPEs can be treated with an approach similar to the treatment for the other referenced commitments in § __.32(e)(1). Under the final rule, the agencies have limited the application of the 100 percent outflow rate to committed credit and liquidity facilities to SPEs that issue or have issued securities or commercial paper to finance their purchases or operations. These SPEs are highly susceptible to stressed market conditions during which they may be unable to refinance their maturing securities and commercial paper. As such, under the final rule:

- For SPEs that do not issue securities or commercial paper:
  - The outflow amount for a committed credit facility extended by the covered company to such SPE that is a consolidated subsidiary of a wholesale customer or counterparty that is not a financial sector entity is 10 percent of the undrawn amount;
  - The outflow amount for a committed liquidity facility extended by the covered company to such SPE that is a consolidated subsidiary of a wholesale customer or counterparty that is not a financial sector entity is 30 percent of the undrawn amount;
  - The outflow amount for a committed credit facility extended by the covered company to such SPE that is a consolidated subsidiary of a financial sector entity is 40 percent of the undrawn amount; and
  - The outflow amount for a committed liquidity facility extended by the covered company to an SPE that is a consolidated subsidiary of a financial sector entity is 100 percent of the undrawn amount.
- The outflow amount for either a committed credit or liquidity facility extended by the covered company to an SPE that issues or has issued commercial paper or securities, other than equity securities issued to a company of which the SPE is a consolidated subsidiary, to finance its purchases or operations is 100 percent of the undrawn amount.

The agencies agree with commenters that SPEs that are formed to manage and invest in real estate should not all be treated with a 100 percent outflow rate, provided that such SPEs do not issue securities or commercial paper. Instead, the agencies are employing the "look through" approach as described above. For example, under the final rule, funding provided to a non-financial sector entity for real estate activities via a committed credit facility to an SPE would receive a 10 percent outflow rate, and funding provided to a financial sector entity for real estate activities via a committed liquidity facility to an SPE would receive a 100 percent outflow rate.

The agencies also agree that the assessment of the undrawn amount for committed liquidity facilities should be narrowed to only include commitments that support obligations that mature in the 30 calendar-day period following the calculation date; however, pursuant to § __.31, notice periods for draws on commitments are not recognized. The agencies are thus clarifying that, if the underlying commitment's contractual terms are so limiting, the amount supporting obligations with maturities greater than 30 days would not be considered undrawn because they would not be available to be drawn within the 30 calendar-day period following the calculation date. In addition, if the underlying commitment's contractual terms do not permit withdrawal but for the occurrence of a contractual milestone that cannot occur within 30-calendar days, such amounts would not be included in the undrawn amount of the facility. Thus, with respect to undrawn amounts for all facilities, the agencies are clarifying in the final rule that the undrawn amount would only include the portion of the facility that a counterparty could contractually withdraw within the 30 calendar-day period following the calculation date.

The agencies have not included § __.32(e)(2)(ii)(B) of the proposed rule in the final rule. This provision that the undrawn amount of a committed facility is less that portion of the facility that supports obligations of a covered company's customer that do not mature 30 calendar days or less from such calculation date, and further provided that if facilities have aspects of both credit and liquidity facilities, the facility must be classified as a liquidity facility. First, the principle in the first clause of the deleted language is duplicative of the rule text set forth in § __.32(e)(2)(ii) of the final rule and therefore not only unnecessary but potentially confusing. Second, the second sentence of the deleted language has been included in the final rule's definition of liquidity facility, rather than in the section on outflows, where the agencies think it is more appropriate and will be easier for readers to find. Accordingly, the agencies have streamlined the text in the final rule.

The agencies are retaining the approach for those financing vehicles that employ both credit and liquidity facilities and treating those entities as liquidity facilities. The agencies believe it would be problematic to assess which portion of the assets securing the facility are meant to serve the liquidity facility and which portion of the assets are meant to serve the credit facility. At the same time, this treatment provides the agencies with a conservative approach for assessing dual purpose facilities. The agencies are also clarifying that facilities that may provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit should be treated as a liquidity facility and not be treated as a credit facility.

The agencies disagree with commenters' recommendation that 40 Act Funds and their foreign equivalents be treated with an outflow rate equivalent to unsecured retail funding because the nature of the counterparty and the corresponding liquidity risks are more akin to the liquidity risks of financial sector entities. Thus, the agencies decline to apply a unique rate for this category of commitments. The agencies also decline to create special exceptions for commitments related to TOBs, mutual funds, and other commitments to investment companies, because similar to other SPEs that issue, or have issued, securities or commercial paper, such entities have liquidity risks that are commensurate with a financial sector entity and their draws on commitments likely will be highly correlated with stress in the financial sector.

The agencies are not providing special treatment for CCPs or certain financial market utilities. The agencies believe it is critical for covered companies to maintain appropriate HQLA to support commitments that may necessitate the provision of liquidity in a crisis and believe that to be the case with respect to commitments to CCPs and certain financial market utilities. Further, the agencies understand that commitments to these entities generally require HQLA to be posted and because the commitment outflow amount is reduced by the amount of Level 1 and 2A HQLA required to support the commitment, the agencies have determined that special treatment for CCPs or certain financial market utilities is not necessary.

f. Collateral Outflow Amount

The proposed rule would have required a covered company to recognize outflows related to changes in collateral positions that could arise during a period of financial stress. Such changes could include being required to post additional or higher quality collateral as a result of a change in derivative collateral values or in underlying derivative values, having to return excess collateral, or accepting lower quality collateral as a substitute for already-posted collateral, all of which could have a significant impact upon a covered company's liquidity profile.

Various requirements of proposed § __.32(f) were of concern to certain commenters who generally believed that the provisions relating to changes in financial condition, potential collateral valuation changes, collateral substitution, and derivative collateral change required clarification or did not accurately reflect liquidity risks around the posting of collateral for derivative transactions. The following describes the subcategories of collateral outflows discussed in the preamble to the proposed rule.

i. Changes in Financial Condition

The proposed rule would have required a covered company to include in its collateral outflow amount 100 percent of all additional amounts that the covered company would have needed to post or fund as additional collateral under a contract as a result of a change in its own financial condition. A covered company would have calculated this outflow amount by evaluating the terms of such contracts and calculating any incremental additional collateral or higher quality collateral that would have been required to be posted as a result of triggering clauses tied to a change in the covered company's financial condition. If multiple methods of meeting the requirement for additional collateral were available (for example, providing more collateral of the same type or replacing existing collateral with higher quality collateral) the covered company was permitted to use the lower calculated outflow amount in its calculation.

Some commenters requested additional clarification regarding the requirements of § __.32(f)(1) of the proposed rule. One commenter requested that the agencies clarify that they do not view the existence of a material adverse change (MAC) clause in a contract as a provision that would be expected to impact the calculation of collateral outflows because these clauses by themselves do not necessarily trigger additional collateral, but require subjective analysis to determine whether they have been triggered. Another commenter noted that the Basel III Revised Liquidity Framework provides for credit ratings downgrades of up to three notches and requested clarity as to how to calculate the collateral outflow amount given the absence of an explicit downgrade threshold in the proposed rule. The same commenter urged the agencies to employ a standard approach (as opposed to allowing banking organizations to choose the lower outflow amount) in cases where multiple methods are available.

The agencies are clarifying in the final rule that when calculating the collateral outflow amount, a covered company should review all contract clauses related to transactions that could contractually require the posting or funding of collateral as a result of a change in the covered company's financial condition, including downgrade triggers, but not including general MAC clauses, which is consistent with the intent of the proposed rule. The agencies also are clarifying that covered companies should count all amounts of collateral in the collateral outflow amount that could be posted in accordance with the terms and conditions of the downgrade trigger clauses found in all applicable legal agreements. Covered companies should not look solely to credit ratings to determine collateral outflows from changes in financial condition, but the agencies note that collateral requirements based on credit rating changes constitute collateral requirements based on changes in financial condition under the final rule. The final rule continues to allow a covered company to choose the method for posting collateral that results in the lowest outflow amount, as the agencies believe a covered company will likely post collateral in the most economically advantageous way that it can. The agencies are finalizing the provision addressing changes in financial condition collateral outflow as proposed.

ii. Derivative Collateral Potential Valuation Changes

The proposed rule would have applied a 20 percent outflow rate to the fair value of any assets posted as collateral that were not level 1 liquid assets, in recognition that a covered company could be required to post additional collateral as the market price of the posted collateral fell. The agencies did not propose to apply outflow rates to level 1 liquid assets that are posted as collateral, as these are not expected to face substantial mark-to-market losses in times of stress.

Commenters requested that the agencies change and clarify certain requirements in § __.32(f)(2) of the proposed rule. For instance, one commenter requested that the agencies revise § __.32(f)(2) to base outflow rates on a net calculation on a security-by-security basis (for non-level 1 liquid assets) and only to include collateral posted on a net basis, not the pre-netting gross amount. Commenters also requested that, consistent with the Basel III Revised Liquidity Framework, the agencies clarify that § __.32(f)(2) only applies to collateral securing derivative transactions and not to collateral pledged for the secured funding transactions contemplated in § __.32(j) of the proposed rule. Another commenter requested that the agencies impose a 20 percent outflow rate for collateral value changes due to market stress.

The agencies have reviewed comments about potential valuation changes in § __.32(f)(2) of the proposed rule and are generally finalizing this section of the rule as proposed. However, the agencies are clarifying in the final rule that, when determining the outflow amount for the potential valuation change of collateral, only collateral securing derivative transactions should be assessed, and not collateral supporting other transactions, such as that securing secured funding transactions under § __.32(j) of the proposed rule. Also, consistent with other derivative netting provisions employed in the proposal, the agencies are clarifying that covered companies can apply the rate to netted collateral, not the pre-netted gross amount, but only if the collateral can be netted under the same qualifying master netting agreement.

iii. Excess Collateral Outflow Amount

The proposed rule would have applied an outflow rate of 100 percent to the fair value of collateral posted by counterparties that exceeds the current collateral requirement in a governing contract. Under the proposed rule, this category would have included unsegregated excess collateral that a covered company may have been required to return to a counterparty based on the terms of a derivative or other financial agreement and which is not already excluded from the covered company's eligible HQLA.

There were no substantive comments received by the agencies regarding § __.32(f)(3) of the proposed rule. For the same reasons outlined in the proposed rule, the agencies are finalizing the excess collateral outflow requirements substantially as proposed.

iv. Contractually-Required Collateral Outflow

The proposed rule would have imposed a 100 percent outflow rate upon the fair value of collateral that a covered company was contractually obligated to post, but had not yet posted. Where a covered company has not yet posted such collateral, the agencies believe that, in stressed market conditions, a covered company's counterparties may demand all contractually required collateral.

There were no substantive comments about § __.32(f)(4) of the proposed rule. For the same reasons outlined in the proposed rule, the agencies are finalizing the contractually-required collateral outflow requirements substantially as proposed.

v. Collateral Substitution

The proposed rule's collateral substitution outflow amount would have equaled the difference between the post-haircut fair value of eligible HQLA collateral posted by a counterparty to a covered company and the post-haircut fair value of lower quality eligible HQLA collateral, or non-HQLA collateral, a counterparty could substitute under an applicable contract. Thus, if a covered company had received as collateral a level 1 liquid asset that counted towards its level 1 liquid asset amount, and the counterparty could have substituted it with an eligible level 2A liquid asset collateral, the proposed rule imposed an outflow rate of 15 percent, which resulted from applying the standardized haircut value of the level 2A liquid assets. Similarly, if a covered company had received as collateral a level 1 liquid asset that counted towards its level 1 liquid asset amount and under an agreement the collateral could have been substituted with assets that are not HQLA, a covered company would have been required to include in its outflow amount 100 percent of the collateral's market value. The proposed rule provided outflow rates for all permutations of collateral substitution.

One commenter stated that § __.32(f)(5) of the proposed rule was excessively conservative because it did not take into account that a counterparty's right to substitute non-HQLA collateral is generally subject to an increase in a market haircut designed to mitigate the liquidity risk associated with the substitution. The commenter further stated that such substitutions are infrequent, and the requirement introduces an asymmetry by ignoring the reuse of the substituted collateral which could be posted to another counterparty. Accordingly, the commenter argued that collateral substitution outflows occur infrequently and do not warrant inclusion in the proposed rule.

The agencies are finalizing this section of the rule substantially as proposed. The agencies recognize that collateral related to transactions is subject to market haircuts. However, the standardized haircuts provided in the proposed rule permit the agencies to design a generally consistent standard that addresses certain potential risks that covered companies may face under a stressed environment. The agencies are clarifying that § __.32(f)(5) only applies to collateral that a counterparty has posted to the covered company as of the calculation date, and does not apply to collateral a covered company has posted to a counterparty, nor to any collateral that the covered company could repost to a counterparty after a collateral substitution has taken place.

vi. Potential Derivative Valuation Change

The proposed rule would have required a covered company to use a two-year look-back approach in calculating its market valuation change outflow amounts for derivative positions. Under the proposed rule, the derivative collateral outflow amount would have equaled the absolute value of the largest consecutive 30 calendar-day cumulative net mark-to-market collateral outflow or inflow resulting from derivative transactions realized during the preceding 24 months.

One commenter indicated that the two-year look-back approach of .32(f)(6) of the proposed rule was not a forward-looking estimate of potential collateral flows in a period of market stress, and that historic collateral outflows may be more indicative of closing out positions rather than liquidity strains. The same commenter requested that the agencies provide an alternative forward-looking approach that would replace the requirement of the proposed rule. Another commenter expressed concern that § __.32(f)(6) did not take into account current conventions regarding margin requirements that greatly reduce a covered company's exposure to derivative valuation changes, thereby making the proposed rule an onerous data exercise without an obvious benefit. Further, according to this commenter, there would be operational challenges as banking organizations have not previously retained this data.

While the agencies recognize the operational challenges raised by commenters, the agencies are finalizing this section of the rule largely as proposed because of the important liquidity risk it addresses. When a covered company becomes subject to the LCR, it should have relevant records related to derivatives to compute this amount. To the extent that the covered company's data is not complete, it should be able to closely estimate its potential derivative valuation change. Once subject to the LCR, the agencies expect that a covered company will collect data to make a precise calculation in the future. The agencies recognize that the calculation is not forward-looking and may not be entirely indicative of the covered company's derivative portfolio at the time of the calculation date, but the historical experience of the covered company with its derivatives portfolio should be a reasonable proxy for potential derivative valuation changes. Additionally, while the margin requirements in recent regulatory proposals may provide certain protections in derivatives transactions, this rule specifically addresses the risk of the potential future liquidity stress from derivative valuation changes. One clarifying change has been made to highlight that the look-back should only include collateral that is exchanged based on the actual valuation changes of derivative transactions (generally referred to as variation margin), and not collateral exchanged based on the initiation or close out of derivative transactions (generally referred to as initial margin).

Table 2 below illustrates how a covered company should calculate this collateral outflow amount. Note that Table 2 only presents a single 30-day period within a prior two-year calculation window. A covered company is required to repeat this calculation for each calendar day within every two-year calculation window, and then determine the maximum absolute value of the net cumulative collateral change, which would be equal to the largest 30-consecutive calendar day cumulative net mark-to-market collateral outflow or inflow realized during the preceding 24 months resulting from derivative transactions valuation changes.

TABLE 2—POTENTIAL DERIVATIVE VALUATION CHANGE OUTFLOW AMOUNT

	Mark-to-market collateral inflows due to derivative transaction valuation changes A	Mark-to-market collateral outflows due to derivative transaction valuation changes B	Net mark-to-market collateral change due to derivative transaction valuation changes (A)–(B) C	Cumulative net mark-to-market collateral change due to derivative transaction valuation changes D	Absolute value of cumulative net collateral change due to derivative transaction valuation changes E
Day 1	72	78	−6	−6	6
Day 2	78	0	78	72	72
Day 3	35	85	−50	22	22
Day 4	18	30	−12	10	10
Day 5	77	59	18	28	28
Day 6	9	53	−44	−16	16
Day 7	53	24	29	13	13
Day 8	81	92	−11	2	2
Day 9	66	2	64	66	66
Day 10	56	58	−2	64	64
Day 11	7	32	−25	39	39
Day 12	62	10	52	91	91
Day 13	96	90	6	97	97
Day 14	54	83	−29	68	68
Day 15	73	45	28	96	96
Day 16	11	62	−51	45	45
Day 17	65	55	10	55	55
Day 18	87	55	32	87	87
Day 19	1	43	−42	45	45
Day 20	96	99	−3	42	42
Day 21	3	89	−86	−44	44
Day 22	95	49	46	2	2
Day 23	18	90	−72	−70	70
Day 24	48	54	−6	−76	76
Day 25	18	100	−82	−158	158
Day 26	86	74	12	−146	146
Day 27	51	65	−14	−160	160
Day 28	48	19	29	−131	131
Day 29	40	74	−34	−165	165
Day 30	52	32	20	−145	145

g. Brokered Deposit Outflow Amount for Retail Customers and Counterparties

The proposed rule provided several outflow rates for retail brokered deposits held by covered companies. The proposed rule defined a brokered deposit as any deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the Federal Deposit Insurance Act (FDI Act).[67] The agencies' proposed outflow rates for brokered deposits from retail customers or counterparties was based on the type of account, whether

[67] 12 U.S.C. 1831f(g).

deposit insurance was in place, and the maturity date of the deposit agreement. Outflow rates for retail brokered deposits were further subdivided into reciprocal brokered deposits, brokered sweep deposits, and all other brokered deposits. The agencies received several comments arguing that: (i) The proposed outflow rates for each category of brokered deposits were too high; (ii) the applicable definitions and key terms lacked clarity and precision; and (iii) the proposed rule would have a number of unintended consequences, including potentially disrupting an important, stable funding source for many banking organizations.

The agencies are adopting many aspects of the proposed rule, with revisions to certain elements in response to commenters and to better reflect the liquidity risks of brokered funding, as described in this section. The agencies continue to believe that brokered deposits have the potential to exhibit greater volatility than funding from stable retail deposits, even in cases where the deposits are fully or partially insured, and thus believe that higher outflow rates, relative to some other retail funding, are appropriate. Brokered deposits are more easily moved from one institution to another, as customers search for higher interest rates. Additionally, brokered deposits can be subject to both regulatory limitations and limitations imposed by the facilitating deposit broker when an institution's financial condition deteriorates, and these limitations can become especially problematic during periods of economic stress when a banking organization may be unable to renew such deposits.

i. Retail Brokered Deposit Outflow Rates

Several commenters contended that the outflow rates for all categories of retail brokered deposits were too high, that they were inconsistent with the liquidity risks posed by these transactions, and that they should be lowered. Commenters argued that the liquidity characteristics of most brokered deposits warranted outflow rates consistent with the unsecured retail outflow rates specified in § __.32(a) of the proposed rule (for example, 3 percent for fully insured retail deposits and 10 percent for all other retail deposits).

As noted in the preamble to the proposed rule, the agencies consider brokered deposits for retail customers or counterparties to be a more volatile form of funding than stable retail deposits, even if deposit insurance coverage is present, because of the structure of the attendant third-party relationship and the potential instability of such deposits during a liquidity stress event. The agencies also are concerned that statutory restrictions on certain brokered deposits make this form of funding less stable than other deposit types under certain stress scenarios. Specifically, a covered company that becomes less than ''well capitalized'' is subject to restrictions on accepting deposits through a deposit broker. Additionally, the agencies disagree with commenters' views that brokered deposits are as low risk as other unsecured retail deposits. During the recent crisis, the FDIC found that: (i) Failed and failing banking organizations were more likely to have brokered deposits than other banking organizations; (ii) replacing core deposits with brokered deposit funding tended to raise a banking organization's default probability, and (iii) banking organizations relying on brokered deposits were more costly to resolve.[68] Because banking organizations that rely heavily on brokered deposits have been shown to engage in relatively higher-risk lending than institutions with more core deposits, banking organizations that rely heavily on brokered deposits are more likely to experience significant losses during stress conditions, which, in turn, may cause these banking organizations' capital levels to fall and, in turn, restrict their ability to replace brokered deposits that run off or mature.

The agencies continue to have the concerns noted above and are finalizing the treatment of retail brokered deposits largely as proposed. However, in response to commenters, the final rule modifies the treatment of certain non-maturity brokered deposits in retail transactional accounts to provide for a lower outflow rate, as described below.

(a). Non-Maturity Brokered Deposits in Transactional Accounts

Under the proposed rule, brokered deposits that mature within 30 calendar days of a calculation date that are not reciprocal deposits or brokered sweep deposits would have been subject to a 100 percent outflow rate. Several commenters argued this outflow rate was unrealistic and would disrupt a valuable source of funding. In particular, commenters argued that certain non-maturity brokered checking and transactional account deposits, such as affinity group deposits, are as stable as traditional retail deposits and should not be subject to the proposed rule's 100 percent outflow rate. According to the commenters, in many instances these deposits involve direct relationships between the banking organization and the retail customer with little continued involvement of the deposit broker. Likewise, commenters stressed that the LCR generally provides for lower treatment of retail-related outflows, and argued that this 100 percent outflow assumption is higher than the 40 percent outflow assumption for wholesale brokered deposits.

To address these commenters' concerns about the outflow rate applied to such deposits, the agencies are providing separate outflow rates for non-maturity brokered deposits in transactional accounts. Under the final rule, retail brokered deposits held in a transactional account with no contractual maturity date receive a 20 percent outflow rate if the entire amount is covered by deposit insurance and a 40 percent outflow rate if less than the entire amount is covered by deposit insurance. This outflow rate covers brokered deposits that are in traditional retail banking accounts and are used by the customers for their transactional needs, and would include non-maturity affinity group referral deposits and third-party marketer deposits where the deposit is held in a transactional account with the bank. The agencies believe these deposits have lower liquidity risk than other types of brokered deposits, but nevertheless warrant higher outflow treatment than the unsecured retail deposits in § __.32(a) due to the presence of third-party intermediation by the deposit broker, which may result in higher outflows during periods of stress. The outflow rates under the final rule are intended to be consistent with the outflow rates for unaffiliated brokered sweep deposits, discussed below, and the agencies' treatment of professionally managed deposits that do not qualify as brokered deposits, discussed above under section II.C.3.a.

(b). Other Brokered Deposits

As noted above, under the proposed rule, all other brokered deposits would have been defined to include those brokered deposits that are not reciprocal brokered deposits or are not part of a brokered sweep arrangement. These deposits were subject to an outflow rate of 10 percent for deposits maturing more than 30 calendar days from the calculation date or 100 percent for deposits maturing within 30 calendar days of the calculation date. With respect to other brokered deposits

[68] *See* Federal Deposit Insurance Corporation, ''Study on Core Deposits and Brokered Deposits,'' Submitted to Congress pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (FDIC Brokered Deposit Study), at pages 34–45 (2011), available at *http://www.fdic.gov/regulations/reform/coredeposit-study.pdf.*

maturing within 30 calendar days of the calculation date, commenters argued that the 100 percent outflow rate for such deposits was unnecessarily high due to the rollover rates banking organizations observed for such deposits. In addition, one commenter argued that the agencies' treatment of deposits entirely covered by deposit insurance was inconsistent because a brokered sweep deposit that is not entirely insured is subject to a 40 percent outflow rate while an entirely insured brokered time deposit is subject to a 100 percent outflow rate if it matures within the 30-day period. The commenter suggested that all deposits that are fully insured (retail or wholesale) should receive the same treatment for the purposes of the LCR. Several commenters requested clarification regarding the treatment of retail brokered deposits that allow for early withdrawal upon the payment of a financial penalty, such as a certain amount of accrued interest.

As discussed in the proposal, the agencies believe the 100 percent outflow rate is appropriate for other brokered deposits maturing within the 30 calendar-day period because under stress, there is a greater probability that counterparties will not renew and that covered companies will not be able to renew brokered deposits due to associated regulatory restrictions. Therefore, the agencies believe covered companies should not rely on the renewal or rollover of such funding as a source of liquidity during a stress period. Accordingly, other than the changes for non-maturity brokered deposits in transactional accounts discussed above, the agencies are adopting this provision of the rule as proposed. The agencies are clarifying that, under the final rule, all retail brokered deposits, regardless of contractual provisions for withdrawal, are subject to the outflow rates provided in the proposed rule, including the 10 percent outflow rate for brokered deposits maturing more than 30 calendar-days after the calculation date.

In addition, several commenters suggested that the 10 percent outflow rate for other brokered deposits maturing outside the 30 calendar-day period was unnecessarily conservative, and urged the agencies to recognize the contractual terms in retail brokered deposit agreements that restrict early withdrawal. Several commenters requested clarification regarding the treatment of retail brokered deposits that allow for early withdrawal upon the payment of a financial penalty, such as a certain amount of accrued interest. A commenter requested that the agencies provide a rationale for diverging from the Basel III Revised Liquidity Framework, which applies a zero percent outflow rate to deposits that have a stated contractual maturity date longer than 30 days. Although many agreements for brokered deposits with contractual maturity provide for limited contractual withdrawal rights, as with non-brokered term retail deposits, the agencies believe that covered companies may agree to waive such contractual maturity dates for retail deposits. The agencies believe a brokered deposit should not obtain more favorable treatment than a non-brokered deposit because the relationship between the brokered deposit customer and the covered company is not as strong as the relationship between a direct retail customer and the covered company, as a brokered deposit interposes a third party. Accordingly, the agencies are adopting this provision of the rule as proposed.

(c). Brokered Sweep Deposits

Brokered sweep deposits involve securities firms or investment companies that ''sweep'' or transfer idle customer funds into deposit accounts at one or more depository institutions. Under the proposed rule, such deposits would have been defined as those that are held at the covered company by a customer or counterparty through a contractual feature that automatically transfers funds to the covered company from another regulated financial company at the close of each business day. The definition of ''brokered sweep deposit'' under the proposed rule would have covered all deposits under such arrangements, regardless of whether the deposit qualified as a brokered deposit under the FDI Act.

The proposed rule would have assigned these deposits progressively higher outflow rates depending on deposit insurance coverage and the affiliation between the bank and the broker sweeping the deposits. Under the proposed rule, brokered sweep deposits that are entirely covered by deposit insurance, and that are deposited in accordance with a contract between a retail customer or counterparty and a covered company, a covered company's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top-tier company (affiliated brokered sweep deposits), would have been assigned a 10 percent outflow rate. Brokered sweep deposits that are entirely covered by deposit insurance but that do not originate with a covered company, a covered company's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top-tier company of a covered company (unaffiliated brokered sweep deposits), would have been assigned a 25 percent outflow rate. All brokered sweep deposits that are not entirely covered by deposit insurance, regardless of the affiliation between the bank and the broker, would have been assigned a 40 percent outflow rate because they have been observed to be more volatile during stressful periods, as customers seek alternative investment vehicles or use those funds for other purposes. The agencies received a number of comments on the outflow rates for brokered sweep deposits. However, for the reasons discussed below and in the proposal, other than changing the level of affiliation required for the 10 percent affiliated brokered sweep deposit outflow rate to apply, the agencies are adopting in the final rule the proposed rule's treatment of brokered sweep deposits with respect to outflow amounts.

Several commenters maintained that the outflow rates applied to fully-insured brokered deposits (10 percent for reciprocal and affiliated brokered sweep deposits, and 25 percent for non-affiliated brokered sweep deposits) should be lowered to be more consistent with the fully insured rate of 3 percent to unsecured stable retail deposits. Similarly, commenters asserted that the outflow rates applicable to partially insured brokered deposits (25 percent for reciprocal brokered deposits and 40 percent for brokered sweep deposits) were too high and should be lowered to be more closely aligned with the corresponding outflow rate for less-stable unsecured retail deposits (10 percent). The agencies believe that the outflow rates for brokered sweep deposits as set forth in the proposed rule are appropriate in light of the additional liquidity risk arising as a result of deposit intermediation. In addition, in contrast to retail deposit accounts which are typically composed of funds used by the depositor for transactional purposes (for example, checking accounts), brokered sweep accounts are composed of deposits that are used for the purchase or sale of securities. During a period of significant market volatility and distress, customers may be more likely to purchase or sell securities and withdraw funds from such accounts. Moreover, the agencies believe that customers would be more likely to withdraw funds from their ancillary accounts, such as the brokered sweep accounts, prior to depleting resources in accounts used for day-to-day transactions. Accordingly, the agencies are adopting in the final rule the relevant outflow rates as proposed.

Several commenters requested that the agencies not distinguish between affiliate and non-affiliate relationships in applying outflow rates to brokered sweep deposits. In particular, commenters argued that unaffiliated sweep arrangements operated by a program operator, where the customer controls the selection of the banking organizations in which deposits may be placed, have far lower outflow rates due to the limited intermediation of the program operator. According to these commenters, the program operator is required to place deposits in accordance with levels set forth in the contractual agreements with the banking organizations and broker-dealers, and in many cases, is required to reduce overall volatility in the deposits to amounts below the outflow rates in the proposed rule. Commenters requested a lower outflow rate for unaffiliated brokered sweep deposits that are subject to a contractual non-volatility requirement or a contractual arrangement that obligates a deposit broker to maintain a minimum amount with the depository institution. In addition, these commenters requested that the agencies recognize the impact of a depository institution's contracts with broker-dealers and treat outflows more favorably if that depository institution would contractually receive funds ahead of other institutions. One commenter requested that the agencies require that affiliated brokered sweep deposits be subject to agreements providing for substantial termination and withdrawal penalties to minimize accelerated client-driven withdrawal. Finally, one commenter stated that data from its own proprietary program shows that fully insured, unaffiliated brokered sweep deposits and fully insured, reciprocal brokered deposits are stickier than would be implied by the outflow rates assigned in the proposed rule. The commenter argued that customers could be deprived access to these insured sweep deposit programs if banking organizations reduce or eliminate their use of these deposits as a funding source because of application of a higher outflow rate to them. The commenter further stated that a substantial portion of these funds, which currently flow to these banking organizations, would be diverted to money market mutual funds or other investments outside the banking system were they subject to a higher outflow rate.

The agencies believe that affiliated brokered sweep deposits are more reflective of an overall relationship with the underlying retail customer, while non-affiliated sweep deposits are more reflective of a relationship associated with wholesale operational deposits. Affiliated brokered sweep deposits generally exhibit a stability profile associated with retail customers, because the affiliated sweep providers generally have established relationships with the retail customer that in many circumstances include multiple products with both the covered company and the affiliated broker-dealer. Affiliated brokered sweep deposit relationships are usually developed over time. Additionally, the agencies believe that because such deposits are swept by an affiliated company, the affiliated company would be incented to minimize harm to any affiliated depository institution.

In contrast, depository institutions in unaffiliated brokered sweep deposit programs have relationships only with a third-party intermediary, rather than with retail customers. Balances in an unaffiliated brokered sweep accounts are purchased and can fluctuate significantly depending on the type of contractual relationship the banking organization has with the unaffiliated broker. Additionally, the introduction of the third-party intermediary adds volatility to the deposit relationship in times of stress, as it is possible the third-party intermediary will move entire balances away from the bank. With respect to contractual requirements for the amount to be swept, although such requirements may add additional stability during normal market conditions, the agencies believe that during a period of significant market distress and volatility, deposit brokers may be unable to abide by such commitments as market transaction volumes rise.

One commenter requested clarification regarding the treatment of the agreement between the bank and a deposit broker relating to minimum balances over a period longer than 30 days, and whether such agreements cause brokered sweep deposits to be treated as deposits maturing greater than 30 days because of the aggregate balance requirement. The agencies are clarifying that such provisions do not alter the contractual maturity of the underlying deposit, which are typically non-maturity or overnight deposits, and do not cause such deposits to become deposits that mature more than 30 calendar days from a calculation date. Accordingly, other than the change to the level of affiliation required under the affiliated sweep deposit outflow rate, discussed below, the agencies are adopting this provision of the final rule as proposed.

(d). Reciprocal Brokered Deposits

The proposed rule would have applied a 10 percent outflow rate to all reciprocal brokered deposits at a covered company that are entirely covered by deposit insurance. Any reciprocal brokered deposits not entirely covered by deposit insurance received an outflow rate of 25 percent. A reciprocal brokered deposit was defined in the proposed rule as a brokered deposit that a covered company receives through a deposit placement network on a reciprocal basis such that for any deposit received, the covered company (as agent for the depositor) places the same amount with other depository institutions through the network and each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members. Reciprocal brokered deposits generally have been observed to be more stable than certain other brokered deposits because each institution within the deposit placement network typically has an established relationship with the retail customer or counterparty that is making the initial over-the-insurance-limit deposit that necessitates distributing the deposit through the network.

Several commenters contended that the outflow rate applied to fully-insured reciprocal deposits (10 percent) should be lowered to be more consistent with the fully insured rate of 3 percent to unsecured stable retail deposits, and that the rate for partially insured reciprocal deposits (25 percent) should be lowered to more closely align with the outflow rate for less-stable unsecured retail deposits (10 percent). The agencies continue to believe that reciprocal deposits, like other brokered deposits, present elevated liquidity risks. During periods of material financial distress or an idiosyncratic event involving a particular institution, depositors or program operators may terminate their relationships with a banking organization, resulting in a significant loss of funding. Accordingly, the agencies have adopted in the final rule the proposed definition and outflow rates for reciprocal brokered deposits.

(e). Empirical Data

Several commenters requested that the agencies provide data or an empirical analysis to support the proposed outflow rates for reciprocal and other brokered deposits. Many commenters concurred with the FDIC Brokered Deposit Study's conclusion that comprehensive, industry-wide data for different types of brokered deposits is not available. As one commenter noted, while banking organizations are required to report their total brokered deposits on the Consolidated Report of Condition and Income (Call Report), there is no breakdown by type of deposit account, specific maturity of CDs, or interest rates. Thus, the commenter stated that banking organizations currently do not report the information necessary for a comprehensive examination of the brokered deposit market and its component parts. Some commenters submitted data to show that the proposed brokered deposit outflow rates were too conservative.

The agencies believe a conservative approach to setting brokered deposit outflow rates for the purposes of the LCR is appropriate in light of limited available data, the findings of the FDIC Brokered Deposit Study showing that increased reliance on brokered deposit rates is correlated with higher overall risk, and the strong incentives third-party brokers have to provide the highest possible returns for their clients by seeking accounts paying the highest interest rates. Moreover, the agencies believe the assumptions and provisions of § __.32(g) are consistent with the available sources of information, including the FDIC Brokered Deposit Study, guidelines provided in the Basel III Revised Liquidity Framework, and supervisory information reviewed by the agencies. Based on the information available to the agencies, the agencies continue to believe that brokered deposits represent a more volatile source of funding than typical retail deposits, thus warranting the outflow rates that were proposed.

(f). Other Comments

One commenter suggested that the agencies allow covered companies to use internal models to determine outflow rates instead of using the proposed rule's standardized outflow rates. While the internal stress-testing requirements of certain covered companies under the Board's Regulation YY[69] permit firms to use internally-developed models for liquidity stress testing, the LCR is a standardized metric that provides for comparability across all institutions subject to the rule. Accordingly, the agencies are not adopting provisions in the final rule that would allow covered companies to determine outflow rates using their internal models as an alternative to the standardized outflow rates outlined in the final rule.

[69] *See* 12 CFR part 252.

ii. Definitions and Key Terms

In connection with the treatment of brokered deposits, several commenters requested that key definitions and terms in the proposed rule be modified or updated to reflect a number of key characteristics. Specifically, commenters requested that the agencies modify the definitions of brokered deposit and consolidated subsidiary and requested that the agencies clarify the meaning of fully insured deposits, pass-through insurance, penalties for withdrawal, and a number of other terms.

(a). Definition of Brokered Deposit

A commenter expressed concern that the proposed rule incorporated the definition of brokered deposit from the FDI Act and the FDIC's regulations, which the commenter stated were developed many years ago for a different purpose and at a time when views of liquidity risks were different. Another commenter requested clarification whether the Board and the OCC would be interpreting the FDI Act's brokered deposit definitions for purposes of the LCR and whether the FDIC's prior interpretations remained binding. Two commenters stated that the FDI Act's definition of brokered deposit and the FDIC's interpretations would cover arrangements that would generally be considered retail stable deposits such as deposits placed by employees of affiliates of a bank. Finally, one commenter requested additional clarity regarding what type of deposits (those from affinity groups, affiliates or third parties) would count as other brokered deposits for purposes of § __.32(g)(1) and § __.32(g)(2) of the proposed rule.

The definition of brokered deposit is adopted as proposed because it continues to sufficiently capture the types of funding with increased liquidity risk that the LCR is designed to capture, including deposits provided by: (a) Persons engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and (b) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan. As noted by a commenter, this would include the placement or facilitation of the placement of deposits by an employee of an affiliate of a bank. The agencies believe that such intermediation by nonbank employees, like intermediation by third-parties, could result in greater liquidity risks.

In response to the comment about what types of transactions would be captured under § __.32(g)(1) and § __.32(g)(2) of the proposed rule, the agencies are clarifying that these provisions include all brokered deposits that are not reciprocal brokered deposits, brokered sweep deposits, or, under the new provision included in the final rule as discussed above, non-maturity brokered deposits that are in transaction accounts, which would include transactional accounts with no maturity date that are placed through certain marketers, affinity groups, and Internet deposit broker entities.

Finally, the agencies are clarifying that the FDIC's longstanding guidance and interpretations will remain in effect. The FDIC will remain the Federal banking agency primarily responsible for matters of interpretation relating to section 29(g) of the FDI Act, and will continue to work closely with the Board and OCC to ensure consistent application of the LCR to covered companies.

(b). Definition of ''Consolidated Subsidiary''

One commenter requested that the agencies change the definition of ''consolidated subsidiary'' for purposes of the affiliated brokered sweep deposit outflow rate so that subsidiaries that are controlled under the BHC Act or affiliates that are under common control under the BHC Act are subject to the lower outflow rate rather than solely subsidiaries and affiliates that are consolidated under GAAP. This commenter argued that the BHC Act affiliate relationship is well recognized in the U.S. bank regulatory scheme, notably Federal Reserve Act sections 23A and 23B, as implemented by the Board's Regulation W, and further noted that the commenter had structured its brokered sweep deposit arrangement with its affiliate to comply with these regulatory restrictions.

The agencies have concluded that it would be consistent with the purposes of the LCR to extend the scope of affiliated brokered sweep arrangements under the final rule to include relationships between affiliates that are ''controlled'' under the BHC Act. Such affiliates would be subject to all the requirements of the BHC Act, sections 23A and 23B of the Federal Reserve Act, and the Board's Regulation W, and thus such deposits are indistinguishable from those where the subsidiary or affiliated is consolidated. Accordingly, the agencies have modified the provision of the rule relating to affiliated sweep arrangements such that any fully insured brokered sweep deposits that are deposited in accordance with a contract between the retail customer or counterparty and the bank, a controlled subsidiary of the bank, or a company that is a controlled subsidiary of the same top-tier company of which the bank is a controlled subsidiary are subject to a 10 percent outflow rate, while brokered sweep deposits not subject to such an agreement are subject to a 25 percent outflow rate.

(c). ''Fully Covered by Insurance''

One commenter raised the concern that it would be difficult to distinguish between fully insured and partially insured or uninsured deposits because, in the case of brokered sweep deposits, the covered company would not necessarily know the identity of the depositor and because recordkeeping would be done by the deposit provider and would be provided to the covered company only in the event of a bank failure. Another commenter requested that the agencies assess the cost for determining whether deposits are fully insured, particularly those deposits that receive pass-through insurance, and requested that the agencies clarify the level of certainty a covered company is required to have prior have in determining whether a deposit is below the deposit insurance threshold.

The agencies believe that a covered company should be able to identify the applicable treatment for all of its deposits under the proposed rule by obtaining the applicable information through the deposit provider, irrespective of a bank failure. The agencies note that banking organizations are expected to have adequate policies and procedures in place for determining whether deposits are above the applicable FDIC-insurance limits. Therefore, the agencies are adopting this provision as proposed.

(d). Pass-Through Insurance

Commenters raised the issue of the proposed rule's treatment of brokered deposits that are held in custody for a depositor by a conduit financial entity, such as a trust corporation, where the depositor, but not the custodial entity, is eligible for deposit insurance on a pass-through basis. Commenters noted that the proposed rule only looks to the identity of the custodial entity, but ignores the pass-through insurance to which such deposit accounts are subject. These commenters asserted that such brokered deposits should be treated as fully-insured retail deposits under the LCR.

The agencies are clarifying that the final rule does not alter the treatment of pass-through insurance for deposits, such that deposits owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s) if certain requirements are satisfied.[70] Under FDIC regulations, to qualify for pass-through insurance, the account records of a covered company must disclose the agency relationship among the parties. Second, the identities and interests of the actual owners must be ascertainable either from the account records of the covered company or records maintained by the agent or other party. Third, the agency or custodial relationship must be genuine.[71]

With respect to brokered deposits held by a fiduciary or an agent on behalf of a retail customer or counterparty, the agencies are clarifying that under the final rule, such deposits would be subject, as applicable, to the outflow rate of non-maturity brokered deposits in a transactional account, reciprocal deposits, brokered sweep deposits, or any other type of brokered deposits.

With respect to deposits that are held by a fiduciary, but do not qualify as brokered deposits under certain exceptions to the FDIC's brokered deposit regulations, the agencies have added § __.32(a)(3) and § __.32(a)(4) to reflect that a trustee or similar third party may deposit funds at a covered company as trustee for the benefit of retail customers or counterparties. These provisions complement the newly added provisions for non-maturity brokered deposits in a transactional account. In those cases, where the criteria of § __.32(a)(3) and § __.32(a)(4) are satisfied, a covered company may look through to the retail customer or counterparty and apply the 20 percent outflow rate to deposits that are fully covered by deposit insurance and the 40 percent outflow rate where less than the entire amount of the deposit is covered by deposit insurance.

(e). Penalties Versus Contractual Restrictions for Withdrawal

Similar to the Basel III Revised Liquidity Framework, commenters requested that the agencies differentiate between brokered deposits that are subject to withdrawal penalties (such as the loss of accrued interest), and those brokered deposits where no contractual right exists to withdraw the deposit or such rights are strictly limited.

As noted above, the agencies have clarified for purposes of the final rule that deposits that can only be withdrawn in the event of death or incompetence are assumed to mature on the applicable maturity date, and deposits that can be withdrawn following notice or the forfeiture of interest are subject to the rule's assumptions for non-maturity transactions. The agencies decline to treat the assessment of deposit penalties the same as contractual prohibitions to withdrawal, but for the occurrence of a remote contingency, because the assessment of the liquidity characteristics of such fees, and whether they deter withdrawal, would be difficult to undertake and could have unintended consequences for retail customers. Additionally, while typical agreements for brokered deposits that mature in more than 30 calendar days provide for more limited contractual withdrawal rights, the agencies decline to provide more favorable treatment for these deposits relative to similar retail deposits. Therefore, the agencies are adopting this provision of the rule as proposed.

(f). Additional Brokered Deposit Categories

One commenter requested that the agencies establish categories for additional types of brokered deposits, namely brokered checking accounts, brokered savings accounts, and deposits referred by affinity groups, affiliates, or third party marketers.

The agencies did not attempt to specifically identify every type of retail brokered deposit in the proposed rule. As discussed above, the agencies have included an additional category of outflows for non-maturity brokered deposits in transactional accounts. The agencies believe that all other types of brokered deposits are appropriately captured in § __.32(g)(1) of the final rule.

iii. Deposit Market Consequences

Several commenters asserted that the proposed requirements of § __.32(g) could adversely impact the brokered deposit markets, preclude covered companies from obtaining key sources of funding, affect investor perceptions about the risks of brokered deposits, and allocate funds away from the banking system as a result of elevated brokered deposit outflow rates, among other unintended consequences. One commenter suggested that the proposed rule would harm retail investing by broker-dealer clients, who would be

[70] 12 CFR 330.7.

[71] Id.

faced with elevated costs without any additional consumer protection benefit, and requested that the final rule exempt depository institution holding companies with substantial retail brokerage activities. Another commenter suggested that the proposed treatment for reciprocal deposits could impact community banks not subject to the LCR by distorting the market standards and pricing for these types of deposits. One commenter suggested that the proposal's treatment of brokered sweep deposits would cause the cost of such products to increase, leading investors to seek products outside of the banking sector, such as money market mutual funds, at a greater cost to financial stability. Another commenter suggested that applying the existing definition of brokered deposit in FDIC regulations would have unintended consequences, such as having employees who are primarily compensated by commissions versus salary being considered deposit brokers. One commenter stated that the FDI Act's treatment of brokered deposits at well-capitalized institutions, which allows for those institutions to accept brokered deposits without limit, warrants the same outflow rate as applicable to stable retail deposits. The commenter stated that the proposed rule appears to stigmatize brokered deposits and requested that the FDIC clarify its liquidity guidance. One commenter argued that the uniqueness of deposit insurance (for example, the relatively high insurance coverage, pass-through insurance, quick and orderly resolution of failed banks) should result in lower outflow rates for insured brokered deposits. This commenter stated that brokered deposits qualifying for full pass-through insurance should be subject to the same outflow rate as fully insured stable retail deposits. Finally, one commenter stated that the distinction between affiliated and unaffiliated brokered sweep deposits would create an unfair disadvantage for small broker-dealers and commercial banks without affiliated broker-dealers, which will face relatively higher pricing to place their swept deposits.

Despite the changes that the retail brokered deposit market will likely need to undertake in response to the application of the LCR, the agencies believe that the provisions and assumptions underlying § __.32(g) of the proposed rule are consistent with the potential risks posed by retail brokered deposits.[72] As noted above, the agencies continue to believe that brokered deposits have the potential to exhibit volatility, are more easily moved from one institution to another, and can be risky to rely upon as a source of liquidity on account of regulatory limitations. In sum, the agencies believe that the standard set forth in § __.32(g) will serve to strengthen the overall financial system as well as the retail brokered deposit market.

h. Unsecured Wholesale Funding Outflow Amount

The proposed rule included three general categories of unsecured wholesale funding: (i) Unsecured wholesale funding transactions; (ii) operational deposits; and (iii) other unsecured wholesale funding which would, among other things, encompass funding from a financial company. The proposed rule defined each of these categories of funding instruments as being unsecured under applicable law by a lien on specifically designated assets. Under the proposed rule, unsecured wholesale funding instruments typically would have included: Wholesale deposits;[73] federal funds purchased; unsecured advances from a public sector entity, sovereign entity, or U.S. GSE; unsecured notes; bonds, or other unsecured debt securities issued by a covered company (unless sold exclusively in retail markets to retail customers or counterparties), brokered deposits from non-retail customers, and any other transactions where an on-balance sheet unsecured credit obligation has been contracted.

i. Non-Financial Wholesale Counterparties and Financial Sector Entities

The agencies proposed to assign three separate outflow rates to non-operational unsecured wholesale funding, reflecting the stability of these obligations based on deposit insurance and the nature of the counterparty. Under the proposed rule, unsecured wholesale funding provided by an entity that is not a financial sector entity generally would have been subject to an outflow rate of 20 percent where the entire amount is covered by deposit insurance. Deposits that are less than fully covered by deposit insurance, or where the funding is a brokered deposit from a non-retail customer, would have been assigned a 40 percent outflow rate. However, the proposed rule would have required all unsecured wholesale funding provided by financial sector entities, including funding provided by a consolidated subsidiary or affiliate of the covered company, be subject to an outflow rate of 100 percent. This higher outflow rate is associated with the elevated refinancing or roll-over risk in a stressed situation and the agencies' concerns regarding the interconnectedness of financial institutions.

Two commenters suggested that wholesale reciprocal brokered deposits are as stable as retail reciprocal brokered deposits, and should be subject to the same outflow rates. These commenters stated that the impact of insurance coverage should be reflected in the case of wholesale brokered deposits (including wholesale reciprocal deposits) by assigning such deposits the same outflow rates that apply to non-brokered deposits; that is, 20 percent if fully-insured and 40 percent if not fully-insured.

One commenter argued that the proposed rule defines the term wholesale deposits broadly and improperly categorizes deposits placed by pension funds on behalf of a retail counterparty as wholesale deposits placed by a financial sector entity. The commenter argued that under FDIC regulations, deposit accounts held by employee benefit plans are insured on a pass-through basis to the benefit of plan beneficiaries and in many plans, a beneficiary can direct the investment of the funds, which merits retail treatment for such funds rather than wholesale treatment.

In addition, several commenters disagreed with the agencies' proposed outflow rate for unsecured wholesale funding provided by financial sector entities. One commenter recognized the agencies' concern regarding the interconnectivity of financial institutions, but cautioned against potential increased costs for correspondent banking and other services and for holding financial institution deposits for banks required to comply with the LCR. A commenter argued that the proposed rule's 100 percent outflow rate for wholesale deposits by financial sector entities effectively eliminates any incentive for a banking organization to take such deposits and that they would therefore cease doing so. The commenter further argued that this would severely disrupt the availability of correspondent deposit options for depository institutions. Another commenter suggested the agencies reconsider the 100 percent outflow rate that would apply to correspondent banking deposits in excess of amounts required for operational services, suggesting that the 40 percent outflow rate applicable to non-financial unsecured wholesale

[72] 78 FR 71840.

[73] Certain small business deposits are included within unsecured retail funding. *See* section II.C.3.a. *supra.*

corporate deposits would be more appropriate. Another commenter suggested treating correspondent banking relationships as operational and argued that assigning a 25 percent outflow rate to such deposits would help support the provision of correspondent banking services to client banks, thereby ensuring the ability of client banks to continue to service the cash management needs of organizations that drive the real economy. The commenter asked that the agencies take an activity-based approach to the classification of correspondent banking outflows, such that outflows generated by correspondent transactions with underlying commercial operations relating to banks and their customers would be classified as operational because they behave in a similar fashion to those of corporate operational relationship accounts. One commenter requested that all corporate trust deposits receive a 25 percent outflow rate regardless of whether the deposit qualified as an operational deposit.

Another commenter requested that the agencies re-examine the treatment of funding provided by a subsidiary of a covered company and: (i) Not treat as an outflow funding provided by a subsidiary of the covered company; (ii) not treat as an inflow amounts owed to the covered company by a subsidiary; and (iii) not treat as an outflow or an inflow funding provided by one consolidated subsidiary of the covered company to another consolidated subsidiary.

For the reasons discussed in the proposal, the agencies continue to believe the proposed outflow rates assigned to unsecured wholesale funding are appropriate. As evidenced in the recent financial crisis, funding from wholesale counterparties, which are generally more sophisticated than retail counterparties, presents far greater liquidity risk to covered companies during a stress period. With respect to wholesale brokered deposits (including wholesale reciprocal brokered deposits), the agencies continue to believe that the 40 percent outflow rate for all such deposits (regardless of insurance) is appropriate given the intermediation or matchmaking by the deposit broker. The 100 percent outflow rate applicable to other unsecured wholesale funding provided by financial sector entities mirrors the treatment for unsecured wholesale cash inflows contractually payable to the covered company from financial sector entities. The agencies note, however, that § __.32(a)(3) and § __.32(a)(4) have been added to the final rule to address the commenter's concern regarding pension fund deposits where the beneficiary can direct the investment of the funds. Such non-brokered deposits placed by a third party on behalf of a retail customer or counterparty may be treated as retail funding, as discussed above. In addition, as discussed above, to the extent such deposits placed by a pension fund meet the definition of retail brokered deposit, such deposits would be eligible for the retail brokered deposit outflow rates under § __.32(g) of the final rule.

With respect to funding provided by an affiliate of a covered company, to address commenters' concerns, the agencies are clarifying in the final rule that the 100 percent outflow rate for unsecured wholesale funding applies only to funding from a company that is a consolidated subsidiary of the same top-tier company of which the covered company is a consolidated subsidiary. This outflow rate does not apply to funding from a consolidated subsidiary of the covered company, which is entirely excluded from the LCR calculation in the final rule under § __.32(m), as discussed below. The agencies also have added paragraph (h)(2)(ii) to the final rule to clarify that debt instruments issued by a covered company that mature within a 30 calendar-day period, whether owned by a wholesale or retail customer or counterparty, will receive a 100 percent outflow rate.

The final rule is adopting the 100 percent outflow rate for unsecured wholesale funding provided by financial sector entities as proposed. The agencies continue to believe that the liquidity risk profile of financial sector entities are significantly different from that of traditional corporate entities. Based on the agencies' supervisory experience, during a period of material financial distress, financial sector entities tend to withdraw large amounts of funding from the financial system to meet their obligations. The agencies believe the outflow rates properly reflect the liquidity risk present in the types of products offered to financial sector entities. The agencies also are adopting in the final rule the 20 percent and 40 percent outflow rates for non-financial sector unsecured wholesale funding, as proposed.

ii. Operational Services and Operational Deposit

The proposed rule would have recognized that some covered companies provide services, such as those related to clearing, custody, and cash management, that increase the likelihood that their customers will maintain certain deposit balances with the covered company. These services would have been defined in the proposed rule as operational services and a deposit required for each of their provision was termed an operational deposit. The proposed rule would have applied a 5 percent outflow rate to an operational deposit fully covered by deposit insurance (other than an escrow deposit) and a 25 percent outflow rate to an operational deposit not fully covered by deposit insurance.

The agencies received a number of comments regarding: (1) The proposed rule's definition of operational deposit and operational services; (2) the operational criteria required to be met for a covered company to treat a particular deposit as an operational deposit; and (3) the proposed rule's outflow rates for operational deposits. In response to the comments received, the agencies have made certain modifications to these requirements, as discussed below.

Although many commenters appreciated the agencies' recognition of the provision of key services by many covered companies in the form of lower outflow rates for operational deposits, two commenters suggested that a model that segregates operational deposits from other deposits is inconsistent with how covered companies and their customers structure their banking operations. One commenter suggested that application of this model could lead to unnecessary confusion and could push excess depository balances into shadow banking. Another commenter argued that the proposed rule's broad definition of operational deposit could result in a lack of consistent application among covered companies, as they would reflect their own clients and product mixes in applying the definition. One commenter called for a simplified definition that could be applied uniformly across the industry, stating that it would be preferable to have a slightly higher outflow rate in exchange for such simplicity.

For the reasons discussed in the proposal and below, the agencies continue to believe that the underlying structure of the proposal's approach to defining an operational deposit, which is consistent with the Basel III Revised Liquidity Framework, is appropriate. As noted by commenters, many customers place deposits with covered companies as a result of their provision of key services, such as payroll processing and cash management. Because such deposits are tied to the provision of specific services to the customer, these deposits present less liquidity risk during a stress period. The agencies have made some changes to the definition of operational deposit, but have retained the definition's structure as proposed because it unambiguously aligns a particular operational deposit with an operational service, thereby providing a standardized method for identifying operational deposits. Accordingly, the agencies are adopting in the final rule the structure for defining operational deposit as proposed with the modifications discussed below.

(a). Definition of "Operational Deposit"

The proposed rule would have defined an operational deposit as unsecured wholesale funding that is required to be in place for a covered company to provide operational services as an independent third-party intermediary to the wholesale customer or counterparty providing the unsecured wholesale funding.

Many commenters indicated that an operational deposit should be one that is "necessary" rather than "required" for the banking organization to provide in light of the operational services enumerated in the proposed rule, which would better align with industry practice. The commenters stated that using "necessary" would make clear that such deposits are functionally necessary as opposed to contractually required. Commenters also requested that the agencies recognize that certain operational services may be provided by a covered company not only as an independent third-party intermediary, but also as an agent or administrator. Finally, several commenters requested that certain collateralized deposits that otherwise meet the eligibility criteria for treatment as an operational deposit, such as preferred public sector deposits or corporate trust deposits, be subject to the outflow rates applicable to operational deposits.

In response to commenters' concerns, the agencies have revised the definition of operational deposit to state that the deposit is "necessary" for the provision of operational services rather than "required." The term "required" implied that the deposit was a contractual requirement as opposed to incidental to the provision of the operational services, and may have inadvertently limited the definition's application. The agencies also have added "agent" and "administrator" as capacities in which a covered company may provide operational services that give rise to a need for an operational deposit, as there are circumstances, such as the provision of custody services, where a covered company acts as an agent or administrator, rather than merely as an independent third-party intermediary. Finally, the agencies have clarified in the final rule that secured funding transactions that are collateralized deposits, as defined under the final rule, are eligible for the operational deposit outflow rates if the deposits otherwise meet the final rule's criteria. However, as discussed in section II.C.3.j. below, such deposits would still be considered secured funding transactions and could be subject to lower outflow rates if the deposits are secured by level 1 liquid assets or level 2A liquid assets.

(b). Definition of "Operational Services"

The proposed rule would have included eleven categories of operational services provided by covered companies that would correspond to an operational deposit. Consistent with the Basel III Revised Liquidity Framework, the operational services would have included: (1) Payment remittance; (2) payroll administration and control over the disbursement of funds; (3) transmission, reconciliation, and confirmation of payment orders; (4) daylight overdraft; (5) determination of intra-day and final settlement positions; (6) settlement of securities transactions; (7) transfer of recurring contractual payments; (8) client subscriptions and redemptions; (9) scheduled distribution of client funds; (10) escrow, funds transfer, stock transfer, and agency services, including payment and settlement services, payment of fees, taxes, and other expenses; and (11) collection and aggregation of funds.

Several commenters argued that the list of operational services should be expanded to include trustee services, the administration of investment assets, collateral management services, settlement of foreign exchange transactions, and corporate trust services. Other commenters requested that the agencies specifically include a number of operational services that are specific to the business of custody banks. One commenter requested that the final rule recognize that a covered company may provide these services as a trustee. One commenter suggested that the rule define operational services as those normal and customary operational services performed by a covered company, and use the rule's enumerated services as illustrative examples. Commenters also recommended that operational deposits include all deposits obtained under correspondent banking relationships. Another commenter requested that the final rule better align the criteria for operational services with the Basel III Revised Liquidity Framework to avoid excluding a substantial amount of deposits that are truly operational in nature.

After consideration, to address commenters' requests that services relating to the business of custody banks be included, the agencies have added a new subparagraph 2 to the definition of operational services to include the administration of payments and cash flows related to the safekeeping of investment assets, not including the purchase or sale of assets. This is intended to encompass certain collateral management payment processing provided by covered companies. Such operational services solely involve the movement of money, and not the transfer of collateral, and are limited to cash flows, and not the investment, purchase, or sale of assets. Moreover, the agencies wish to make clear that this prong of the operational services definition does not encompass any activity that would constitute prime brokerage services, as any deposit provided in connection with the provision of prime brokerage services by a covered company could not be treated as an operational deposit, as discussed in more detail below.

The agencies also have added "capital distributions" to the now renumbered subparagraph 8 of the operational services definition. This addition was necessary to clarify the intention of the agencies to include such payments as an operational service along with recurring contractual payments when performed as part of cash management, clearing, or custody services.

The agencies believe the final rule appropriately addresses the concerns of commenters while also treating as operational services those services that are truly operational in nature. Defining operational services as the customary operational services performed by a covered company, as suggested by one commenter, would have been overly broad and could have led to wide variations in the treatment of operational services across covered companies. Moreover, it is not necessary to add the entire suite of corporate trust services to the list of enumerated defined operational services in order to include those aspects of such business lines that have the inherent or essential qualities of operational services. The existing twelve categories of services, when performed as part of cash management, clearing, or custody services, will adequately capture those corporate trust services that should be captured by the operational service definition. With respect to correspondent banking and foreign exchange settlement activity, neither of those services in isolation enhance the stability of the funding to warrant a lower outflow rate; however, to the extent that operational services are utilized by customers engaged in those activities, associated deposits may be included as operational deposits. With respect to the remaining operational services identified in the proposed rule, the agencies have adopted the final rule as proposed.

(c). Operational Requirements for Recognition of Operational Deposits

In addition to stipulating that the deposit be required for the provision of operational service by the covered company to the customer, the proposed rule would have required that an operational deposit meet eight qualifying criteria, each described below. The agencies received a number of comments on these operational criteria, and have made certain modifications to these criteria in their adoption of the final rule.

(d). Deposit Held Pursuant to Agreement and Subject to Termination or Switching Costs

Section __.4(b)(1) of the proposed rule would have required that an operational deposit be held pursuant to a legally binding written agreement, the termination of which was subject to a minimum 30 calendar-day notice period or significant termination costs to have been borne by the customer providing the deposit if a majority of the deposit balance was withdrawn from the operational deposit prior to the end of a 30 calendar-day notice period.

Many commenters stated that operational deposits are typically held in demand deposit accounts with no notice or termination restrictions. Instead, the associated operational services are provided pursuant to a written contract that contains the relevant termination and notice provisions. Commenters requested that the final rule require that the operational services, not the operational deposits, be subject to a legally binding written agreement. In addition, several commenters suggested that the agencies recognize, in addition to termination costs such as fees or withdrawal penalties, switching costs that would be borne by a customer transitioning operational services from one covered company to another and could inhibit the transfer of operational services to another provider.

In response to the comments, the agencies have revised § __.4(b)(1) of the final rule to require that the operational services, rather than the operational deposit, be provided pursuant to a written agreement. Additionally, the agencies have revised § __.4(b)(1) to reflect that, in addition to or in lieu of termination costs set forth in the written agreement covering the operational services, the final rule's criterion would be satisfied if a customer bears significant switching costs to obtain operational services from another provider. Switching costs include costs external to the contract for operational services, such as the significant information technology, administrative, and legal service costs that would be incurred in connection with the transfer of operational services to a new service provider. Switching costs, however, would not include the routine costs of moving an account from one financial institution to another, such as notifying counterparties of new account numbers or setting up recurring transactions. Rather, the favorable treatment for operational deposits under the final rule is premised on strong incentives for a customer to keep its deposits with the covered company.

(e). Lack of Significant Volatility in Average Deposit Balance

Section __.4(b)(2) of the proposed rule would have required that an operational deposit not have significant volatility in its average balance. The agencies proposed this requirement with the intent to exclude surges in balances in excess of levels that customers have historically held to facilitate operational services.

Commenters found the proposed requirement in § __.4(b)(2) confusing. One commenter questioned how the concept of ''average balance'' could be reconciled with ''significant volatility,'' as averaging would in practice subsume the variability. Several commenters observed that an operational deposit account, by definition, would experience volatility, as cash flows into and out of such an account over the course of a 30 calendar-day period. Commenters expressed concern that the ''significant volatility'' language could disqualify deposits based on these normal variations in deposit balances. Commenters suggested that the agencies' concerns regarding excess funds would be better addressed through the provisions of § __.4(b)(6), and that § __.4(b)(2) should be deleted.

To address these concerns, the agencies have eliminated significant volatility as a standalone criterion for qualification as an operational deposit in the final rule, but have incorporated consideration of volatility into the methodology that a covered company must adopt for identifying excess balances, as discussed below. Covered companies are still expected to assess whether there are operational reasons for any notable shifts in the average balances that occur over time.

(f). Deposit Must Be Held in Operational Account

In § __.4(b)(3) of the proposed rule, the agencies proposed that an operational deposit be held in an account designated as an operational account. Two commenters expressed the view that this provision was too restrictive because cash management practices allow customers to transfer funds across their entire banking relationship between sweep accounts, interest bearing accounts, investment accounts, and zero balance accounts. These commenters argued that a customer's funds need not be maintained in a transactional account specified as an operational account so long as the funds are liquid and available for operational use without penalty when needed.

After consideration of the comments, the agencies have retained the requirement in the final rule. The agencies believe this requirement allows covered companies to clearly identify the deposits that are eligible for operational deposit's lower outflow rate, and to prevent the intermingling of operational deposits with other deposits. Accordingly, under the final rule, an operational deposit must be held in an account designated as an operational account, which can be one or more linked accounts. Such an account need not take a specific form, but must be designated as an operational account for a specific customer so that it can be considered in identifying excess balances required under § __.4(b)(5) of the final rule and discussed further below.

(g). Primary Purpose of Obtaining Operational Services

Section __.4(b)(4) of the proposed rule would have required that an operational deposit be held by a customer at a covered company for the primary purpose of obtaining operational services from the covered company. Commenters suggested that the best way to address the relationship between the operational deposits and operational services would be to disqualify deposit balances that are in excess of amounts necessary to perform operational services; that is, through § __.4(b)(6) of the proposed rule. Accordingly, these commenters requested the deletion of this requirement from the final rule. Alternatively, one commenter suggested that the agencies use the language from paragraph 94 of the Basel III Revised

Liquidity Framework and allow a deposit to be treated only as an operational deposit to the extent that the customer depends on the covered company to perform the associated operational services.

After considering the comments, the agencies have adopted this requirement of the proposed rule without change. Based on their supervisory experience, the agencies understand that covered companies already review various characteristics, such as customer type, business line, product, and service, when classifying deposits as operational. The agencies expect that covered companies would review these same characteristics to categorize the primary purpose of the deposit in order to satisfy this provision of the rule.

(h). Prohibition of Economic Incentives To Maintain Excess Funds

Section __.4(b)(5) of the proposed rule would have required that an operational deposit account not be designed to incent customers to maintain excess funds therein through increased revenue, reduction in fees, or other economic incentives. Commenters remarked that a common feature of most operational deposit accounts, the earnings credit rate (ECR), would seem to violate this criterion and, therefore, disqualify many deposits from being treated as operational.[74] Commenters suggested that the ECR increases the strength of the relationship between a covered company and a customer, as it encourages the customer to continue to obtain operational services from the covered company. This, in turn, results in more stable operational deposit levels. Several commenters requested that the agencies remove this proposed criterion on the grounds that it essentially aims to limit excess balances, and this is already addressed in the proposed rule's § __.4(b)(6).

The agencies believe this criterion better ensures that a deposit is truly necessary for an operational service, and is not the result of an ancillary economic incentive. For that reason, the agencies are retaining this criterion in the final rule. However, the agencies are clarifying that some economic incentives, such as an ECR to offset expenses related to operational services, are acceptable, so long as they do not incent the maintenance of excess deposits. If an ECR or other economic incentive causes a customer to maintain deposit balances in excess of the amount necessary to serve the customer's operational needs, then those excess balances would not qualify as operational deposits.

(i). Exclusion of ''Excess'' Amounts

Section __.4(b)(6) of the proposed rule would have required that a covered company demonstrate that an operational deposit is empirically linked to an operational service and that the covered company has a methodology for identifying any deposits in excess of the amount necessary to provide the operational services, the amount of which would be excluded from the operational deposit amount. Commenters generally supported this criterion but requested clarification as to whether covered companies would be allowed to calculate excess balances on an aggregate basis rather than on a deposit-by-deposit or account-by-account basis. Commenters argued that absent such clarification, assessing operational deposits at an unnecessarily granular level would be overly burdensome for covered companies and supervisors. One commenter expressed concern that the proposed rule would have required covered companies to develop models for determining the excess amount and requested that the agencies provide clear criteria for determining excess deposits. One commenter suggested, however, that allowing each banking organization to have its own methodology could lead to protracted negotiation with local supervisors and inconsistent implementation. Commenters also expressed concerns regarding the identification of excess deposits in connection with particular operational services, such as cash management and corporate trust services and argued that the agencies should exempt such deposits from the excess operational deposit methodology.

The agencies believe it would be inappropriate to give excess operational deposit amounts the same favorable treatment as deposits that are truly necessary for operational purposes, as doing so could lead to regulatory arbitrage or distort the amount of unsecured wholesale cash outflows in the LCR calculation. Further, operational deposits are afforded a lower outflow rate due to their perceived stability arising from the nature of the relationship between a customer and covered company and the operational services provided, as well as factors, such as the switching costs associated with moving such deposits, as discussed above. In contrast, excess deposits are not necessary for the provision of operational services and therefore do not exhibit these characteristics.

The agencies are of the view that there is no single methodology for identifying excess deposits that will work for every covered company, as there is a range of operational deposit products offered and covered company data systems processing those products. Aggregation may be undertaken on a customer basis, a service basis, or both, but in all instances, a covered company's analysis of operational deposits must be conducted at a sufficiently granular level to adequately assess the risk of withdrawal in an idiosyncratic stress. The agencies expect covered companies to be able to provide supporting documentation that justifies the assumptions behind any aggregated calculations of excess deposits and expect that the higher (that is, the further from the individual account or customer) the level of aggregation, the more conservative the assumptions related to excess deposit amounts will be. A covered company's methodology must also take into account the volatility of the average deposit balance to ensure the proper identification of excess balances. Moreover, the agencies believe that it is inappropriate to exempt deposits received in connection with particular operational services from the requirement to identify excess balances because all excess balances may exhibit greater volatility than those that are necessary for the provision of operational services by a covered company. Accordingly, the agencies are adopting this provision of the rule as proposed, with a modification to explicitly require a covered company to take into account the volatility of the average operational deposit balance when designing its methodology for identifying excess deposit amounts.

(j). Exclusion of Deposits Relating to Prime Brokerage Services

Section __.4(b)(7) of the proposed rule would have excluded deposits provided in connection with the covered company's provision of prime brokerage services from the operational deposit outflow rates.[75] The agencies defined prime brokerage services as the provision of operational services to an investment company, non-regulated fund, or investment adviser. The agencies defined prime brokerage in this manner to cover the primary recipients of prime brokerage services.

Many commenters disagreed with the agencies' approach in the proposed rule,

[74] An ECR is a rate used by certain banking organizations in noninterest bearing accounts to reduce the amount of fees a customer would be required to pay for bank services. The ECR would be applied to the entire balance of the account, and thus, a larger balance would provide for a greater reduction in fees.

[75] Basel III Revised Liquidity Framework at ¶ 99.

stating that defining prime brokerage services in terms of customer type resulted in an operational deposit exclusion that was too broad, and several argued that it would likely exclude a broad range of operational deposits from custody banks, which provide safekeeping and asset administration services to investment companies that are wholly unrelated to prime brokerage services, as well as clearly operational services such as employee compensation payroll services for a mutual fund complex. Several commenters suggested that rather than focus on the type of client, the final rule should focus on the specific prime brokerage services to be excluded from the definition of operational services. One commenter argued that this proposed alternative treatment would be beneficial in that, consistent with the Basel III Revised Liquidity Framework, it would not exclude stable deposits related to operational servicing relationships with mutual funds and their foreign equivalents. Commenters noted that while many prime brokerage services overlap with core operational services such as cash management, clearing, or custody, prime brokerage services differ from those services in that a prime broker generally facilitates the clearing, settling, and carrying of client trades that are executed by an executing broker. A second distinguishing feature of prime brokerage services identified by these commenters is the provision of financing (for example, margin lending) by the prime broker to facilitate the investment strategies of the client. According to commenters, these financing agreements require the client to authorize the prime broker to rehypothecate client assets pledged to secure margin lending, as contrasted with investment company assets held by a custodian for safe-keeping, which by law must be segregated.[76]

With respect to the exclusion of non-regulated funds, one commenter requested that the rule be revised to instead apply a higher outflow rate to the types of non-regulated funds that are likely to withdraw deposits in a period of stress. The commenter further suggested that closed-end funds that do not issue redeemable securities be excluded from the definition of non-regulated funds, as well as a consolidated subsidiary of a non-regulated fund.[77] Another commenter argued that investment companies, such as U.S. mutual funds and their foreign equivalents, should not be included in this category because they do not use prime brokerage services in their ordinary business operations.

The agencies have concluded that the proposed rule's approach of defining prime brokerage services by counterparty could have been overly broad in application, potentially excluding many types of truly operational services from the proposed rule's preferential treatment of operational deposits. Therefore, in response to concerns raised by commenters, the agencies have defined prime brokerage services in the final rule using the key aspects of the prime brokerage relationship. In addition to the execution, clearing and settling of transactions, the agencies believe it is the financing services and the retention of rehypothecation rights by the prime broker that distinguish prime brokerage from other operational services. This financing and rehypothecation aspect of prime brokerage services merits exclusion from operational services, as highly-levered customers and the reuse of assets can expose covered companies to significant liquidity risk. Under the final rule, prime brokerage services are those services offered by a covered company whereby the covered company executes, clears, settles, and finances transactions entered into by a customer with the covered company or a third-party entity on behalf of the customer (such as an executing broker). The covered company must also have a right to use or rehypothecate assets provided to the covered company by the customer, including in connection with the extension of margin lending or other financing to the customer. The final rule clarifies that prime brokerage services would include operational services provided to a non-regulated fund. The final rule explicitly states that prime brokerage services include those provided to non-regulated funds because of the higher liquidity risks posed by the provision of these services to hedge and private equity funds. The agencies believe these changes capture the intent of the proposed rule, in that deposits that are less stable do not qualify as operational deposits under the final rule. Accordingly, all deposits of a non-regulated fund will not be eligible for treatment as an operational deposit, regardless of the provision of operational services by the covered company.

(k). Exclusion of Certain Correspondent Banking Activities

Section __.4(b)(8) of the proposed rule would have excluded from the definition of operational deposits a subset of correspondent banking arrangements pursuant to which a covered company (as correspondent) holds deposits owned by another depository institution (as respondent) and the respondent temporarily places excess funds in an overnight deposit with the covered company. The agencies specifically excluded these deposits from treatment as an operational deposit under the proposed rule because, although they may meet some of the requirements applicable to operational deposits, they historically have exhibited instability during stressed liquidity events. In doing so, the agencies did not intend to exclude all banking arrangements with correspondents, only those specifically described in § __.4(b)(8) of the proposed rule.

Several commenters argued that the agencies' proposed exclusion is broader than that in the Basel III Revised Liquidity Framework and requested that the agencies clarify that the exclusion for deposits provided in connection with correspondent banking services is limited to the settlement of foreign currency transactions. In addition, several commenters argued that this exclusion would exclude all deposits under correspondent banking relationships from application of the operational deposit outflow rate.

The agencies continue to believe that excess funds from a depository institution placed in an overnight deposit account are not stable, and have retained the exclusion of them from operational deposits. However, the agencies have modified the final rule to remove the phrase ''correspondent banking'' from the proposed provision in § __.4(b)(8) to address commenters' concerns that the exclusion applies to all correspondent banking arrangements.

The proposed rule would have allowed correspondent banking deposits that meet all operational requirements to be included as operational deposits; however, deposits arising from correspondent banking relationships that were not operational in nature would not have been categorized as operational. The proposal would not have excluded from operational deposits those correspondent banking arrangements under which a correspondent bank held deposits owned by respondent banks and provided payment and other services in order to settle foreign currency transactions. The final rule provides for the same treatment.

[76] 15 U.S.C. 80a–17(f).

[77] With respect to commenters' requests regarding non-regulated funds, the agencies have addressed these comments in section II.B.2.b.iv above.

(l). Operational Deposit Outflow Rates

As noted above, the proposed rule would have applied a 5 percent outflow rate to operational deposits fully covered by deposit insurance (other than escrow deposits) and a 25 percent outflow rate to operational deposits not fully covered by deposit insurance and all escrow deposits. One commenter argued that operational deposits are unlikely to run off during a 30 calendar-day period because customers likely would not terminate the attendant operational services, which are provided via legal contracts with notice and termination provisions, and thus requested that the agencies adopt lower outflow rates for such deposits. The commenter further argued that certain operational services, such as investment company custody services, are mandated by law, and providers of operational services generally have a diverse customer base. Other commenters argued that operational deposits should be subject to lower outflow rates on the basis of evidence indicating that such deposit amounts tend to increase during times of stress.

A commenter provided data to justify lowering the 25 percent outflow rate for operational deposits where less than the entire amount of the deposit is covered by deposit insurance, requesting that the treatment of operational deposits be consistent with the Basel III Revised Liquidity Framework. Commenters also argued for the inclusion of both fully insured accounts and the insured portions of accounts that are over the FDIC insurance limits in the 5 percent outflow category of operational deposits. Throughout the final rule, the agencies are drawing a distinction between fully insured deposits on the one hand and less than fully insured deposits on the other, because, as discussed above, based on the agencies' supervisory experience, the entire balance of partially insured deposits behave more like uninsured deposits, with customers withdrawing the entire deposit amount, including amounts below the deposit insurance limit. Thus, the agencies have adopted this provision of the rule as proposed.

The agencies recognize the stable nature of operational deposits, which is reflected in the proposed and final rule's 5 percent outflow rate for fully insured operational deposits. However, the agencies continue to believe that deposits that are not fully covered by insurance will experience higher outflow rates in a macroeconomic stress scenario as covered companies' counterparties will likely find themselves subject to the same stress, thereby reducing their operational deposit balances as their business slows. While operational deposits are more stable than non-operational funding, the agencies believe that in the event of idiosyncratic stress, counterparties likely would reduce the amount of their operational deposits. Accordingly, all other unsecured operational deposits are assigned a 25 percent outflow rate in the final rule, as in the proposed rule.

One commenter criticized the agencies' decision not to assign fully insured escrow deposits a 5 percent outflow rate that other fully insured operational deposits would have received, arguing that deposits in mortgage escrow accounts are no more likely to be withdrawn in a period of financial stress than any other operational deposits at the same bank from the same depositor.

The agencies believe that, although escrow deposits are operational, it is their nature that there will be outflows based on the occurrence of a specified event, regardless of the amount of deposit insurance coverage. Thus, during a period of overall macroeconomic distress, the amount of operational escrow deposits would shrink as business slowed, regardless of deposit insurance. Further, the agencies believe that given the general volatility of escrow deposits, affording them a 3 or 10 percent outflow rate would not properly reflect the lack of funding stability in these deposits. The 25 percent outflow rate appropriately reflects the outflow risk of escrow deposits, and has therefore been adopted in the final rule as proposed.

iii. Other Unsecured Wholesale Funding

The proposed rule would have assigned an outflow rate of 100 percent to all other unsecured wholesale funding. This category was designed to capture all other funding not given a specific outflow rate elsewhere in the proposed rule, including funding provided to a financial sector entity as described above. The agencies have adopted this category in the final rule as proposed.

i. Debt Security Outflow Amount

The agencies proposed that where a covered company is the primary market maker for its own debt securities, the outflow rate for such funding would equal 3 percent for all debt securities that are not structured securities that mature outside of a 30 calendar-day period and 5 percent for all debt securities that are structured debt securities that mature outside of a 30 calendar-day period. This outflow amount was proposed in addition to any debt security-related outflow amounts maturing within a 30 calendar-day period that must have been included in net cash outflows. Based on historical experience, including the recent financial crisis during which institutions went to significant lengths to ensure the liquidity of their debt securities, the agencies proposed what they considered to be relatively low outflow rates for a covered company's own debt securities. The proposed rule differentiated between structured and non-structured debt on the basis of data from stressed institutions indicating the likelihood that structured debt requires more liquidity support. In such cases, a covered company may be called upon to provide liquidity to the market by purchasing its debt securities without having an offsetting sale through which it can readily recoup the cash outflow.

A few commenters suggested that these proposed outflow rates were too high, arguing that the actual volume of any repurchases made by a banking organization may be lower than the proposed outflow rates because investors may not be willing to have the banking organization repurchase the debt securities during a stress scenario at a price which would result in the investor recognizing a significant loss. A commenter suggested that covered companies be allowed to set their own outflow rates, reflecting the fact that different covered companies might take different approaches to addressing franchise or reputational risk. This commenter argued that, in any event, while outflow rates of 3 and 5 percent seem low, once one takes into account the amount of securities that a covered company may have outstanding, a materially significant outflow amount is possible, which the commenter found unreasonable. Two other commenters requested clarification regarding how the debt security outflow amount would work in practice. A commenter argued that the scope of debt securities subject to this section should be modified to apply an outflow rate only to the senior unsecured debt of the covered company in which it is the primary market maker. The commenter also argued that to the extent that a covered company's offering documents disclose that it is not obligated to provide liquidity for such securities, the securities should not be subject to a predetermined outflow rate.

Another commenter argued that the proposed rule's provision of cash outflow rates for primary market makers would likely discourage covered companies from supporting their own or other covered companies' debt securities and asked that the agencies clarify the definition and the intent of this provision. After considering the comments received on this section of the proposed rule, the agencies are finalizing § __.32(i) as proposed with one minor change. Recognizing that a limited number of covered companies are primary market makers for their own debt securities, the agencies have clarified that the debt security buyback outflow will be triggered when either a covered company or its consolidated subsidiary is the primary market maker for debt securities issued by the covered company.

The agencies are adopting the outflow rates as proposed for several reasons. First, one purpose of the LCR is to implement a standardized quantitative liquidity stress measure and this, in turn, counsels toward not allowing covered companies discretion in determining outflow rates. Second, these outflow rates are not intended to measure the cost to a covered company of addressing franchise or reputational risk through participation in the market. Rather, as the primary market maker for a security, the market expects that the covered company or its consolidated subsidiary will continue to purchase the securities, especially if they issued the securities. Thus, the 3 percent and 5 percent rates are reasonable. Third, with regard to investors not being willing to repurchase securities at a given price, the price will be the then-market price, which reflects the outflow the market maker will have if it is required to purchase securities from a counterparty that it cannot then re-sell. That reduced price is reflected in the outflow rate. Historical experience in past bear markets and the recent financial crisis shows that market makers will continue to make markets in most debt issuances, particularly when such market makers or their consolidated subsidiaries are the issuers of a particular security.

The agencies further believe that these outflow rates are appropriate to address the potential future support a covered company will provide with regard to its primary market making role for its own debt, and would not directly discourage any such support. In addition, the outflow rates only apply to debt securities issued by a covered company or its consolidated subsidiary. It would not apply to a covered company's efforts to provide secondary market liquidity to the securities of other banking organizations.

Moreover, a covered company would not be required to calculate this outflow amount unless it or its consolidated subsidiary is the primary market maker for its own debt securities. While the final rule does not define the term market maker, the agencies generally expect that if a covered company or its consolidated subsidiary routinely stands ready to purchase and sell its debt securities and is willing and available to quote, purchase and sell, or otherwise to enter into long and short positions in its debt securities, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for such debt securities, that it is a market maker for those debt securities. The market will know who the primary market makers are for a particular security, and a covered company should know if it is the primary market maker for a particular security.

j. Secured Funding Transactions and Asset Exchange Outflow Amounts

i. Definitions and Outflow Rates

The proposed rule would have defined a secured funding transaction as a transaction giving rise to a cash obligation of a covered company that is secured under applicable law by a lien on specifically designated assets owned by the covered company that gives the counterparty, as holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution. As defined, secured funding transactions would have included repurchase transactions, FHLB advances, secured deposits, loans of collateral to effect customer short positions, and other secured wholesale funding arrangements with Federal Reserve Banks, regulated financial companies, non-regulated funds, or other counterparties.

Under the proposed rule, secured funding transactions maturing within 30 calendar days of the calculation date would have given rise to cash outflows during the stress period. This outflow risk, together with the potential for additional outflows in the form of collateral calls to support a given level of secured funding transactions, was reflected in the proposed secured funding transaction outflow rates. The agencies believed that rather than applying an outflow rate based on the nature of the funding provider, the proposed rule should generally apply an outflow rate based on the quality and liquidity of the collateral securing the funding. For secured funding transactions, the quality of the assets securing the transaction is a significant factor in determining the likelihood that a covered company will be able to roll over the transaction at maturity with a range of market participants and maintain the associated funding over time. In the proposed rule, secured funding outflow rates would have progressively increased depending upon whether the secured funding transaction was secured by level 1 liquid assets, level 2A liquid assets, level 2B liquid assets, or by assets that were not HQLA. These outflow rates were proposed as zero percent, 15 percent, 50 percent and 100 percent, respectively. Additionally, the proposed rule would have applied a 25 percent outflow rate to secured funding transactions with sovereigns, multilateral development banks, or U.S. GSEs that are assigned a risk weight of 20 percent under the agencies' risk-based capital rules, to the extent such transactions were secured by assets other than level 1 or level 2A liquid assets. Under the proposed rule, loans of collateral to facilitate customer short positions were secured funding transactions, subject to outflow rates generally as described above for other types of secured funding transactions.

Secured funding transactions in the form of customer short positions give rise to liquidity risk because the customer may abruptly close its positions, removing funding from the covered company. Further, customers may remove their entire relationship with the covered company, causing the firm to lose the funding associated with the short position. In the particular case where customer short positions were covered by other customers' collateral that does not consist of HQLA, the proposed rule would have applied an outflow rate of 50 percent, rather than the generally applicable 100 percent outflow rate for other secured funding transactions secured by assets that are not HQLA. The 50 percent outflow rate reflected the agencies' recognition of there being some interrelatedness between such customer short positions and other customer long positions within the covered company, and that customers in aggregate may not be able to close all short positions without also significantly reducing leverage. In the case of customers moving their relationships, closing short positions would also be associated with moving long positions for which the covered company may have been providing funding in the form of margin loans. The 50 percent outflow rate for these customer short positions was designed to recognize potential symmetry with the inflows generated from margin loans secured by assets that are not HQLA, to which the proposed rule applied an inflow rate of 50 percent, and that are described in section II.C.4.f. of this Supplementary Information section.

The agencies proposed to treat borrowings from Federal Reserve Banks the same as other secured funding transactions because these borrowings are not automatically rolled over, and a Federal Reserve Bank may choose not to renew the borrowing. Therefore, the agencies believed an outflow rate based on the quality and liquidity of the collateral posted was most appropriate for such transactions. The agencies noted in the proposed rule that should the Federal Reserve Banks offer alternative facilities with different terms than the current primary credit facility, or modify the terms of the primary credit facility, outflow rates for the LCR may be modified.

In addition to secured funding transactions, which relate solely to a secured cash obligation, an asset exchange would have been defined under the proposed rule as a transaction that requires the counterparties to exchange non-cash assets. Asset exchanges can give rise to a change in a covered company's liquidity, such as where the covered company is obligated to provide higher-quality assets in return for less liquid, lower-quality assets. The proposal would have reflected this risk through the proposed asset exchange outflow rates, which would have been based on the HQLA levels of the assets exchanged and would have progressively increased as the assets to be relinquished by a covered company increased in quality relative to those to be received from the asset exchange counterparty. § __.32(j)(2) of the proposed rule set forth the outflow rates for various asset exchanges.

In general, commenters' concerns with the outflow rates for secured funding transactions pertained to perceptions of the relative liquidity of various asset classes and whether particular types of assets should have been classified as HQLA in the proposed rule, as described in section II.B above. For example, one commenter argued that a transaction secured by government MMFs should receive the same outflow rate as a transaction that is secured by level 1 liquid assets and, similarly, a transaction secured by other types of MMFs should have the same outflow rate as a transaction secured by level 2A liquid assets because MMFs have high credit quality and are liquid. Some commenters noted that, under the proposed rule, level 2B liquid assets that are common equity securities were limited to shares in the S&P 500 index, common shares recognized by local regulatory authorities in other jurisdictions, and, potentially, shares in other indices. These commenters requested that the agencies consider a narrow expansion of this asset category for the purposes of secured funding outflow rates (and secured lending inflow rates). These commenters also argued that all major indices in G–20 jurisdictions should qualify as level 2B liquid assets for the purposes of secured funding transaction cash flows.

Other commenters recommended applying an outflow rate that would ensure that secured funding transactions secured by assets that are not HQLA would not have an outflow rate that was greater than the outflow rate applied to an unsecured funding transaction with the same counterparty in order to avoid inconsistency. One commenter requested that the agencies limit the definition of secured funding transaction to only include repurchase agreements.

With respect to the definition of a secured funding transaction, the agencies continue to believe that the principle liquidity characteristics of an asset which were considered when determining the inclusion of an asset as HQLA also are applicable to the determination of the outflow rates for any transactions that are secured by those assets and that the definition of such transactions should include more than repurchase agreements. Accordingly, the agencies are adopting the definition of secured funding transaction largely as proposed, with a clarification that the definition of secured funding transaction only includes transactions that are subject to a legally binding agreement as of the calculation date. In addition and as described above under section II.C.3.a, the agencies have opted to treat secured retail transactions under § __.32(a) of the final rule. Accordingly, the secured funding transaction and asset exchange outflow rates under § __.32(j) of the final rule would apply only to transactions with a wholesale counterparty.

Consistent with the proposed rule, the final rule's outflow rates for secured funding transactions that mature within 30 calendar days of the calculation date are based upon the HQLA categorization of the assets securing the transaction and are generally as proposed (see Table 3a). Consistent with this treatment and as discussed in section II.B above, MMFs do not meet the definition of HQLA under the final rule and a secured funding transaction that is secured by an MMF generally will receive the 100 percent outflow rate associated with collateral that is not HQLA. Further, the agencies believe it would be inappropriate to establish an exception to this principle, whereby, for example, secured funding transactions secured by non-U.S. equity securities that are not level 2B liquid assets would be subject to the outflow rate applicable to level 2B liquid asset collateral. As discussed above in section II.B.2.f, the agencies believe that assets that are not HQLA may not remain liquid during a stress scenario. Accordingly, any secured funding transaction maturing in less than 30 calendar days that is secured by assets that are not HQLA may not roll over or could be subject to substantial haircuts. Thus, secured funding transactions that are secured by assets that are not HQLA under the final rule receive the outflow rate appropriate for this type of collateral and the relevant counterparty.

Although a covered company may have the option of reallocating the composition of the collateral that is securing a portfolio of transactions at a future date, the outflow rates for a secured funding transaction or asset exchange is based on the collateral securing the transaction as of the calculation date.

The agencies agree with certain commenters that, as a general matter, the outflow rate for a secured funding transaction should not be greater than that applicable to an equivalent wholesale unsecured funding transaction (that is not an operational deposit) from the same counterparty. Under § __.32(j)(2) of the final rule, in instances where the outflow rate applicable to a secured funding transaction (conducted with a counterparty that is not a retail customer or counterparty) would exceed that of an equivalent wholesale unsecured funding transaction (that is not an operational deposit) with the same counterparty, the covered company may apply the lower outflow rate to the transaction.[78] The reduced outflow rate would not, however, be applicable if the secured funding transaction was secured by collateral that was received by the covered company under a secured lending transaction or asset exchange. Additionally, the reduced outflow would still be considered a secured funding transaction outflow amount under § __.32(j) of the final rule for the purposes of reporting and determining the applicable maturity date (see Table 3a). Furthermore and as discussed below, for collateralized deposits as defined in the final rule, the outflow rate applicable to part or all of the

[78] The agencies note that, for counterparties that are financial sector entities, the applicable non-operational deposit unsecured wholesale funding outflow rate would be 100 percent under § __.32(h)(5) of the final rule. Thus, for such counterparties, the secured funding transaction outflow rates would be equivalent or higher depending on the collateral securing the transaction.

secured funding transaction amount may potentially be the outflow rate applicable to a wholesale operational deposit from the same counterparty, for the portion of the deposit that meets the remaining criteria for classification as an operational deposit.

Under the final rule, the treatment of asset exchange outflows is adopted generally as proposed (see Table 3b). However, the agencies are clarifying that in the case where a covered company will not have the required collateral to deliver to the counterparty upon the maturity of an asset exchange, the covered company should assume it will be required to make a cash purchase of the necessary security prior to the maturity of the asset exchange. Accordingly, and consistent with the Basel III Revised Liquidity Framework, the covered company should include in its outflow amount an outflow for the purchase of the security. As reflected in § __.32(j)(3)(x)–(xiii) of the final rule and in Table 3b, below, under these provisions, the outflow rate would be the fair value of the asset that the covered company would be required to purchase in the open market minus the value of the collateral that the covered company would receive on the settlement of the asset exchange, which is determined by the rule's haircuts for HQLA and non-HQLA.

The agencies are clarifying that assets collateralizing secured funding transactions as of a calculation date are encumbered and therefore cannot be considered as eligible HQLA at the calculation date. However, because outflow rates are applied to the cash obligations of a covered company under secured funding transactions subject to a legally binding agreement as of a calculation date, these outflow rates do not depend on whether the collateral securing the transactions at the calculation date was or was not eligible HQLA prior to the calculation date.

The agencies recognize that certain assets that are collateralizing a secured funding transaction (or a derivative liability or other obligation) as of a calculation date, and certain assets that have been delivered to a counterparty in an asset exchange, may be rehypothecated collateral that was made available to the covered company from a secured lending, asset exchange, or other transaction. As described in section II.C.2 above, the maturity date of any such secured lending transaction or asset exchange determined under § __.31 of the final rule cannot be earlier than the maturity date of the secured funding transaction or asset exchange for which the collateral has been reused. Furthermore, the agencies recognize that the remaining term of secured lending transactions, asset exchanges or other transactions that are secured by rehypothecated assets may extend beyond 30 calendar days from a calculation date, meaning that the covered company will have a continuing obligation to return collateral at a future date. The inflow rates that are to be applied to secured lending transactions and asset exchanges where received collateral has been reused to secure other transactions are described in section II.C.4 below.

In addition to comments broadly relating to definitions and outflow rates for secured funding transactions, commenters raised specific concerns regarding the treatment of collateralized municipal and other deposits as secured funding transactions, the outflow rates associated with certain prime brokerage transactions, and the treatment of FHLB secured funding.

ii. Collateralized Deposits

Under the proposed rule, all secured deposits would have been treated as secured funding transactions. Some commenters objected to the proposed rule's inclusion of collateralized public sector deposits as secured funding transactions on the grounds that such deposits are relationship-based, were more stable during the recent financial crisis, and are typically secured by a more stable portfolio of collateral than the collateral that secures secured funding transactions such as repurchase agreements. Commenters argued that during the recent financial crisis, state and local governments that placed deposits secured by municipal securities with banking organizations did not withdraw such funds due to concern over the quality of the collateral underlying their deposits. These commenters further argued that it is often the case that the collateral used to secure a government's deposits can be that government's own bonds.

As discussed in section II.B.5 of this Supplementary Information section, commenters argued that collateralized public sector deposits, which are required by law to be collateralized with high-quality assets, should not be treated like short-term, secured funding transactions, because collateralized public sector deposits are not the type of transactions susceptible to the risk of manipulation that commenters believed was the focus of the proposed rule. Commenters further argued that this classification would lead to unnecessary distortions that could increase the cost of these deposits for bank customers.

Commenters also contended that during a period of financial market distress, it is not plausible that a state or local government could withdraw a lower amount of unsecured deposits than secured public sector deposits, as contemplated by the outflow rates assigned to the applicable unsecured wholesale funding and secured funding categories.[79] Many commenters also argued that applying a higher outflow rate to collateralized municipal deposits versus unsecured municipal deposits could discourage banking organizations from accepting collateralized public sector deposits. Thus, several commenters requested that if collateralized public sector deposits are categorized as secured funding transactions in the final rule, the agencies should assign a lower outflow rate to these deposits. These commenters suggested that the agencies provide the same treatment for collateralized deposits as they do for unsecured deposits and take into consideration the historical behavior of the depositor to determine the appropriate outflow rate. Other commenters pointed out that the unsecured deposits of municipalities would have been subject to outflow rates in the range of 20 percent to 40 percent under the proposed rule, in contrast to the more stringent outflow rates applicable to secured funding transactions backed by lower quality collateral.[80] Additionally, some commenters stated that the secured funding transaction outflow rates that would have applied to collateralized public sector deposits under the proposed rule would have diverged from the Basel III Revised Liquidity Framework. These commenters argued that the Basel standard assigned a 25 percent outflow rate for secured funding transactions with public sector entities that have a risk-weight of 20 percent under the Basel capital standards. Likewise, one commenter recommended assigning collateralized public sector deposits an outflow rate of no more than 15 percent because, according to the commenter, bank Call Report data suggests that, even during the recent financial crisis, the peak secured municipal deposit outflow rates generally did not exceed approximately 15 percent. Another commenter also recommended that the agencies adopt a

[79] Under the proposed rule, secured funding transactions that are secured by collateral that is not HQLA, would have received a 100 percent outflow rate while unsecured non-operational wholesale funding that is not fully covered by deposit insurance would have received an outflow rate of 40 percent.

[80] However, other commenters also argued that the outflow rate for unsecured deposits of 40 percent under the proposed rule was unduly punitive.

30 percent maximum outflow rate assumption for deposits collateralized by municipal securities. Finally, other commenters requested clarification as to whether collateralized public sector deposits that otherwise meet the criteria for operational deposits would be eligible for the operational deposit outflow rates.

Further, because municipal securities would not have been included as HQLA under the proposed rule, commenters were concerned that in certain cases a banking organization could be required to hold HQLA equal to the deposits that a public entity had placed with the banking organization in addition to the collateral specified to be held against the deposit as a matter of state law in order to meet the outflow rates that the proposed rule would have assumed. A commenter proposed that the outflow rate for a collateralized deposit should only be applied to the deposit amount less the value of collateral posted by the covered company. A few commenters inquired as to whether preferred deposits secured by FHLB letters of credit would be assigned the same 15 percent outflow rate as secured funding transactions secured with U.S. GSE obligations or if those that satisfy the operational deposit criteria would receive an outflow rate no higher than 25 percent.[81]

Many commenters requested the exclusion of collateralized public sector deposits from the secured transaction unwind mechanism used to determine adjusted liquid assets amounts as addressed in section II.B.5.d above.

In addition to comments relating to public sector deposits, the agencies received a number of comments relating to corporate trust deposits. Commenters argued that funds in corporate trust accounts are very stable due to the specialized nature of the banking relationship and constraints imposed by governing documents. Moreover, due to the specialized nature of indentured trustee and agency engagements associated with corporate trust deposits, withdrawal and disbursements of funds may be strictly limited. However, certain corporate trust deposits would have met the definition of secured funding transactions under the proposed rule. Consistent with other comments received relating to secured funding transactions in general, commenters were concerned that the outflow rate applicable to a collateralized corporate trust deposit may be higher than that applied to an unsecured deposit from the same depositor. Other commenters requested clarification as to whether collateralized corporate trust deposits that otherwise met the criteria for operational deposits would be eligible for the operational deposit outflow rate. One commenter requested that collateralized corporate trust deposits be excluded from the LCR requirements entirely. A few commenters requested that collateralized corporate trust deposits be excluded from the unwind mechanism used to determine the adjusted excess HQLA amount as addressed in section II.B.5.d above.

The agencies recognize the particular characteristics of collateralized public sector and certain collateralized corporate trust deposits. The agencies acknowledge that a covered company's collateralized public sector deposits may, in part, be related to longer-term relationships with its counterparties, established through a public bidding process that is specific to the counterparties' requirements. The agencies also recognize that certain corporate trust deposits are required by federal law to be collateralized.[82] Such deposits are governed by complex governing documents, such as trust indentures, that may limit the customer's discretion to withdraw, pay, or disburse funds. The agencies further acknowledge that there may be relationship characteristics that influence the availability, volume, and potential stability of collateralized public sector and corporate trust deposits placed at covered companies. However, given the collateral requirements and potential collateral flows associated with such deposits, whether required by law or otherwise, the agencies continue to believe that the liquidity risk of collateralized public sector deposits, collateralized corporate trust deposits, and all other secured deposits is appropriately addressed through their treatment as secured funding transactions where the deposits meet the definition of such transactions. Under the final rule, the outflow rate assigned to all secured deposits, including collateralized public sector and corporate trust deposits, with a maturity as determined under § __.31 of the final rule of 30 calendar days or less will be principally based on the quality of the collateral used to secure the deposits. The outflow rate applicable to all secured deposits meeting the definition of a secured funding transaction that are secured by level 1 liquid assets will be zero percent, while the outflow rate for deposits secured by level 2A liquid assets will be 15 percent. As described above for secured funding transactions in general, the agencies are amending the final rule so that the outflow rate applicable to a secured deposit is not greater than the equivalent outflow rate for an unsecured deposit from the same counterparty.

The agencies believe this amendment addresses a number of the concerns expressed by commenters with respect to collateralized deposits. For example, while public sector deposits secured by level 2A liquid assets would be assigned a 15 percent outflow rate, similar deposits secured by FHLB letters of credit (which are not HQLA under the final rule) may receive the 40 percent outflow rate applicable to unsecured deposits from a wholesale counterparty that is not a financial sector entity (versus a 100 percent outflow rate). The agencies believe the application of outflow rates in this manner is appropriate and that a further reduced outflow rate specific to public sector deposits would not be appropriate. Additionally, because the secured funding transaction outflow rates are derived from the quality and liquidity profile of the collateral securing the deposit in a manner which is consistent with the liquidity value of that collateral if it were held unencumbered by the covered company, the agencies do not believe that it is appropriate to net the amount of the deposit by the collateral posted by the covered company.

Furthermore, specifically and solely in the case of a secured funding transaction that meets the definition of a collateralized deposit under the final rule, a covered company may assess whether such a collateralized deposit meets the criteria for an operational deposit under § __.4 of the final rule.[83] If such collateralized deposits meet the criteria for an operational deposit, the covered company may determine the amount of the collateralized deposit that would receive the 25 percent outflow rate applicable to an unsecured operational deposit that is not fully covered by deposit insurance (see Table 3a). Any portion of the collateralized deposit that is not an operational deposit under the covered company's excess operational deposit amount methodology will receive the outflow rate applicable to a wholesale unsecured non-operational deposit from the same counterparty. With respect to the requests by commenters to apply the 25 percent outflow rate to all collateralized

[81] As discussed above under section II.B.2.f.iv, FHLB letters of credit would not qualify as HQLA under the final rule.

[82] 12 CFR 9.10 (national banks) and 12 CFR 150.300–150.320 (Federal savings associations).

[83] All other secured deposits would not be eligible for the operational deposit outflow rates under the final rule.

public sector deposits that are secured by level 2B liquid assets or non-HQLA, the agencies believe that deposits not meeting the criteria for operational deposits would be less stable during a period of market stress due to the lack of an operational relationship tying the funds to the service provided by the covered company. Accordingly, the agencies have not made secured funding transactions with public sector entities eligible for the 25 percent outflow rate applicable to secured funding transactions with sovereign entities, multilateral development banks, and U.S. GSEs subject to a 20 percent risk-weight under the agencies' risk-based capital rules.

iii. Prime Brokerage Secured Funding Transactions Outflows

The agencies received several comments regarding the outflow treatment of secured funding transactions in the context of prime brokerage activities. As described above, in general under the proposed rule secured funding transactions, including certain loans of collateral to cover customer short positions, that are secured by assets that are not HQLA would have required an outflow rate of 100 percent. However, certain secured funding transactions that are customer short positions of collateral that do not consist of HQLA and are covered by another customer's collateral would have received a 50 percent outflow rate. As explained above, the 50 percent outflow rate reflected the agencies' recognition of some interrelatedness between such customer short positions and other customer long positions within the covered company, and the fact that customers in aggregate may not be able to close all short positions without also significantly de-leveraging, or in the case of moving their relationship, also moving the long positions for which the covered company may have been providing funding in the form of margin loans. Commenters argued that this section of the proposed rule did not address a covered company's internal process for deciding how to source collateral to cover short positions, such as the process for choosing between utilizing inventory securities, external borrowings, or using other customers' collateral. Commenters argued that when customer short positions are covered by inventory securities, these securities are frequently held as hedges to other customer positions. These commenters indicated that the source of the collateral covering the customer short position is irrelevant, and recommended applying a 50 percent outflow rate to all customer shorts that are covered by any collateral that is not HQLA, irrespective of the source, and also to customer short positions that are covered by other methods, such as hedges to customer swaps and securities specifically obtained by a prime broker to cover the customer short positions. These commenters argued that this treatment would better capture risk management practices that rely on symmetrical treatment of customer long and short positions. These commenters also argued that applying this approach to closing customer short positions would reflect customers' offsetting reduction in leverage irrespective of the source of collateral and would capture the risks related to internal coverage of short positions. One commenter suggested that the funding risk created by internalization, where collateral is provided by and utilized for various secured transactions within the covered company without being externally sourced, is more accurately assessed by measuring customer and CUSIP concentrations, rather than looking at the asset class or the type of long-short pair because more concentrated ownership impacts the risk of internalization providing stable funding.

Consistent with the Basel III Revised Liquidity Framework, the final rule prescribes the outflow amount for each secured funding transaction individually, while taking into account the potential dependency of certain secured transactions upon the source of the collateral securing the transaction. Cash obligations of a covered company to a counterparty that are generated through loans of collateral to cover a customer short position pose liquidity risks that are similar to other secured funding transactions as described above. For this reason, the agencies believe that funding from a customer short position should be treated as a secured funding transaction, and that the outflow associated with this funding should, in general, be consistent with all other forms of secured funding transactions. In the case where a covered company has received funding from, for example, the cash proceeds of a customer's short sale of an asset that is not HQLA, the closing out of the short position by the customer at its discretion may lead to the covered company being required to relinquish cash in return for the receipt of the borrowed asset. In general, the outflow rate applicable to an individual secured funding transaction secured by assets that are not HQLA is 100 percent under the final rule. The agencies believe that it would be inappropriate to apply an outflow rate of 50 percent to all customer short positions covered by assets that are not HQLA, irrespective of the source of the collateral. While the standardized framework of the final rule is not designed to reflect the individual collateral allocation or risk management practices of covered companies, the agencies expect that covered companies will have in place liquidity risk management practices commensurate with the complexity of their prime brokerage business activities, including collateral tracking, collateral concentration monitoring, and potential exposure resulting from the exercise of customer options to withdraw funding.

The outflow rate applicable to customer short positions that are covered by other customers' collateral that does not consist of HQLA is specifically intended to parallel the inflow rate applicable to secured lending transactions that are margin loans secured by assets that are not HQLA under § __.33(f)(1)(vii) of the final rule.[84] This 50 percent outflow rate reflects the agencies' recognition of some correlation between such customer short positions and other customer long positions within a covered company, and the fact that customers in aggregate may not be able to close all short positions without also significantly de-leveraging, or in the case of moving their relationship, also moving the long positions for which the covered company may have been providing funding in the form of margin loans. In contrast, if a customer short position is covered by the covered company's long positions of assets that are not HQLA, the outflow rate assigned to the customer short position would be that applicable to other secured funding transactions under the final rule.

Furthermore, the agencies recognize that prime brokerage activities may entail significant rehypothecation of assets to secure certain secured funding transactions. The agencies emphasize the treatment for determining the maturity of such transactions under § __.31 of the final rule and the inflows rates applicable to secured lending transactions and assets exchanges under § __.33(f) of the final rule.

iv. Federal Home Loan Bank Secured Funding Transactions

Under the proposed rule, secured funding transactions with sovereign entities, multilateral development banks, and U.S. GSEs that are assigned a 20 percent risk weight under the agencies' risk-based capital rules and

[84] Margin loans that are secured by assets that are not HQLA are assigned an inflow rate of 50 percent under the final rule.

that are not secured by level 1 or level 2A liquid assets would have received a 25 percent outflow rate. Several commenters requested clarification as to whether this 25 percent proposed outflow rate would have applied to all secured FHLB advances or only those secured by level 2B liquid assets. Some commenters stated that if the agencies intended to apply the 25 percent outflow rate only to advances secured by level 2B liquid assets, it would significantly increase the cost of FHLB advances to member institutions because such advances are typically secured by mortgages or mortgage-related securities that are not HQLA. Commenters recommended reducing the outflow rate applicable to FHLB advances to 3 percent, the outflow rate for stable retail deposits. Other commenters requested confirmation that FHLB advances are subject to a maximum outflow rate of 25 percent and posited that involuntary outflow rates for FHLB advances have approached zero historically. The agencies were also asked to clarify whether FHLB guarantees, including letters of credit that secure public sector deposits, would be subject to the same outflow rate as FHLB advances.

The agencies are aware of the important contribution made by the FHLB system in providing funding to banking organizations and of the general collateral used to support FHLB borrowings. The agencies are clarifying that, under the final rule, the preferential 25 percent outflow rate applicable to secured funding transactions with certain sovereigns, multilateral development banks and U.S. GSEs applies to secured funding transactions that are secured by either level 2B liquid assets or assets that are not HQLA and that mature within 30 calendar days of a calculation date. FHLB advances that mature more than 30 calendar days from a calculation date are excluded from net cash outflows. Given the broad range of collateral accepted by FHLBs and the possibility of collateral quality deterioration or increased collateral haircuts, the agencies do not believe that a lower outflow rate for FHLB advances, such as the 3 percent outflow rate proposed by a commenter, would be appropriate. The agencies recognize that FHLB advances may be secured by diverse pools of collateral, and that this collateral may potentially include HQLA. Under § __.22(b)(1)(ii) of the final rule, HQLA that is pledged to a central bank or U.S. GSE to secure borrowing capacity but is not securing existing borrowings may be treated as unencumbered for the purposes of identifying eligible HQLA. The agencies acknowledge that in cases where advances and undrawn FHLB capacity are secured by a pool of collateral, covered companies may wish to exercise the flexibility of designating which collateral pledged to a FHLB is securing currently outstanding borrowings and also designating which subset of such collateral is securing those advances maturing within 30 calendar days of a calculation date. The agencies believe allowing covered companies this flexibility is appropriate, but emphasize that no asset may be double counted as eligible HQLA and as securing a borrowing as of a calculation date.

Tables 3a and 3b summarize the secured funding transaction and asset exchange outflow rates under the final rule.

TABLE 3a—SECURED FUNDING TRANSACTION OUTFLOW RATES

Categories for maturing secured funding transactions	Secured funding outflow rate
Secured by level 1 liquid assets	0%.
Secured by level 2A liquid assets	15%.
Transactions with sovereigns, multilateral development banks and U.S. GSEs subject to a 20% risk weight not secured by level 1 or level 2A liquid assets.	25%.
Secured by level 2B liquid assets	50%.
Customer short positions covered by other customers' collateral that is not HQLA	50%.
Secured by assets that are not HQLA, except as above	100%.
If the outflow rate listed above is greater than that for a wholesale unsecured transaction (that is not an operational deposit) with the same wholesale counterparty.	Apply to the secured funding transaction amount the wholesale unsecured non-operational outflow rate for that counterparty.
For collateralized deposits where the secured funding transaction outflow rate listed above is greater than that for a wholesale unsecured transaction with the same wholesale counterparty.	Apply to each portion of the secured funding transaction amount the wholesale unsecured outflow rate applicable to that portion, for that counterparty, including amounts that may be operational deposits or excess operational deposit amounts.

TABLE 3b—ASSET EXCHANGE OUTFLOW RATES

Covered company must deliver at maturity	Covered company will receive at maturity	Asset exchange outflow rate
Where a covered company has the asset that it will be required to deliver at the maturity of an asset exchange or where the asset has been re-used in a transaction that will mature no later than the maturity date of the asset exchange such that the asset required to be delivered will be available at the maturity date, and where the:		
Level 1 liquid assets	Level 1 liquid assets	0%
Level 1 liquid assets	Level 2A liquid assets	15%
Level 1 liquid assets	Level 2B liquid assets	50%
Level 1 liquid assets	Assets that are not HQLA	100%
Level 2A liquid assets	Level 2A liquid assets	0%
Level 2A liquid assets	Level 2B liquid assets	35%
Level 2A liquid assets	Assets that are not HQLA	85%
Level 2B liquid assets	Level 2B liquid assets	0%
Level 2B liquid assets	Assets that are not HQLA	50%

TABLE 3b—ASSET EXCHANGE OUTFLOW RATES—Continued

Covered company must deliver at maturity	Covered company will receive at maturity	Asset exchange outflow rate
Where a covered company does not have the asset that it will be required to deliver at the maturity of an asset exchange and where the asset has not been reused in a transaction that will mature no later than the maturity date of the asset exchange, and where the:		
Level 1, 2A, 2B liquid assets, or assets that are not HQLA	Level 1 liquid assets	0%
	Level 2A liquid assets	15%
	Level 2B liquid assets	50%
	Assets that are not HQLA	100%

k. Foreign Central Bank Borrowings Outflow Amount

The agencies recognize central banks' lending terms and expectations differ by jurisdiction. Accordingly, for a covered company's borrowings from a particular foreign jurisdiction's central bank, the proposed rule would have assigned an outflow rate equal to the outflow rate that such jurisdiction has established for central bank borrowings under a minimum liquidity standard. The proposed rule would have provided further that if such an outflow rate has not been established in a foreign jurisdiction, the outflow rate for such borrowings would be treated as secured funding pursuant to § __.32(j) of the proposed rule.

The agencies received no comments on this section and have adopted proposed § __.32(k) without change in the final rule.

l. Other Contractual Outflow Amounts

The proposed rule would have applied a 100 percent outflow rate to amounts payable within 30 calendar days of a calculation date under applicable contracts that are not otherwise specified in the proposed rule. Some commenters argued that the 100 percent outflow rate would have applied to some contractual expenses payable within 30 calendar days of a calculation date, such as operating costs and salaries that are operational expenses and should be excluded from outflows. One commenter also argued that the proposed rule's treatment of such expenses was not consistent with the examples of ''other outflows'' illustrated in Paragraph 141 of the Basel III Revised Liquidity Framework, which includes outflows to cover unsecured collateral borrowings, uncovered short positions, dividends or contractual interest payments and specifically excludes from this category operating costs. The commenter requested that the final rule be consistent with the Basel III Revised Liquidity Framework. Further, one commenter argued that including contractual expenses that are operational in nature would result in such expenses being included as outflows, yet the inflows from non-financial revenues would be excluded. Therefore, this commenter argued, the final rule should exclude operational costs from outflows and exclude from inflows non-financial revenues that are not enumerated in § __.33(b)–(f) of the proposed rule and excluded under § __.33(g) of the proposed rule (other cash inflows). One commenter requested clarification that there was no outflow rate associated with trade finance instruments and letters of credit with performance requirements under the proposed rule. Another commenter asked for clarification of the treatment of contingent trade finance obligations under the final rule. Another commenter asked for guidance on the treatment of projected cash outflows for certain contingency funding obligations such as variable rate demand notes, stable value funds, and other similarly structured products, noting that while the proposed rule did not provide outflow rates for these categories, the Basel III Liquidity Framework provided for national discretion when determining rates for such products.

The agencies are clarifying that the final rule excludes from outflows operational costs, because the agencies believe that assets specifically designated to cover costs, such as wages, rents, or facility maintenance, generally would not be available to cover liquidity needs that arise during stressed market conditions.

The final rule does not provide a specific outflow rate for trade finance obligations that are subject to the movement of goods or the provision of services. This would include documentary trade letters of credit; documentary and clean collection; import and export bills; and guarantees directly related to trade finance obligations, such as shipping guarantees. Instead, a covered company should calculate outflow amounts for lending commitments, such as direct import or export financing for non-financial firms, in accordance with § __.32(e) of the final rule.

Under the final rule, variable rate demand note amounts payable within 30 calendar days of a calculation date will be treated as a committed liquidity facility to a financial sector entity and will receive a 100 percent outflow rate pursuant to § __.32(e)(1)(vii) of the final rule. The agencies believe that this treatment is appropriate because such payments would likely be made by a covered company to support amounts coming due within 30 calendar days of a calculation date. With respect to an implicit agreement to guarantee a covered company's sponsored product, covered companies may be prohibited from doing so under § __.13 of the BHC Act, and such support has long been discouraged by the agencies.[85] If, however, a covered company's guarantee is in the form of a guaranteed investment contract (GIC) or a synthetic GIC (commonly referred to as a wrapper), then it will be treated as a commitment to a financial sector entity or SPE as appropriate under § __.32(e)(1)(vii) or (viii) of the final rule.

m. Excluded Amounts for Intragroup Transactions

The proposed rule would have excluded from a covered company's outflows and inflows all transactions between the covered company and a consolidated subsidiary or between consolidated subsidiaries of a covered company. Such transactions were excluded on the grounds that they would not result in a net liquidity change for a covered company on a consolidated basis.

One commenter expressed concern that section 32(h) of the proposed rule was contrary to the symmetrical treatment of funding provided by and to

[85] *See, e.g.,* OCC, Board, FDIC, and SEC, ''Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Certain Relationships With, Hedge Funds and Private Equity Funds,'' 79 FR 5536, 5790 (January 31, 2014); ''Interagency Policy on Banks/Thrifts Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates,'' OCC Bulletin 2004–2, Federal Reserve Supervisory Letter 04–1, FDIC FIL–1–2004 (January 5, 2004).

covered companies and its subsidiaries and between its subsidiaries in section 32(m)(1), which would have entirely excluded outflows arising from transactions between the covered company and its consolidated subsidiary. Consistent with the proposed rule's section 32(m), the final rule excludes from a covered company's outflows and inflows all transactions between the covered company and a consolidated subsidiary or between consolidated subsidiaries of a covered company. As discussed above under II.C.3.h, to address commenters concerns, the agencies have clarified that the 100 percent affiliate outflow rate under § __.32(h)(2) of the final rule applies solely to funding from a consolidated subsidiary of the same top-tier company of which the covered company is a consolidated subsidiary, but that is not a consolidated subsidiary of the covered company, due to the lack of the consolidation of the inflows and outflows with the covered company under applicable accounting standards. Accordingly, the agencies have removed the language from proposed § __.32(h)(2) that would have applied the outflow rate to funding from a consolidated subsidiary of the covered company.

4. Inflow Amounts

Under the proposed rule, a covered company's total cash inflow amount would be the lesser of: (1) the sum of the cash inflow amounts as described in § __.33 of the proposed rule; and (2) 75 percent of the expected cash outflows as calculated under § __.32 of the proposed rule. Similar to the total cash outflow amount, the total cash inflow amount would have been calculated by multiplying the outstanding balances of contractual receivables and other cash inflows as of a calculation date by the inflow rates described in § __.33 of the proposed rule. In addition, the proposed rule would have excluded certain inflows from the cash inflow amounts, as described immediately below. The agencies have adopted this structure for calculating total cash inflows in the final rule, with certain updates to the proposed inflow rates to address comments received.

a. Items Not Included as Inflows

Under the proposed rule, the agencies identified six categories of items that would have been explicitly excluded from cash inflows. These exclusions were meant to ensure that the denominator of the proposed LCR would not be influenced by potential cash inflows that may not be reliable sources of liquidity during a stressed scenario. The first excluded category would have consisted of any inflows derived from amounts that a covered company holds in operational deposits at other regulated financial companies. Because these deposits are made for operational purposes, the agencies reasoned that it would be unlikely that a covered company would be able to withdraw these funds in a crisis to meet other liquidity needs, and therefore excluded them. The final rule adopts this provision as proposed. The agencies expect covered companies to understand what deposits they have placed at other financial companies that are operational in nature and to use the same methodology to assess the operational nature of its deposits at other financial companies as it uses to assess the operational nature of their deposit liabilities from other financial companies.

A commenter requested clarification as to whether cash held at agent banks for other than operational purposes can count towards a covered company's HQLA or inflow amount. The agencies are clarifying that, depending on the manner in which the cash is held, it may qualify as an unsecured payment contractually payable to the covered company by a financial sector entity under § __.33(d)(1) of the final rule, in which case it would be subject to a 100 percent inflow rate. As discussed in section II.B.2.c above such placements do not meet the criteria for inclusion as HQLA.

The second category would have excluded amounts that a covered company expects to receive or is contractually entitled to receive from derivative transactions due to forward sales of mortgage loans and any derivatives that are mortgage commitments.

Two commenters recommended that the agencies distinguish forward sales of mortgage loans under GSE standby programs from other warehouse facilities, reasoning that the nature of the commitments provided under those programs and the creditworthiness of the GSEs should permit each covered company to include 100 percent of its notional balances under GSE standby programs as an inflow. Commenters argued that, unlike a warehouse facility, which involves the counterparty risk of a non-government-sponsored enterprise and the potential that loans will not close or will have incomplete loan documents, GSE standby programs include only closed and funded loans with the liquidity option provided directly by FNMA and FHLMC. According to the commenters, the loans are always eligible to be delivered to FNMA and FHLMC regardless of credit deterioration. Another commenter remarked on the asymmetry of the proposed rule's treatment of commitments, noting that if a covered company must include loan commitments in its outflows, then it should be allowed to include forward commitments to sell loans to GSEs in its inflows.

A commenter argued that the proposed rule would discourage covered companies from investing in the housing industry or GSE-backed securities because these would be subject to a 15 percent haircut when counted as HQLA and any expected inflow from mortgage commitments within the next 30 days would be excluded from the net outflow calculation. This commenter noted that it is unclear what impact this treatment would have on the mortgage markets.

The agencies recognize that covered companies may receive inflows as a result of the sale of mortgages or derivatives that are mortgage commitments within 30 days after the calculation date. However, the agencies believe that there are some potential liquidity risks from mortgage operations that should be captured in the LCR. During the recent financial crisis, it was evident that many institutions were unable to rapidly reduce mortgage lending pipelines even as market demand for mortgages slowed. Because of these liquidity risks, the final rule requires an outflow rate for mortgage commitments of 10 percent, with an exclusion of inflows. On balance, the agencies believe the 10 percent outflow rate for commitments coupled with no recognition of inflows is appropriate due to the risks evidenced in the recent financial crisis. The agencies are therefore finalizing this aspect of the rule as proposed.

The third excluded category would have comprised amounts arising from any credit or liquidity facility extended to a covered company. The agencies believe that in a stress scenario, inflows from such facilities may not materialize due to restrictive covenants or termination clauses. Furthermore, reliance by covered companies on inflows from credit facilities with other financial entities would materially increase the interconnectedness within the system. Thus, the material financial distress at one institution could result in additional strain throughout the financial system as the company draws down its lines of credit. Because of these likelihoods, the proposed rule would not have counted a covered company's credit and liquidity facilities as inflows.

Some commenters recommended that at least 50 percent of the unused portions of a covered company's committed borrowing capacity at a FHLB be treated as an inflow under the final rule. Commenters requested that the agencies allow a banking organization to increase its inflow amounts and thus decrease the denominator of its LCR by an amount equal to at least 50 percent of the unused borrowing commitments from an FHLB. The agencies have considered the role that FHLB borrowings played in the recent crisis and have decided not to recognize collateralized lines of credit in favor of promoting on-balance sheet liquidity.

A commenter requested that the agencies revisit the assumptions about asymmetric outflows and inflows under credit and liquidity facilities. The commenter proposed that a covered nonbank company be permitted to include amounts from committed credit and liquidity facilities extended to covered companies as inflows at the same rates at which it would be required to assume outflows if it extended the same facilities to the same counterparties, but only if the facilities do not contain material adverse change clauses, financial covenants, or other terms that could allow a counterparty to cancel the facility if the covered company experienced stress. According to the commenter, the balance sheet and funding profile of covered nonbank companies are substantially different from other covered companies.

The agencies continue to emphasize the importance of on-balance sheet liquidity and not the capacity to draw upon a facility, which, as stated above, may or may not materialize in a liquidity stress scenario even where the facilities do not contain material adverse change clauses or financial covenants. During a period of material financial distress, companies may not be in a position to extend funds under the facilities. Therefore, the agencies are adopting this provision in the final rule as proposed.

The fourth excluded category of inflows would have consisted of amounts included in a covered company's HQLA amount under § __.21 of the proposed rule and any amount payable to the covered company with respect to those assets. The agencies reasoned that because HQLA is already included in the numerator at fair market value, including such amounts as inflows would result in double counting. Consistent with the Basel III Revised Liquidity Framework, this exclusion also would have included all HQLA that mature within 30 calendar days of a calculation date. The agencies received no comments on this provision of the proposed rule and have adopted it in the final rule without change.

The fifth excluded category of inflows would have comprised amounts payable to the covered company or any outstanding exposure to a customer or counterparty that is a nonperforming asset as of a calculation date or that the covered company has reason to expect will become a nonperforming exposure 30 calendar days or less from a calculation date. Under the proposed rule, a nonperforming exposure was defined as any exposure that is past due by more than 90 calendar days or on nonaccrual status. This provision recognized the potential that a covered company will not receive the full inflow amounts due from a nonperforming customer. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule as proposed.

The sixth excluded category of inflows would have comprised items that have no contractual maturity date or items that mature more than 30 calendar days after a calculation date. The agencies are concerned that in a time of liquidity stress a covered company's counterparties will not pay amounts that are not contractually required in order to maintain their own liquidity or balance sheet. Items that mature more than 30 calendar days after a calculation date generally fall outside of the scope of the net cash outflow denominator.

The agencies received several comments relating to the treatment of the term of margin loans and, more generally, the maturity treatment of secured transactions that may be interrelated. The treatment of these secured transactions is described in section II.C.4.f, below.

Another commenter stated that loans that are offered on an open maturity basis and contractually due on demand, such as trade receivables, should be included as inflows rather than excluded as items that do not have a contractual maturity date under proposed § __.33(a)(6).

Section __.31 of the final rule describes how a covered company must determine the maturity date of a transaction for the purposes of the rule. The agencies have revised this provision to provide a maturity date for certain non-maturity transactions that would have otherwise been excluded as inflows under the final rule. Thus, as discussed below, certain unsecured wholesale cash inflows (including non-maturity deposits at other financial sector entities) and secured lending transactions, are treated as maturing on the first calendar day after the calculation date. The agencies recognize these specific inflows as day-one inflows to reflect symmetry in the outflow assumptions. Any other non-maturity inflow would be excluded under this provision.

b. Net Derivatives Cash Inflow Amount

In § __.33(b) of the proposed rule, the agencies proposed that a covered company's net derivative cash inflow amount would equal the sum of the payments and collateral that a covered company will receive from each counterparty to its derivative transactions, less, for each counterparty, if subject to a qualifying master netting agreement, the sum of payments and collateral that the covered company will make or deliver to each counterparty. This calculation would have incorporated the amounts due from and to counterparties under applicable transactions within 30 calendar days of a calculation date. Netting would have been permissible at the highest level permitted by a covered company's contracts with a counterparty and could not include off-setting inflows where a covered company has included as eligible HQLA any assets that the counterparty has posted to support those inflows. If the derivatives transactions are not subject to a qualifying master netting agreement, then the derivative cash inflows for that counterparty would have been included in the net derivative cash inflow amount and the derivative cash outflows for that counterparty would have been included in the net derivative cash outflow amount, without any netting. Under the proposed rule, the net derivative cash inflow amount would have been calculated in accordance with existing valuation methodologies and expected contractual derivative cash flows. In the event that the net derivative cash inflow for a particular counterparty was less than zero, such amount would have been required to be included in a covered company's net derivative cash outflow amount for that counterparty.

As with the net derivative cash outflow amount, pursuant to § __.33(a)(2), the net derivative cash inflow amount would not have included amounts arising in connection with forward sales of mortgage loans and derivatives that are mortgage commitments. The net derivative cash inflow amount would have included derivatives that hedge interest rate risk associated with a mortgage pipeline.

The agencies received no comments unique to this provision of the proposed rule. All related comments focused on the net derivatives cash outflow amount provision. This provision was intended to complement the net derivatives cash outflow amount provision, and the provision that would apply at any given time would depend on whether the covered company had a net ''due to'' or ''due from'' position with the counterparty. In the final rule, the agencies have made changes to § __.33(b) that are consistent with the changes described above in section II.C.3.c that the agencies made to § __.32(c). In both cases, the agencies have permitted the netting of foreign currency exchange derivative transactions that result in the full exchange of cash principal payments in different currencies within the same business day. As with all net cash inflows, any resulting net derivatives cash inflow amount would be subject to the overall 75 percent cap on total net inflows.

c. Retail Cash Inflow Amount

The proposed rule would have allowed a covered company to count as an inflow 50 percent of all contractual payments it expects to receive within 30 calendar days from retail customers and counterparties. This inflow rate reflected the agencies' expectation that covered companies will need to maintain a portion of their retail lending activity even during periods of liquidity stress. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule as proposed.

d. Unsecured Wholesale Cash Inflow Amount

The agencies believed that for purposes of the proposed rule, all wholesale inflows (for example, principal and interest receipts) from financial sector entities (and consolidated subsidiaries thereof) and from central banks generally would have been available to meet a covered company's liquidity needs. Therefore, the agencies proposed to assign such inflows a rate of 100 percent.

The agencies also expect covered companies to maintain ample liquidity to sustain core businesses lines, including continuing to extend credit to retail customers and wholesale customers and counterparties that are not financial sector entities. Indeed, one purpose of the proposed rule was to ensure that covered companies would have sufficient liquidity to sustain such business lines during a period of liquidity stress. While the agencies acknowledge that, in times of liquidity stress, covered companies can curtail some activity to a limited extent, covered companies would likely continue to renew at least a portion of maturing credit and extend some new loans due to reputational and business considerations. Therefore, the agencies proposed to apply an inflow rate of 50 percent for inflows due from wholesale customers or counterparties that are not financial sector entities, or consolidated subsidiaries thereof. With respect to revolving credit facilities, already drawn amounts would not have been included in a covered company's inflow amount, and undrawn amounts would be treated as outflows under § __.32(e) of the proposed rule. This is based upon the agencies' assumption that a covered company's counterparty would not repay funds it is not contractually obligated to repay in a stressed scenario.

A commenter requested that the final rule provide a 100 percent inflow treatment for inflows due from trade financing activities with a residual maturity of 30 calendar days or less as of the calculation date, rather than the overall 50 percent outflow for non-financial sector entities. Trade finance receivables coming due from non-financial corporate entities that are contractually due within 30 days receive the same treatment as other loans coming due from non-financial counterparties and that is a 50 percent inflow. This recognizes that the covered company will likely have new lending and loan renewals for at least a portion of loans coming due within the next 30 days. The agencies continue to believe that these inflow rates accurately reflect the effect of material liquidity stress upon an institution, as described above, and are thus adopting this provision of the final rule as proposed.

One commenter requested clarification regarding the proposed rule's treatment of fee income. The commenter argued that unless fee income is included under wholesale payments, there appeared to be no provision or discussion of the possibility that fee income will greatly decline during market stress. The agencies consider fee income to be a contractual payment and its inflow rate would depend on whether the counterparty owing the fee is a retail customer or counterparty (in which case the inflow rate would be 50 percent under § __.33(c)), a financial sector entity or central bank (in which case the inflow rate would be 100 percent under § __.33(d)(1)), or a non-financial sector wholesale customer or counterparty (in which case the inflow rate would be 50 percent under § __.33(d)(2)).

e. Securities Cash Inflow Amount

The proposed rule would have provided that inflows from securities owned by a covered company that were not included in a covered company's HQLA amount and that would mature within 30 calendar days of the calculation date would have received a 100 percent inflow rate. Such amounts would have included all contractual dividend, interest, and principal payments due and expected to be paid to a covered company within 30 calendar days of a calculation date, regardless of their liquidity. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule.

f. Secured Lending and Asset Exchange Cash Inflow Amounts

i. Definitions and Inflow Rates

The proposed rule provided that a covered company would be able to recognize cash inflows from secured lending transactions that matured within 30 calendar days of a calculation date. The proposed rule would have defined a secured lending transaction as any lending transaction that gave rise to a cash obligation of a counterparty to a covered company that was secured under applicable law by a lien on specifically designated assets owned by the counterparty and included in the covered company's HQLA amount that gave the covered company, as a holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution. Secured lending transactions would have included reverse repurchase transactions, margin loans, and securities borrowing transactions.

The proposed rule would have assigned inflow rates to all contractual payments due to the covered company under secured lending transactions based on the quality of the assets securing the transaction. These inflow rates generally would have complemented the outflow rates on secured funding transactions under § __.32(j)(1) of the proposed rule. Consistent with the Basel III Revised Liquidity Framework, the inflow amount from secured lending transactions or the outflow amount from secured funding transactions would have been calculated on the basis of each transaction individually. However, the symmetry between the proposed inflow and outflow rates recognized the benefits of a matched book approach to managing secured transactions, where applicable. The proposed rule also would have assigned a 50 percent inflow rate to the contractual payments due from customers that had borrowed on margin, where such margin loans were collateralized by assets that were not HQLA.

While the provisions relating to secured lending transactions governed the cash obligations of counterparties, the proposed rule would have defined asset exchanges as the transfer of non-cash assets. A covered company's liquidity position may improve in instances where a counterparty is contractually obligated to deliver higher quality assets to the covered company in return for less liquid, lower-quality assets. The proposed rule would have reflected this through the proposed asset exchange inflow rates, which were based on a comparison of the quality of the asset to be delivered by a covered company with the quality of the asset to be received from a counterparty. Asset exchange inflow rates progressively increased on a spectrum that ranged from a zero percent inflow rate where a covered company would be receiving assets that are the same HQLA level as the assets that it would be required to deliver through a 100 percent inflow rate where a covered company would be receiving assets that are of significantly higher quality than the assets that it would be required to deliver.

Many commenters noted that a contradiction existed between the definition of a secured lending transaction under the proposed rule, which would have been limited to transactions that were secured by assets included in the covered company's HQLA amount, and the proposed secured lending transaction cash inflow amounts which would have recognized inflows for secured lending transactions that are secured by assets that are not HQLA. Commenters therefore requested that the final rule clarify that the 100 percent inflow rate would be applied to transactions secured by assets that are not eligible HQLA. In addition, other commenters objected to the fact that the proposed rule applied inflow rates for secured lending transactions secured by level 1, level 2A, and level 2B liquid assets only when the assets were eligible HQLA. These commenters argued that the difference in phrasing could lead to uncertainty about the treatment of transactions secured by liquid assets that are not included in a company's eligible HQLA because the operational requirements are not satisfied. Moreover, the commenters argued that the perceived matched book parity of the proposed rule would not apply to a large number of transactions that actually have matched maturities.

As described in section II.B.3 of this Supplementary Information section, the agencies recognized the need to clarify the distinction between the criteria for assets identified as HQLA in § __.20 of the final rule and the requirements for eligible HQLA set forth in § __.22 of the final rule. The agencies recognize that secured lending transactions may be secured by assets that are not eligible HQLA and agree with commenters that the definition of secured lending transaction was too narrow and that it should be revised to remove the requirement that the collateral securing a secured lending transaction must be eligible HQLA. Therefore, under the final rule, secured lending transactions include the cash obligations of counterparties to the covered company that are secured by assets that are HQLA regardless of whether the HQLA is eligible HQLA and also include the cash obligations of counterparties that are secured by assets that are not HQLA. Accordingly, the agencies have amended the requirements for the secured lending transaction inflow amounts under § __.33(f) of the final rule to remove the references to the requirement that the assets securing a secured lending transaction be eligible HQLA.

The agencies continue to believe that the inflow rate for a secured lending transaction that has a maturity date (as determined under § __.31 of the final rule) within 30 calendar days should be based on the type of collateral that is used to secure that transaction. Generally, the agencies assume that upon the maturity of a secured lending transaction, the covered company may be obligated to return the collateral to the counterparty and receive cash from the counterparty in fulfilment of the counterparty's cash obligation. Therefore, for the purpose of recognizing a cash inflow, it is crucial that the collateral securing a secured lending transaction be identified as being available for return to the counterparty at the maturity of the transaction.

Under the final rule, the secured lending transaction inflow rates are designed to complement the outflow rates for secured funding transactions (that are not secured funding transactions conducted with sovereigns, multilateral development banks, or U.S. GSEs and are not customer short positions facilitated by other customers' collateral) secured by the same quality of collateral and, for collateral that is held by the covered company as eligible HQLA,[86] the haircuts for the various categories of HQLA.

In the case of a secured lending transaction that matures within 30 calendar days of a calculation date that is secured by an asset that is not held by the covered company as eligible HQLA, but where the collateral has not been rehypothecated such that the asset is still held by the covered company and is available for immediate return to the counterparty, the agencies have adopted a 100 percent inflow rate (except for margin loans secured by assets that are not HQLA, which will receive a 50 percent inflow rate). Unlike secured lending transactions where collateral is held as eligible HQLA and is therefore included in the calculation of the HQLA amount at the calculation date, the agencies determined that the inflow for transactions where collateral is not held as eligible HQLA but is available for immediate return to the counterparty should receive a 100 percent inflow reflecting the settlement of the counterparty's cash obligation at the maturity date.

Section II.C.4.ii below discusses instances where the collateral securing the secured lending transaction has been rehypothecated in another transaction as of a calculation date. The inflow rates applied to maturing secured lending transactions are shown in Table 4a.

With respect to asset exchange inflows, the agencies did not receive significant comments on the proposed rule's treatment of asset exchanges and are adopting them in the final rule largely as proposed (Table 4b.). However, the agencies are clarifying for purposes of the final rule that where a covered company has rehypothecated an asset received from a counterparty in an asset exchange transaction, a zero percent inflow rate would be applied to the transaction under the final rule, reflecting the agencies' concern that the covered company would be required to purchase the asset on the open market to settle the asset exchange, as described for assets exchange outflows in section II.C.3.j above.

ii. The Reuse of Collateral and Certain Prime Brokerage Transactions

The proposed rule would have applied a 50 percent inflow rate to inflows from collateralized margin loans that are secured by assets that are not HQLA and that are not reused by the covered company to cover any of its short positions. Several commenters

[86] The agencies reiterate that a covered company cannot treat an asset as eligible HQLA that it received with rehypothecation rights if the owner has the contractual right to withdraw the asset without an obligation to pay more than de minimis remuneration at any time during the prospective 30 calendar-day period per § __.22(b)(5) of the final rule.

requested that the agencies expand this inflow rate to also apply to collateralized margin loans that are secured by collateral that is eligible HQLA or otherwise held at the covered company and not reused in any other transaction.[87] These commenters also suggested this proposed 50 percent inflow rate should be applied regardless of the maturity of the loan because, although such margin loans may have a contractual maturity date that is more than 30 calendar days from a calculation date, the contractual agreements would require the customer to repay the loan in the event the customer's portfolio composition materially changes. Commenters argued that the agencies had not taken into account that a significant portion of prime brokerage business consists of short-term secured financing, such as margin loans and loans of securities to effect customer short positions. Commenters also expressed concern that the terms of certain contracts, such as term margin agreements, require customers to maintain market neutral portfolios with increasing margin requirements and reduced leverage or financing based on the level of asymmetry between customer long and short positions. In particular, commenters requested that the agencies recognize collateralized term margin loans not secured by HQLA as generating inflows regardless of maturity because financings under term margin loans are designed to be treated as overnight transactions that are due on demand if the customer does not satisfy the loan terms.

More generally, commenters asked that the agencies revise the proposed rule such that it more fully capture the matched secured lending and secured funding transactions that occur in prime brokerage and matched book activity. As addressed in section II.C.1. b of this Supplementary Information section, commenters also requested that certain related inflow amounts be excluded from the aggregate cap on inflows in calculating the net cash inflow amount. Commenters asked the agencies to reevaluate the treatment of matched transactions based on whether the collateral is rehypothecated or remains in inventory and based on the term of the secured funding transaction to determine the covered company's net cash outflow over a 30 calendar-day period.

The agencies recognize that prime brokerage, matched book, and other activities conducted at covered companies make significant use of the rehypothecation of collateral that may have been provided for use by the covered company through secured lending transactions and asset exchanges (together with derivative assets, other secured counterparty obligations, or other transactions). Beyond the reuse of specific collateral, the agencies also recognize the potential interrelationship of certain transactions within prime brokerage activities, both at an individual customer level (for example, through market neutrality requirements) and in the aggregate portfolio of customers. Consistent with the Basel III Revised Liquidity Framework, the agencies do not believe that a 100 percent inflow rate for all margin loans secured by assets that are not HQLA and that mature within 30 calendar days of a calculation date is appropriate. The 50 percent inflow rate on these margin loans recognizes that not all margin loans may pay down during a stress period and covered companies may have to continue to fund a proportion of margin loans over time. In requiring the 50 percent inflow rate on such margin loans, the agencies note the symmetry with the secured funding transaction outflow rate required for customer short positions that are covered by other customers' collateral that is not HQLA. The agencies believe this symmetrical treatment balances the general treatment of individual secured funding and secured lending transactions under the rule with certain relationships that may potentially apply within prime brokerage activities, including contractual market neutrality clauses applicable to certain customers and certain aggregate customer behaviors. The agencies are further clarifying that margin loans secured by HQLA are required to apply the inflow rates applicable to any other type of secured lending transaction secured by the same collateral, including inflow rates applicable to collateral that is eligible HQLA. As discussed in section II.C.1.b above, although the final rule permits the use of specified netting in the determination of certain transaction amounts, no individual inflow categories are exempt from the aggregate cap of inflows at 75 percent of gross outflows in the net cash inflow amount calculation.

The agencies believe that, consistent with other foundational elements of the final rule, secured lending transactions that have a maturity date as determined under the final rule of greater than 30 calendar days from a calculation date should be excluded from the LCR calculation. Similarly, the agencies believe this principle should be maintained in respect to margin loans with remaining contractual terms of greater than 30 calendar days from a calculation date because a covered company may not rely on inflows that are not required, by relevant contractual terms, to occur within the 30 calendar-day period of the LCR calculation. With respect to margin loans that are secured by HQLA, the agencies believe that the inflow rates applied to secured lending transactions, which are complementary to the outflow rates for secured funding transactions that are secured by HQLA, are appropriate given the cash obligation of the counterparty. Moreover, where margin loans are secured by assets that the covered company includes as eligible HQLA, the inflow rates applied to the secured lending transactions would be complementary to the haircut assumptions for the various categories of HQLA and also are appropriate given the cash obligation of the counterparty and the covered company's obligation to return the value of the HQLA.

The agencies are aware that collateral may be rehypothecated to secure a secured funding transaction or other transaction or obligation (or delivered in an asset exchange) that matures either within 30 calendar days of a calculation date, or that matures more than 30 calendar days after a calculation date. In either case, different inflow rates are applied under the final rule to the secured lending transaction (or asset exchange) that provides the collateral in order to address the interdependency with the secured funding transaction (or asset exchange) for which the collateral was reused.

If the transaction or obligation for which the collateral has been reused has a maturity date (as determined under § __.31 of the final rule) within 30 calendar days of a calculation date, the covered company may anticipate receiving, or regaining access to, the collateral within the 30-day period. Assuming that the maturities are matched or that the maturity of the secured lending transaction is later than that of the secured funding transaction, the covered company may therefore anticipate having the collateral available at the maturity of the secured lending transaction (or asset exchange) from which the collateral was originally obtained. Accordingly, under the final rule, if collateral obtained from a secured lending transaction (or received from a prior asset exchange) that

[87] As discussed above, the agencies have adopted a 100 percent inflow rate for all secured lending transactions that are secured by assets that are not eligible HQLA, have not been rehypothecated by the bank, and are available for the immediate return to the counterparty at any time.

matures within 30 calendar days of a calculation date is reused in a secured funding transaction (or delivered in a second asset exchange) that matures within 30 calendar days of a calculation date, the covered company may recognize an inflow from the secured lending transaction (or prior asset exchange) as occurring at the maturity date.[88] As required under § __.31 of the final rule, the maturity of this secured lending transaction (or prior asset exchange) must be no earlier than the secured funding transaction (or second asset exchange). This treatment will generally apply a symmetric treatment for outflows and inflows occurring within a 30 calendar-day period.

Consistent with the Basel III Revised Liquidity Framework, the final rule will not recognize inflows from secured lending transactions (or asset exchanges) that mature within 30 calendar days from a calculation date where the collateral received is reused in a secured funding transaction (or asset exchange) that matures more than 30 calendar days from the calculation date, or where the collateral is otherwise reused in a transaction or to cover any obligation that could extend beyond 30 calendar days from a calculation date. This is because a covered company should assume that such secured lending transaction (or asset exchange) may need to be rolled over and will not give rise to a cash (or net collateral) inflow, reflecting its need to continue to cover the secured funding transaction (or asset exchange or other transaction or obligation). For example, a covered company would not recognize an inflow from a margin loan that matures within 30 calendar days of a calculation date if the loan was secured by collateral that had been reused in a term repurchase transaction that matured more than 30 calendar days from a calculation date.

Tables 4a and 4b summarize the inflow rates for secured lending transactions and asset exchanges.

TABLE 4a—SECURED LENDING TRANSACTION INFLOW RATES

Categories for secured lending transactions maturing within 30 calendar days of the calculation date	Secured lending inflow rate applied to contractual amounts due from the counterparty
Where the asset securing the secured lending transaction is included in the covered company's eligible HQLA as of the calculation date, and the transaction is:	
Secured by level 1 liquid assets	0%
Secured by level 2A liquid assets	15%
Secured by level 2B liquid assets	50%
Where the asset securing the secured lending transaction is not included in the covered company's eligible HQLA as of the calculation date but is still held by the covered company and is available for immediate return to the counterparty, and the transaction is:	
Secured by level 1, level 2A or level 2B liquid assets	100%
A collateralized margin loan secured by assets that are not HQLA	50%
Not a collateralized margin loan and is secured by assets that are not HQLA	100%
Where the asset securing the secured lending transaction has been rehypothecated and used to secure, or has been delivered into, any transaction or obligation which:	
Will not mature or expire within 30 calendar days or may extend beyond 30 calendar days of the calculation date	0%
Where the asset securing the secured lending transaction has been rehypothecated and used to secure any secured funding transaction or obligation, or delivered in an asset exchange, that will mature within 30 calendar days of the calculation date,* and the secured lending transaction is:	
Secured by level 1 liquid assets	0%
Secured by level 2A liquid assets	15%
Secured by level 2B liquid assets	50%
A collateralized margin loan secured by assets that are not HQLA	50%
Not a collateralized margin loan and is secured by assets that are not HQLA	100%

* Under § __.31(a)(3) of the final rule, the maturity date of the secured lending transaction cannot be earlier than the maturity date of the secured funding transaction or asset exchange.

TABLE 4b—ASSET EXCHANGE INFLOW RATES

Covered company will receive at maturity	Covered company must post at maturity	Asset exchange inflow rate
Where the asset originally received in the asset exchange has not been rehypothecated to secure any transaction or obligation, or delivered in an asset exchange, that will mature or expire more than 30 calendar days from a calculation date or may extend beyond 30 calendar days of a calculation date: **		
Level 1 liquid assets	Level 1 liquid assets	0%
Level 1 liquid assets	Level 2A liquid assets	15%
Level 1 liquid assets	Level 2B liquid assets	50%
Level 1 liquid assets	Assets that are not HQLA	100%

[88] The amount of the inflow would be determined by whether the collateral that the covered company received in the secured lending transaction or prior asset exchange was HQLA or non-HQLA as summarized in Tables 4a and 4b.

TABLE 4b—ASSET EXCHANGE INFLOW RATES—Continued

Covered company will receive at maturity	Covered company must post at maturity	Asset exchange inflow rate
Level 2A liquid assets	Level 1 or level 2A liquid assets	0%
Level 2A liquid assets	Level 2B liquid assets	35%
Level 2A liquid assets	Assets that are not HQLA	85%
Level 2B liquid assets	Level 1 or level 2A or level 2B liquid assets	0%
Level 2B liquid assets	Assets that are not HQLA	50%
Where the asset originally received in the asset exchange has been rehypothecated to secure any transaction or obligation, or delivered in an asset exchange, which will mature or expire more than 30 calendar days from the calculation date or may extend beyond 30 calendar days of the calculation date:		0%

** Under § __.31(a)(3) of the final rule, the maturity date of the asset exchange cannot be earlier than the maturity date of the transaction or obligation for which the collateral was reused.

g. Segregated Account Inflow Amount

Several commenters noted that unlike the Basel III Revised Liquidity Framework, the proposed rule did not recognize inflows from the release of assets held in segregated accounts in accordance with regulatory requirements for the protection of customer trading assets, such as Rule 15c3–3.[89] A few commenters argued that Rule 15c3–3 is, in effect, a liquidity rule that ensures that broker-dealers have sufficient liquid assets to meet their obligations to customers. Another commenter argued that by failing to address these assets in the proposed rule, the agencies had failed to consider the SEC's functional regulation of broker-dealers. Commenters noted that because these inflows are not specifically addressed in the proposed rule, the assets would be treated as encumbered and would not be eligible to offset deposits subject to the outflow rate applicable to affiliated sweep deposits. A commenter argued that because of the regulatory regime that governs these segregated assets, there is no market risk to the banking organization. One commenter requested that the release of balances held in segregated accounts be subject to a 100 percent inflow rate.

The agencies recognize that segregated accounts required for the protection of customer trading assets are designed to meet potential outflows to customers under certain circumstances. The agencies also recognize, however, that such segregated amounts held as of an LCR calculation date will be amounts calculated by the covered company at or prior to the calculation date and generally on a net basis across existing customer free cash, loans, and short positions. The agencies acknowledge that these segregated amounts will necessarily be recalculated within a 30 calendar-day period, which could potentially lead to a reduction in the amount that is required to be segregated, and a corresponding release of a portion of the amount held as of a calculation date. Accordingly, the agencies have included a provision in the final rule that permits a covered company to recognize certain inflows from broker-dealer segregated account releases based on the change in fair value of the customer segregated account balances between the calculation date and 30 calendar days following the calculation date.

The agencies do not believe that 100 percent of the value of segregated accounts held as of a calculation date would be an appropriate inflow amount because this inflow amount may not, in fact, be realized by the covered company. As a general matter, the final rule requires outflow amounts and inflow amounts to be calculated by using only the balances and transaction amounts at a calculation date, and not based on anticipated future balances or obligation amounts. However, consistent with the Basel III Revised Liquidity Framework, the agencies have determined that the appropriate inflow amount for the release of broker-dealer segregated account assets is dependent on the anticipated amount of broker-dealer segregated account assets that may need to be held by the covered company 30 calendar days from a calculation date. The anticipated amount of broker-dealer segregated account assets that may need to be held 30 calendar days from a calculation date should be based on the impact of those outflow and inflow amounts described under the final rule that are specifically relevant to the calculation of the segregated amount under applicable law. The covered company must therefore calculate the anticipated required balance of the broker-dealer segregated account assets as of 30 calendar days from a calculation date, assuming that customer cash and collateral positions have changed consistent with the outflow and inflow calculations required under § __.32 and § __.33 of the final rule as applied to any transaction affecting the calculation of the segregated balance. If the calculated future balance of the segregated account assets is less than the balance at the calculation date, then the broker-dealer segregated account inflow amount is the value of assets that would be released from the segregated accounts.

In addition and as discussed above, the agencies have added a provision to the maturity date calculation requirements of § __.31(a)(5) of the final rule to clarify that broker-dealer segregated account inflow under § __.33(g) will not be deemed to occur until the date of the next scheduled calculation of the amount as required under applicable legal requirements for the protection of customer assets with respect to each broker-dealer segregated account, in accordance with the covered company's normal frequency of recalculating such requirements. If, for example, a broker-dealer performs this calculation on a daily basis, the inflow may occur on the day following a calculation date. If a broker-dealer typically performs the calculation on a weekly basis, the inflow would be deemed to occur the day of the next regularly scheduled calculation.

h. Other Cash Inflow Amounts

Under the proposed rule, the covered company's inflow amount, as of the calculation date, would have included zero percent of other cash inflow amounts not described elsewhere in the proposed rule. The agencies continue to believe that limiting inflow amounts in the final rule to those categories specified, which reflect certain stressed assumptions, is important to the calculation of the total cash inflow amount and the LCR as a whole. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule as proposed.

[89] 17 CFR 240.15c3–3.

i. Excluded Amount for Intragroup Transactions

Under the proposed rule, inflow amounts would not have included amounts arising out of transactions between a covered company and its consolidated subsidiary or amounts arising out of transactions between a consolidated subsidiary of a covered company and another consolidated subsidiary of that covered company. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule.

III. Liquidity Coverage Ratio Shortfall

Although the Basel III Revised Liquidity Framework provides that a banking organization is required to maintain an amount of HQLA sufficient to meet its liquidity needs within a 30 calendar-day stress period, it also makes clear that it may be necessary for a banking organization to fall below the requirement during a period of liquidity stress. The Basel III Revised Liquidity Framework therefore provides that any supervisory decisions in response to a reduction of a banking organization's LCR should take into consideration the objectives of the Basel III Revised Liquidity Framework. This provision of the Basel III Revised Liquidity Framework indicates that supervisory actions should not discourage or deter a banking organization from using its HQLA when necessary to meet unforeseen liquidity needs arising from financial stress that exceeds normal business fluctuations.

The proposed rule included a supervisory framework for addressing a shortfall with respect to the rule's LCR that is consistent with the intent of having HQLA available for use during stressed conditions, as described in the Basel III Revised Liquidity Framework. This supervisory framework included notice and response procedures that would have required a covered company to notify its appropriate Federal banking agency of any LCR shortfall on any business day, and would have provided the appropriate Federal banking agency with flexibility in its supervisory response. In addition, if a covered company's LCR fell below the minimum requirement for three consecutive business days or if its supervisor determined that the covered company is otherwise materially noncompliant with the proposed rule, the proposed rule would have required the covered company to provide to its supervisor a plan for remediation of the liquidity shortfall.

Some commenters stated that the requirement in the proposed rule to report non-compliance to the appropriate Federal banking agency appears to contradict the BCBS premise that the stock of HQLA should be available for use during periods of stress. Other commenters requested that the agencies take into consideration that when an institution's LCR falls below 100 percent, it is not necessarily indicative of any real liquidity concerns. Commenters expressed concern that disclosure requirements under securities laws or stock exchange listing rules could require an institution to immediately and publicly report an LCR below 100 percent or the adoption of a remediation plan, which would make the HQLA de facto unusable during times of stress and could exacerbate any burgeoning liquidity stress being experienced. Similarly, commenters expressed concern that media reports of an institution's LCR falling below100 percent would not necessarily reflect the underlying reasons and complexities in the case of a temporary LCR shortfall and may create liquidity instability. Accordingly, such commenters recommended that any public disclosure at the bank holding company level be carefully tailored. Alternatively, one commenter requested that any supervisory procedures be triggered only when a covered company's LCR has fallen by at least 5 percent for a period of at least 3 business days. In order to accommodate normal fluctuations in a firm's day-to-day liquidity position, the commenter encouraged the agencies to consider providing more flexibility in the final rule. One commenter requested that the agencies clarify whether, in addition to monitoring a covered company's compliance with the LCR, the agencies would be taking other indicators of financial health into account. Another commenter noted that daily notification requirements to a covered company's appropriate Federal banking agency for non-compliance with the LCR would detract from the company's critical operating duties. Several commenters requested that the agencies reconsider the negative connotation of falling below the target ratio and the requirement to provide a written remediation plan, which they stated would cause the LCR to become a bright line requirement to be met each day instead of serving as a cushion for stressful times. One commenter requested that the agencies consider making greater use of the countercyclical potential of liquidity regulation by permitting liquidity requirements to be adjusted upward during periods where markets are overheated, similar to the countercyclical capital requirements under the Basel III capital framework.

In the proposed rule, consistent with the Basel III Revised Liquidity Framework, the agencies affirmed the principle that a covered company's HQLA amount is expected to be available for use to address liquidity needs in a time of stress. The agencies believe that the proposed LCR shortfall framework would provide them with the appropriate amount of supervisory flexibility to respond to LCR shortfalls. Depending on the circumstances, an LCR shortfall would not have necessarily resulted in supervisory action, but, at a minimum, would have resulted in heightened supervisory monitoring. The notification procedures that were to be followed whenever a covered company dropped below the required LCR were intended to enable supervisors to monitor and respond appropriately to the unique circumstances that are giving rise to a covered company's LCR shortfall. This supervisory monitoring and response would be hindered if such notification were only to occur when a covered company dropped a specified percentage below the LCR requirement. Such notification may give rise to a supervisory or enforcement action, depending on operational issues at a covered company, whether the violation is a part of a pattern or practice, whether the liquidity shortfall was temporary or caused by an unusual event, and the extent of the shortfall or noncompliance. The agencies believe the proposed LCR shortfall framework provides appropriate supervisory flexibility and are adopting it in the final rule substantially as proposed.

The agencies recognize that there will be a period of time during which covered companies will be calculating their LCR on the last day of each calendar month, rather than on each business day. Accordingly, the final rule requires that during that period, if a covered company's LCR is below the required minimum when it is calculated on the last day of each calendar month, or if its supervisor has determined that the covered company is otherwise materially noncompliant, the covered company must promptly consult with the appropriate Federal banking agency to determine whether the covered company must provide a written remediation plan.

A covered company dropping below the LCR requirement will necessitate allocating resources to address the LCR shortfall. However, the agencies believe this allocation of resources is appropriate to promote the overall safety and soundness of the covered company. As with all supervisory monitoring, the agencies will monitor a covered company's compliance with the final rule in conjunction with the agencies' overall supervisory framework. If necessary, the agencies will adjust the supervisory response to address any deterioration in the financial condition of a covered company.

With regard to counter cyclicality, by requiring that ample liquid assets be held during favorable conditions such that a covered company can use them in times of stress, the LCR effectively works as a countercyclical requirement. The agencies are not adding additional countercyclical elements to the final rule.

As noted elsewhere in this Supplementary Information section, the proposed rule did not include disclosure requirements for the LCR and the agencies anticipate that they will seek comment on reporting requirements through a future notice, which will be tailored to disclose the appropriate level of information. The agencies are clarifying that, other than any public disclosure requirements that may be proposed in a separate notice, reports to the agencies of any decline in a covered company's LCR below 100 percent, and any related supervisory actions would be considered and treated as confidential supervisory information.

IV. Transition and Timing

The proposed rule included a transition period for the LCR that would have required covered companies to maintain a minimum LCR as follows: 80 percent beginning on January 1, 2015, 90 percent beginning on January 1, 2016, and 100 percent beginning on January 1, 2017, and thereafter. The proposed transition period accounted for the potential implications of the proposed rule on financial markets, credit extension, and economic growth and sought to balance these concerns with the proposed LCR's important role in promoting a more robust and resilient banking sector.

Commenters expressed concern with: (i) The proposed transition period with regard to the operational requirements necessary to meet the proposed rule, (ii) the fact that the transition period differs from the timetable published in the Basel III Revised Liquidity Framework, and (iii) the HQLA shortfall amount that the financial system faces. One commenter expressed concern that the proposal was premature because the BCBS is currently reviewing ways to reduce the complexity and opaqueness of the Basel III capital framework.

Several commenters stated that compliance with the proposed transition timeline would require comprehensive information technology improvements and governance processes over a short period of time. One commenter noted that covered companies will need to make operational changes to comply with the new requirement and that some covered companies will need to adjust their asset composition significantly. One commenter argued that certain covered companies have not historically been subject to formal regulatory reporting requirements at the holding company level and that the agencies should consider this in determining whether to impose accelerated implementation on these companies. The commenter further stated that the implementation challenges posed by the proposal would be particularly acute for these covered companies and requested that the final rule provide an extended transition period for those companies that have not traditionally been subject to the regulatory reporting regimes that are applicable to bank holding companies. Similarly, two commenters noted that U.S. banking organizations that have not been identified as G–SIBs by the Financial Stability Board have not been previously required to report their liquidity positions on a daily basis under the Board's FR 2052a reporting form, and thus these banking organizations have not had time to upgrade data and systems to be in a position to comply with the proposed rule and its daily reporting requirements. Additionally, according to commenters, accelerated implementation would compress the full cost and burden of compliance into an extremely brief period for these organizations.

A few commenters requested that the agencies consider that the implementation of the proposed LCR requirements would happen contemporaneously with the implementation of other resource-intensive regulatory requirements, all of which would require changes to the infrastructure of banking organizations. Several commenters requested that the implementation date of the rule be delayed, with some specifically requesting delay by 12 months to begin no earlier than January 1, 2016, one commenter requesting a delay by 24 months to begin no earlier than January 1, 2017, and another commenter requesting a phase-in period of three years.

Several commenters requested that the proposed transition time frame follow the Basel III Revised Liquidity Framework. One commenter stated that this approach would minimize the likelihood of an adverse impact on the financial markets. One commenter stated that an accelerated implementation timeline would make it impossible for there to be a level playing field for LCR comparison across all internationally active banking organizations until 2019 when the Basel III Revised Liquidity Framework becomes fully implemented in other jurisdictions, and that asymmetrical treatment between the United States and Europe will advantage foreign lenders and borrowers, as well as their economies.

A few commenters expressed concern that the proposed transition timeline was in part predicated on a level of shortfall in HQLA estimated by the agencies. One commenter argued that the empirical evidence justifying the agencies' aggregate HQLA amount shortfall conclusion on which the implementation timing was based is very limited and requested that the agencies revisit the conclusion regarding the amount of shortfall. The commenter expressed concern that the shortfall assumption may be based on the less stringent approach of the Basel III Revised Liquidity Framework. The commenter also expressed concern that the estimate of the LCR shortfall does not take into account any shortfall that may be present in foreign banking organizations that will be required to form an intermediate holding company under the Board's Regulation YY,[90] and thus the estimate of the shortfall is likely significantly underestimated.[91] A commenter stated that its analysis indicated that a number of institutions would find it difficult to reach a LCR of 80 percent by 2015. Several commenters requested that a quantitative impact study be conducted before the agencies implement an accelerated implementation schedule. Several commenters requested that the agencies clarify the interaction between the daily calculation requirement under the proposed rule, and the current liquidity reporting that certain firms are undertaking under the Board's FR 2052a and Liquidity Monitoring Report (FR 2052b) reporting forms. In particular, the commenters expressed concern that the agencies would be requiring multiple daily calculations and reports with respect to the same data.

[90] *See* 12 CFR 252.153.

[91] As noted above, the agencies have not applied the requirements of the rule to foreign banking organizations or intermediate holding companies that are not otherwise covered companies.

With respect to commenters' concerns regarding the proposed rule's deviation from the Basel III Revised Liquidity Framework phase-in, the agencies believe the accelerated phase-in properly reflects the significant progress covered companies have made since the financial crisis in enhancing their overall liquidity positions. The agencies continue to believe that the minimum level of the LCR that would be applicable in each calendar year specified in the proposed transition periods is appropriate to ensure that the financial stability benefits presented by the standard are appropriately realized. Accordingly, as with the proposed rule, the final rule requires covered companies to maintain a LCR as follows: 80 percent beginning on January 1, 2015, 90 percent beginning on January 1, 2016, and 100 percent beginning on January 1, 2017, and thereafter. These transition periods are intended to facilitate compliance with a new minimum liquidity requirement and the agencies expect that covered companies with LCRs at or near 100 percent generally would not reduce their liquidity coverage during the transition period. The agencies emphasize that the final rule's LCR is a minimum requirement and that companies should have internal liquidity management systems and policies in place to ensure they hold liquid assets sufficient to meet their institution-specific liquidity needs that could arise in a period of stress.

In determining the proposed transition time frame, the agencies were aware that covered companies may face a range of implementation issues in coming into compliance with the proposed rule. The agencies asked in the proposal whether the proposed transition periods were appropriate for all covered companies in respect to the proposed LCR. Recognizing commenters' concerns regarding the operational difficulty for organizations that were not already subject to daily liquidity reporting requirements, and the systems changes necessary to calculate the LCR accurately on a daily basis, the agencies believe it is appropriate to differentiate the transition periods for calculation of the liquidity coverage ratio based on the size, complexity, and potential systemic impact of covered companies. The final rule therefore requires covered depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody, and any depository institution that is a consolidated subsidiary of such depository institution holding companies that has total consolidated assets equal to $10 billion or more, to conform to transition periods that are different from those for other covered companies. The agencies expect these largest, most complex firms to have the most sophisticated liquidity risk monitoring procedures, commensurate with their size and complexity,[92] and these firms are currently submitting daily liquidity reports. Under the final rule, these covered companies are required to calculate the LCR on the last business day of each calendar month from January 1, 2015, to June 30, 2015, and on each business day from July 1, 2015, onwards. All other covered companies must calculate the LCR on the last business day of each calendar month beginning January 1, 2015, and on each business day from July 1, 2016, onwards. The transition provisions of the final rule are also set forth in Table 5 below.

In developing these transition periods, the agencies analyzed data received from several institutions under a quantitative impact study as well as supervisory data from each of the institutions that would be subject to the final rule. Based on the review of this data, the agencies believe that the transition periods set forth in the rule are appropriately tailored to the size, complexity, and potential systemic impact of covered companies. The agencies do not currently believe that additional data is necessary for the adjustment of the transition periods, but will monitor the implementation of the final rule by covered companies during the transition periods.

Although the agencies have not proposed the regulatory or public reporting requirements for the final rule, the agencies anticipate that they will seek comment on reporting requirements through a future notice.

TABLE 5—TRANSITION PERIOD FOR THE LIQUIDITY COVERAGE RATIO

Transition period	Liquidity coverage ratio
Calendar year 2015	.80
Calendar year 2016	.90
Calendar year 2017 and thereafter	1.00
Calculation Frequency	
Covered depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody, and any depository institution that is a consolidated subsidiary of such depository institution holding companies that has total consolidated assets equal to $10 billion or more:	
Last business day of the calendar month	Beginning January 1, 2015.
Each business day	Beginning July 1, 2015 and thereafter.
All other covered companies:	
Last business day of the calendar month	Beginning January 1, 2015.
Each business day	Beginning July 1, 2016 and thereafter.

V. Modified Liquidity Coverage Ratio

Section 165 of the Dodd-Frank Act authorizes the Board to tailor the application of its enhanced prudential standards, including differentiating among covered companies on an individual basis or by category of institution.[93] When differentiating among companies for purposes of applying the Board's standards established under section 165, the Board may consider the companies' size,

[92] For example, the Board's Regulation YY requires large domestic bank holding companies to develop internal liquidity risk-management and stress testing practices that are tailored to the risk profile and business model of the particular institution. *See* 12 CFR 252.33–35. The firm-specific liquidity requirements set forth in the Board's Regulation YY are intended to complement the standardized approach of the U.S. liquidity coverage ratio framework, which provides for comparability across firms within the United States.

[93] *See* 12 U.S.C. 5365(a) and (b).

capital structure, riskiness, complexity, financial activities, and any other risk-related factor the Board deems appropriate.[94]

The Basel III Revised Liquidity Framework was developed for internationally active banking organizations, taking into account the complexity of their funding sources and structure. Although depository institution holding companies with at least $50 billion in total consolidated assets that are not covered companies (modified LCR holding companies) are large financial companies with extensive operations in banking, brokerage, and other financial activities, they generally are smaller in size, less complex in structure, and less reliant on riskier forms of market funding than covered companies. On a relative basis, the modified LCR holding companies tend to have simpler balance sheets, better enabling management and supervisors to take corrective actions more quickly in a stressed scenario than is the case with a covered company.

Accordingly, the Board proposed to tailor the proposed rule's application of the liquidity coverage ratio requirement to modified LCR holding companies pursuant to its authority under section 165 of the Dodd-Frank Act. Although the Board believes it is important for all bank holding companies subject to section 165 of the Dodd-Frank Act (and similarly situated savings and loan holding companies) to be subject to a quantitative liquidity requirement as an enhanced prudential standard, it recognizes that these smaller companies would likely not have as great a systemic impact as larger, more complex companies if they experienced liquidity stress. Therefore, because the options for addressing their liquidity needs under such a scenario (or, if necessary, for resolving such companies) would likely be less complex and therefore more likely to be implemented in a shorter period of time, the Board proposed a modified LCR incorporating a shorter (21 calendar-day) stress scenario for modified LCR holding companies.

The proposed modified LCR would have been a simpler, less stringent form of the proposed rule's liquidity coverage ratio (for the purposes of this section V., unmodified LCR) and would have imposed outflow rates based on a 21 calendar-day rather than a 30 calendar-day stress scenario. As a result, outflow rates for the proposed modified LCR generally would have been 70 percent of the unmodified LCR's outflow rates. In addition, modified LCR holding companies would not have been required to calculate a maximum cumulative peak net outflow day for total net cash outflows as required for covered companies subject to the unmodified LCR.[95] The requirements of the modified LCR standard would have otherwise been the same as the unmodified LCR as described in the proposal, including the proposed HQLA criteria and the calculation of the HQLA amount, and modified LCR holding companies would have to comply with all unmodified aspects of the standard to the same extent as covered companies.

A. Threshold for Application of the Modified Liquidity Coverage Ratio Requirement

One commenter expressed support for the modified LCR, stating that modified LCR holding companies have substantially less complex funding and risk profiles than covered companies. The commenter stated that operating under the modified LCR will allow such a holding company to remain competitive without compromising its commitment to liquidity risk management or drastically limiting the amount of maturity transformation it undertakes on behalf of its customers. A commenter further expressed support for the Board's use of cumulative net cash outflows over the stress period in the modified LCR compared to the net cumulative peak calculation in the unmodified LCR requirement's proposed rule.

As discussed above in section I.D., several commenters requested that the agencies apply the modified LCR to all banking organizations with limited international operations regardless of asset size. The commenters argued that the risk and funding profile of banking organizations with balance sheets of $250 billion or more in total consolidated assets and limited international operations is more consistent with that of modified LCR holding companies than with internationally active G–SIBs, for which the commenters say the LCR was originally intended. A commenter stated that deposit pricing may be adversely affected by the threshold for application of the modified LCR requirement and expressed concerns regarding an unlevel playing field across banking organizations. Another commenter stated that the proposed rule's tiered approach to assessing liquidity risks among U.S. banking organizations raises the potential unintended consequence that certain risks the agencies wish to ensure are backed by adequate liquidity will migrate to those institutions that are not required to hold as much liquidity. One commenter requested that the Federal Reserve articulate the justification for applying the LCR to the selected institutions, particularly in light of other supervisory efforts to monitor and strengthen liquidity management.

As discussed in section I of this Supplementary Information section, the agencies believe that the unmodified LCR is appropriate for the size, complexity, risk profile, and interconnectedness of covered companies. Consistent with the enhanced prudential standards requirements in Regulation YY, the Board continues to believe that bank holding companies and savings and loan holding companies with total consolidated assets of at least $50 billion dollars that are not covered companies should be subject to the modified LCR. Further, the Board believes that tailoring the requirements of the quantitative minimum standard for organizations that are not covered companies under the rule is consistent with the Dodd-Frank Act and that it is appropriate for modified LCR holding companies with less complex funding structures to be required to hold lower amounts of HQLA under the rule.

B. 21 Calendar-Day Stress Period

Several commenters noted that the 21 calendar-day stress period is operationally challenging because banking organizations typically manage and operate on a month-end or 30-day cycle. Thus, commenters suggested that the modified LCR be based on a calendar month stress period, rather than the 21 calendar-day stress period in the proposal, and argued that the 21 calendar-day basis of the modified LCR would have made it difficult to fully embed the calculation into internal processes including liquidity stress testing and balance sheet forecasts. One commenter argued that the benefits of a 21 calendar-day measurement period would typically be small because most holding companies that would be subject to the modified LCR do not generally rely on short-term funding; however, the same commenter requested the 70% outflow rate for non-maturity cash outflows be retained. Commenters argued that the 21 calendar-day forward-looking stress period required under the modified LCR would consistently omit key recurring payment activity that occurs on the calendar-month cycle and would force the banks to manage cash flows in an abnormal manner. Commenters also

[94] *See* 12 U.S.C. 5365(a)(2).

[95] *See supra* section II.C.

argued that the 21 calendar-day measurement period would make the modified LCR holding companies' LCR extremely volatile. One commenter requested that the agencies give such firms the option to utilize a 30 calendar-day measurement period, whereas others requested that the modified LCR be based on 30 calendar-day time frame and outflow rates be set at 70 percent of the outflow rate in the unmodified liquidity coverage ratio. One commenter stated that many of the calibrations in the rule, such as the treatment of operational deposits, municipal deposits, and level 2A securities, overstate the liquidity risk of the institutions covered by the modified LCR. The commenter requested that the agencies consider a lower LCR compliance threshold, such as 50 percent, to better align with the more stable funding profile of modified LCR holding companies.

Commenters suggested that the modified LCR be based on a monthly cycle so that 31-day, 30-day, and 28-day months are all treated as a cycle for the modified LCR. Two commenters stated that the 21 calendar-day measurement period would create additional measurement and reporting burdens and inconsistencies, because it deviates from other similar liquidity standards proposed by the BCBS and by the Dodd-Frank Act.

The Board agrees with commenters that there is merit in using a stress period that is consistent with periods over which liquidity risk is monitored by modified LCR holding companies as part of their internal practices. Thus, consistent with the risk management practices required under the Board's Regulation YY, the Board is applying a stress period of 30 days to the calculation of the modified LCR. To tailor the minimum quantitative standard for modified LCR holding companies while generally maintaining the amount of HQLA required for these firms under the proposal, the Board is amending the modified LCR denominator such that the net cash outflows shall be the net cash outflows calculated under the unmodified liquidity coverage ratio requirements over a 30 calendar-day stress period (excluding step 2 of the peak day approach described in section II.C.1 of this Supplementary Information section) multiplied by a factor of 0.7.

C. Calculation Requirements and Comments on Modified LCR Reporting

The proposed rule would have applied the modified LCR to depository institution holding companies domiciled in the United States that have total consolidated assets of $50 billion or more based on the average of the total asset amount reported on the institution's four most recent FR Y–9Cs. One commenter requested that the agencies clarify when companies subject to the modified LCR are required to start meeting the requirement: The day on which the company files the fourth FR Y–9C showing that it is subject to the rule, the day of the quarter following the filing of that report, or another date.

One commenter requested that the agencies clarify the mechanics for calculating the modified LCR and reporting to the regulators. Specifically, the commenter asked whether the modified LCR requires a daily calculation. One commenter recommended that regional banking organizations be required to calculate the LCR monthly and to report the information on a delayed basis, for example on the 20th day of the calendar month following the calculation date. The Board recognizes that the calculation requirements under the modified LCR present certain operational challenges to modified LCR holding companies. The Board is delaying the earliest date upon which a modified LCR holding company must comply with this rule to January 1, 2016. In addition, the Board is adopting in the final rule a monthly calculation requirement, rather than the daily calculation requirement in the proposed rule. This monthly calculation requirement reflects the difference in size, complexity, and funding profile of the institutions subject to the modified LCR. Modified LCR holding companies will be subject to the transition periods set forth in Table 6 below. If a modified LCR holding company's LCR is below the required minimum when it is calculated on the last day of each calendar month, or if its supervisor has determined that the covered company is otherwise materially noncompliant, the covered company must promptly consult with the Board to determine whether the covered company must provide a written remediation plan.

As discussed in section I of this Supplementary Information section, the agencies anticipate proposing reporting requirements in a future notice. This future notice would contain the reporting requirements for institutions subject to the Board's modified LCR, including any applicable reporting date requirements.

The Board is clarifying that a modified LCR holding company is required to comply with the modified LCR on the first day of the quarter following the date at which the average total consolidated assets of the holding company equal or exceed $50 billion.

TABLE 6—TRANSITION PERIOD FOR THE MODIFIED LIQUIDITY COVERAGE RATIO

Transition period		Liquidity coverage ratio
Calendar year 2016		.90
Calendar year 2017 and thereafter		1.00
Calculation Frequency		
All modified LCR holding companies	Last business day of the calendar month.	Beginning January 1, 2016 and thereafter.

VI. Plain Language

Section 722 of the Gramm-Leach Bliley Act[96] requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

VII. Regulatory Flexibility Act

Section 4 of the Regulatory Flexibility Act[97] (RFA), requires an agency to prepare a final regulatory flexibility analysis (FRFA) when an agency promulgates a final rule unless,

[96] Pub L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

[97] 5 U.S.C. 604.

pursuant to section 5(b) of the RFA, the agency certifies that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities [98] (defined for purposes of the RFA to include banking entities with total assets less than or equal to $550 million and trust companies with total assets less than or equal to $38.5 million (small banking entities)).[99] Pursuant to section 5(b) of the RFA, the OCC and the FDIC are certifying that the final rule will not have a significant economic impact on a substantial number of small entities.

OCC

As discussed previously in this Supplementary Information section, the final rule generally will apply to national banks and Federal savings associations with: (i) Total consolidated assets equal to $250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to $10 billion or more; or (iii) total consolidated assets equal to $10 billion or more if a national bank or Federal savings association is a consolidated subsidiary of a company subject to the proposed rule. As of December 31, 2013, the OCC supervises 1,231 small entities. The only OCC-supervised institutions subject to the final rule have $10 billion or more in total consolidated assets. Accordingly, no OCC-supervised small banking entities meet the criteria to be a covered institution under the final rule. Therefore, the final rule will not have a significant economic impact on a substantial number of small OCC-supervised banking entities.

Pursuant to section 5(b) of the RFA, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

Board

The Board is providing a final regulatory flexibility analysis with respect to this final rule. As discussed above, this final rule would implement a quantitative liquidity requirement consistent with the liquidity coverage ratio established by the BCBS. The Board received no public comments related to the initial Regulatory Flexibility Act analysis in the proposed rule from the Chief Council for Advocacy of the Small Business Administration or from the general public.

As discussed previously in this Supplementary Information section, the final rule generally would apply to Board-regulated institutions with (i) total consolidated assets equal to $250 billion or more; (ii) total consolidated on-balance sheet foreign exposure equal to $10 billion or more; or (iii) total consolidated assets equal to $10 billion or more if that Board-regulated institution is a depository institution subsidiary of a company subject to the proposed rule. The modified version of the liquidity coverage ratio would apply to top-tier bank holding companies and savings and loan holding companies domiciled in the United States that have total consolidated assets of $50 billion or more. The modified version of the liquidity coverage ratio would not apply to: (i) A grandfathered unitary savings and loan holding company that derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act; (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies and either calculates its total consolidated assets in accordance with GAAP or estimates its total consolidated assets, subject to review and adjustment by the Board. The final rule focuses on these financial institutions because of their complexity, funding profiles, and potential risk to the financial system.

As of June 30, 2014, there were approximately 657 small state member banks, 3,716 small bank holding companies, and 254 small savings and loan holding companies. No small top-tier bank holding company, top-tier savings and loan holding company, or state member bank would be subject to the rule, so there would be no additional projected compliance requirements imposed on small bank holding companies, savings and loan holding companies, or state member banks.

The Board believes that the final rule will not have a significant impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the rule that would reduce the economic impact on small banking organizations supervised by the Board.

FDIC

As described previously in this Supplementary Information section, the final rule generally will establish a quantitative liquidity standard for internationally active banking organizations with $250 billion or more in total assets or $10 billion or more of on-balance sheet foreign exposure (internationally active banking organizations), and their consolidated subsidiary depository institutions with $10 billion or more in in total consolidated assets. One FDIC-supervised institution will satisfy the foregoing criteria as of the effective date of the final rule, and it is not a small entity. As of December 31, 2013, based on a $550 million threshold, the FDIC supervises 3,353 small state nonmember banks, and 51 small state savings associations. The only FDIC-supervised institutions subject to the final rule have $10 billion or more in total consolidated assets. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

Pursuant to section 5(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

VIII. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain ‘‘collection of information’’ requirements 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 OCC and FDIC submitted this collection to OMB at the proposed rule stage. The information collection requirements contained in this joint final rule are being submitted by the FDIC and OCC to OMB for approval under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The agencies received no comments regarding the collection at the proposed rule stage.

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 of the agencies' estimates of the burden of the

[98] 5 U.S.C. 605(b).

[99] *See* 79 FR 33647 (June 12, 2014).

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 start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Commenters may submit comments on aspects of this notice that may affect burden estimates at the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., 10235, Washington, DC 20503; by facsimile to 202–395–6974; or by email to: *oira_submission@omb.eop.gov.* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.

Frequency of Response: Annual and event generated.

Affected Public:

FDIC: Insured state non-member banks, state savings associations, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, or any operating subsidiary thereof.

Board: Insured state member banks, bank holding companies, savings and loan holding companies, and any subsidiary thereof.

Abstract:

The final rule implements a quantitative liquidity requirement consistent with the LCR standard established by the BCBS and contains requirements subject to the PRA. The reporting and recordkeeping requirements are found in §§ __.22 and __.40. Compliance with the information collections will be mandatory. Responses to the information collections will be kept confidential to the extent permitted by law, and there would be no mandatory retention period for the proposed collections of information.

Section __.22 will require that, with respect to each asset eligible for inclusion in a covered company's HQLA amount, the covered company must implement policies that require eligible HQLA to be under the control of the management function in the covered company responsible for managing liquidity risk. The management function must evidence its control over the HQLA by segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity, or demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk management strategy of the covered company. In addition, § __.22 will require that a covered company must have a documented methodology that results in a consistent treatment for determining that the covered company's eligible HQLA meet the requirements of § __.22.

Section __.40 will require that a covered company must notify its appropriate Federal banking agency on any day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § __.10. If a covered company's liquidity coverage ratio is below the minimum requirement in § __.10 for three consecutive days, or if its appropriate Federal banking agency has determined that the institution is otherwise materially noncompliant, the covered company must promptly provide a plan for achieving compliance with the minimum liquidity requirement in § __.10 and all other requirements of this part to its appropriate Federal banking agency.

The liquidity plan must include, as applicable, (1) an assessment of the covered company's liquidity position; (2) the actions the covered company has taken and will take to achieve full compliance, including a plan for adjusting the covered company's risk profile, risk management, and funding sources in order to achieve full compliance and a plan for remediating any operational or management issues that contributed to noncompliance; (3) an estimated time frame for achieving full compliance; and (4) a commitment to provide a progress report to its appropriate Federal banking agency at least weekly until full compliance is achieved.

Estimated Paperwork Burden

Estimated Burden per Response:

Reporting Burden

§ __.40(a)—0.25 hours.
§ __.40(b)—0.25 hours.
§ __.40(b)(4)—0.25 hours.

Recordkeeping Burden

§ __.22(a)(2) and (5)—20 hours.
§ __.40(b)—100 hours.

FDIC

Estimated Number of Respondents: 2.

Total Estimated Annual Burden: 249 hours.

OCC

Estimated Number of Respondents: 20 national banks and Federal savings associations.

Total Estimated Annual Burden: 2,485 hours.

Board

Estimated Number of Respondents: 42 for § __.22; 3 for § __.40.

Total Estimated Annual Burden: 1,153 hours.

IX. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). For purposes of this analysis, the OCC considered whether the final 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 (adjusted annually for inflation) in any one year.

The OCC has determined that this final rule is likely to result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation) in any one year. When the final rule is published in the **Federal Register**, the OCC's UMRA written statement will be available at: *http://www.regulations.gov,* Docket ID OCC–2013–0016.

Text of Common Rule

(All Agencies)

PART [___]—LIQUIDITY RISK MEASUREMENT STANDARDS

Subpart A General Provisions

Sec.

Subpart B Liquidity Coverage Ratio

Subpart C High-Quality Liquid Assets

Subpart A—General Provisions

§ __.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard for certain [BANK]s on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A [BANK] is subject to the minimum liquidity standard and other requirements of this part if:

(i) It has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end [REGULATORY REPORT];

(ii) It has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is a consolidated subsidiary of a company described in paragraphs (b)(1)(i) or (ii) of this section and has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income; or

(iv) The [AGENCY] has determined that application of this part is appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) Subject to the transition periods set forth in subpart F of this part:

(i) A [BANK] that is subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section on September 30, 2014, must comply with the requirements of this part beginning on January 1, 2015;

(ii) A [BANK] that becomes subject to the minimum liquidity standard and other requirements of this part under paragraphs (b)(1)(i) through (iii) of this section after September 30, 2014, must comply with the requirements of this part beginning on April 1 of the year in which the [BANK] becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) From April 1 to December 31 of the year in which the [BANK] becomes subject to the minimum liquidity standard and other requirements of this part, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning January 1 of the year after the first year in which the [BANK] becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section, and thereafter, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date; and

(iii) A [BANK] that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(iv) of this section after September 30, 2014, must comply with the requirements of this part subject to a transition period specified by the [AGENCY].

(3) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) A [BANK] subject to a minimum liquidity standard under this part shall remain subject until the [AGENCY] determines in writing that application of this part to the [BANK] is not appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraphs (b)(1)(iv) or (4) of this section, the [AGENCY] will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in [12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)].

§ __.2 Reservation of authority.

(a) The [AGENCY] may require a [BANK] to hold an amount of high-quality liquid assets (HQLA) greater than otherwise required under this part, or to take any other measure to improve the [BANK]'s liquidity risk profile, if the [AGENCY] determines that the [BANK]'s liquidity requirements as calculated under this part are not commensurate with the [BANK]'s liquidity risks. In making determinations under this section, the [AGENCY] will apply notice and response procedures as set forth in [12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)].

(b) Nothing in this part limits the authority of the [AGENCY] under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

§ __.3 Definitions.

For the purposes of this part:

Affiliated depository institution means with respect to a [BANK] that is a depository institution, another depository institution that is a consolidated subsidiary of a bank holding company or savings and loan holding company of which the [BANK] is also a consolidated subsidiary.

Asset exchange means a transaction in which, as of the calculation date, the counterparties have previously exchanged non-cash assets, and have each agreed to return such assets to each other at a future date. Asset exchanges do not include secured funding and secured lending transactions.

Bank holding company is defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*).

Brokered deposit means any deposit held at the [BANK] that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)), and includes a reciprocal brokered deposit and a brokered sweep deposit.

Brokered sweep deposit means a deposit held at the [BANK] by a customer or counterparty through a contractual feature that automatically transfers to the [BANK] from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

Calculation date means any date on which a [BANK] calculates its liquidity coverage ratio under § __.10.

Client pool security means a security that is owned by a customer of the [BANK] that is not an asset of the

[BANK], regardless of a [BANK]'s hypothecation rights with respect to the security.

Collateralized deposit means:

(1) A deposit of a public sector entity held at the [BANK] that is secured under applicable law by a lien on assets owned by the [BANK] and that gives the depositor, as holder of the lien, priority over the assets in the event the [BANK] enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(2) A deposit of a fiduciary account held at the [BANK] for which the [BANK] is a fiduciary and sets aside assets owned by the [BANK] as security under 12 CFR 9.10 (national bank) or 12 CFR 150.300 through 150.320 (Federal savings associations) and that gives the depositor priority over the assets in the event the [BANK] enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit facility or liquidity facility, that under the terms of the legally binding written agreement governing the facility:

(1) The [BANK] may not refuse to extend credit or funding under the facility; or

(2) The [BANK] may refuse to extend credit under the facility (to the extent permitted under applicable law) only upon the satisfaction or occurrence of one or more specified conditions not including change in financial condition of the borrower, customary notice, or administrative conditions.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Consolidated subsidiary means a company that is consolidated on the balance sheet of a [BANK] or other company under GAAP.

Controlled subsidiary means, with respect to a company or a [BANK], a consolidated subsidiary or a company that otherwise meets the definition of ''subsidiary'' in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company; or

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph 3(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System.

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by rule or order to comply with the requirements of 12 CFR part 249.

Credit facility means a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes. A credit facility does not include a legally binding written agreement to extend funds at a future date to a counterparty that is made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. *See liquidity facility.*

Customer short position means a legally binding written agreement pursuant to which the customer must deliver to the [BANK] a non-cash asset that the customer has already sold.

Deposit means ''deposit'' as defined in section 3(*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)) or an equivalent liability of the [BANK] in a jurisdiction outside of the United States.

Depository institution is defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Depository institution holding company means a bank holding company or savings and loan holding company.

Deposit insurance means deposit insurance provided by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

Derivative transaction means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, forward contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

Designated company means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board of Governors of the Federal Reserve System and for which such determination is still in effect.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

Eligible HQLA means a high-quality liquid asset that meets the requirements set forth in § __.22.

Fair value means fair value as determined under GAAP.

Financial sector entity means an investment adviser, investment company, pension fund, non-regulated fund, regulated financial company, or identified company.

Foreign withdrawable reserves means a [BANK]'s balances held by or on behalf of the [BANK] at a foreign central bank that are not subject to restrictions on the [BANK]'s ability to use the reserves.

GAAP means generally accepted accounting principles as used in the United States.

High-quality liquid asset (HQLA) means an asset that is a level 1 liquid asset, level 2A liquid asset, or level 2B liquid asset, in accordance with the criteria set forth in § ___.20.

HQLA amount means the HQLA amount as calculated under § __.21.

Identified company means any company that the [AGENCY] has determined should be treated for the purposes of this part the same as a regulated financial company, investment company, non-regulated fund, pension fund, or investment adviser, based on activities similar in scope, nature, or operations to those entities.

Individual means a natural person, and does not include a sole proprietorship.

Investment adviser means a company registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or foreign equivalents of such company.

Investment company means a person or company registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or foreign equivalents of such persons or companies.

Liquid and readily-marketable means, with respect to a security, that the security is traded in an active secondary market with:

(1) More than two committed market makers;

(2) A large number of non-market maker participants on both the buying and selling sides of transactions;

(3) Timely and observable market prices; and

(4) A high trading volume.

Liquidity facility means a legally binding written agreement to extend funds at a future date to a counterparty that is made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. A liquidity facility includes an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program or conduit in the event that funds are required to repay maturing asset-backed commercial paper. Liquidity facilities exclude facilities that are established solely for the purpose of general working capital, such as revolving credit facilities for general corporate or working capital purposes. If a facility has characteristics of both credit and liquidity facilities, the facility must be classified as a liquidity facility. *See credit facility.*

Multilateral development bank means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable risk.

Non-regulated fund means any hedge fund or private equity fund whose investment adviser is required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), other than a small business investment company as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*).

Nonperforming exposure means an exposure that is past due by more than 90 days or nonaccrual.

Operational deposit means unsecured wholesale funding or a collateralized deposit that is necessary for the [BANK] to provide operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the unsecured wholesale funding or collateralized deposit. In order to recognize a deposit as an operational deposit for purposes of this part, a [BANK] must comply with the requirements of § __.4(b) with respect to that deposit.

Operational services means the following services, provided they are performed as part of cash management, clearing, or custody services:

(1) Payment remittance;

(2) Administration of payments and cash flows related to the safekeeping of investment assets, not including the purchase or sale of assets;

(3) Payroll administration and control over the disbursement of funds;

(4) Transmission, reconciliation, and confirmation of payment orders;

(5) Daylight overdraft;

(6) Determination of intra-day and final settlement positions;

(7) Settlement of securities transactions;

(8) Transfer of capital distributions and recurring contractual payments;

(9) Customer subscriptions and redemptions;

(10) Scheduled distribution of customer funds;

(11) Escrow, funds transfer, stock transfer, and agency services, including payment and settlement services, payment of fees, taxes, and other expenses; and

(12) Collection and aggregation of funds.

Pension fund means an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1001 *et seq.*), a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction.

Public sector entity means a state, local authority, or other governmental subdivision below the U.S. sovereign entity level.

Publicly traded means, with respect to an equity security, that the equity security is traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the security in question.

Qualifying master netting agreement (1) Means a legally binding written agreement that:

(i) Creates a single obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding, of the counterparty;

(ii) Provides the [BANK] the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to U.S. government-sponsored enterprises; and

(iii) Does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(2) In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a [BANK] must comply with the requirements of § __.4(a) with respect to that agreement.

Reciprocal brokered deposit means a brokered deposit that a [BANK] receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the [BANK] (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site,[1] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under 12 CFR part 249;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462); and

(7) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (6) of this definition (e.g., a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(8) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

Reserve Bank balances means:

(1) Balances held in a master account of the [BANK] at a Federal Reserve Bank, less any balances that are attributable to any respondent of the [BANK] if the [BANK] is a correspondent for a pass-through account as defined in section 204.2(l) of Regulation D (12 CFR 204.2(l));

(2) Balances held in a master account of a correspondent of the [BANK] that are attributable to the [BANK] if the [BANK] is a respondent for a pass-through account as defined in section 204.2(l) of Regulation D;

(3) ''Excess balances'' of the [BANK] as defined in section 204.2(z) of Regulation D (12 CFR 204.2(z)) that are maintained in an ''excess balance account'' as defined in section 204.2(aa) of Regulation D (12 CFR 204.2(aa)) if the [BANK] is an excess balance account participant; or

(4) ''Term deposits'' of the [BANK] as defined in section 204.2(dd) of Regulation D (12 CFR 204.2(dd)) if such term deposits are offered and maintained pursuant to terms and conditions that:

(i) Explicitly and contractually permit such term deposits to be withdrawn upon demand prior to the expiration of the term, or that

(ii) Permit such term deposits to be pledged as collateral for term or automatically-renewing overnight advances from the Federal Reserve Bank.

Retail customer or counterparty means a customer or counterparty that is:

(1) An individual;

(2) A business customer, but solely if and to the extent that:

(i) The [BANK] manages its transactions with the business customer, including deposits, unsecured funding, and credit facility and liquidity facility transactions, in the same way it manages its transactions with individuals;

(ii) Transactions with the business customer have liquidity risk characteristics that are similar to comparable transactions with individuals; and

(iii) The total aggregate funding raised from the business customer is less than $1.5 million; or

(3) A living or testamentary trust that:

(i) Is solely for the benefit of natural persons;

(ii) Does not have a corporate trustee; and

(iii) Terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years, if applicable under state law.

Retail deposit means a demand or term deposit that is placed with the [BANK] by a retail customer or counterparty, other than a brokered deposit.

Retail mortgage means a mortgage that is primarily secured by a first or subsequent lien on one-to-four family residential property.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

SEC means the Securities and Exchange Commission.

Secured funding transaction means any funding transaction that is subject to a legally binding agreement as of the calculation date and gives rise to a cash obligation of the [BANK] to a counterparty that is secured under applicable law by a lien on assets owned by the [BANK], which gives the counterparty, as holder of the lien, priority over the assets in the event the [BANK] enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, loans of collateral to the [BANK]'s customers to effect short positions, other secured loans, and borrowings from a Federal Reserve Bank.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement of the calculation date and gives rise to a cash obligation of a counterparty to the [BANK] that is secured under applicable law by a lien on assets owned by the counterparty, which gives the [BANK], as holder of the lien, priority over the assets in the event the counterparty enters into receivership, bankruptcy,

[1] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

insolvency, liquidation, resolution, or similar proceeding, including reverse repurchase transactions and securities borrowing transactions.

Securities Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Special purpose entity means a company organized for a specific purpose, the activities of which are significantly limited to those appropriate to accomplish a specific purpose, and the structure of which is intended to isolate the credit risk of the special purpose entity.

Stable retail deposit means a retail deposit that is entirely covered by deposit insurance and:

(1) Is held by the depositor in a transactional account; or

(2) The depositor that holds the account has another established relationship with the [BANK] such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the [BANK] demonstrates to the satisfaction of the [AGENCY] would make deposit withdrawal highly unlikely during a liquidity stress event.

Structured security means a security whose cash flow characteristics depend upon one or more indices or that has embedded forwards, options, or other derivatives or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates, or cash flows.

Structured transaction means a secured transaction in which repayment of obligations and other exposures to the transaction is largely derived, directly or indirectly, from the cash flow generated by the pool of assets that secures the obligations and other exposures to the transaction.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame conforming to trade custom.

U.S. government-sponsored enterprise means an entity established or chartered by the Federal government to serve public purposes specified by the United States Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States government.

Unsecured wholesale funding means a liability or general obligation of the [BANK] to a wholesale customer or counterparty that is not secured under applicable law by a lien on assets owned by the [BANK], including a wholesale deposit.

Wholesale customer or counterparty means a customer or counterparty that is not a retail customer or counterparty.

Wholesale deposit means a demand or term deposit that is provided by a wholesale customer or counterparty.

§ __.4 Certain operational requirements.

(a) *Qualifying master netting agreements.* In order to recognize an agreement as a qualifying master netting agreement as defined in § __.3, a [BANK] must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of the definition of qualifying master netting agreement in § __.3; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding) the relevant judicial and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in § __.3.

(b) *Operational deposits.* In order to recognize a deposit as an operational deposit as defined in § __.3:

(1) The related operational services must be performed pursuant to a legally binding written agreement, and:

(i) The termination of the agreement must be subject to a minimum 30 calendar-day notice period; or

(ii) As a result of termination of the agreement or transfer of services to a third-party provider, the customer providing the deposit would incur significant contractual termination costs or switching costs (switching costs include significant technology, administrative, and legal service costs incurred in connection with the transfer of the operational services to a third-party provider);

(2) The deposit must be held in an account designated as an operational account;

(3) The customer must hold the deposit at the [BANK] for the primary purpose of obtaining the operational services provided by the [BANK];

(4) The deposit account must not be designed to create an economic incentive for the customer to maintain excess funds therein through increased revenue, reduction in fees, or other offered economic incentives;

(5) The [BANK] must demonstrate that the deposit is empirically linked to the operational services and that it has a methodology that takes into account the volatility of the average balance for identifying any excess amount, which must be excluded from the operational deposit amount;

(6) The deposit must not be provided in connection with the [BANK]'s provision of prime brokerage services, which, for the purposes of this part, are a package of services offered by the [BANK] whereby the [BANK], among other services, executes, clears, settles, and finances transactions entered into by the customer or a third-party entity on behalf of the customer (such as an executing broker), and where the [BANK] has a right to use or rehypothecate assets provided by the customer, including in connection with the extension of margin and other similar financing of the customer, subject to applicable law, and includes operational services provided to a non-regulated fund; and

(7) The deposits must not be for arrangements in which the [BANK] (as correspondent) holds deposits owned by another depository institution bank (as respondent) and the respondent temporarily places excess funds in an overnight deposit with the [BANK].

Subpart B—Liquidity Coverage Ratio

§ __.10 Liquidity coverage ratio.

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a [BANK] must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day in accordance with this part. A [BANK] must calculate its liquidity coverage ratio as of the same time on each business day (elected calculation time). The [BANK] must select this time by written notice to the [AGENCY] prior to the effective date of this rule. The [BANK] may not thereafter change its elected calculation time without prior written approval from the [AGENCY].

(b) *Calculation of the liquidity coverage ratio.* A [BANK]'s liquidity coverage ratio equals:

(1) The [BANK]'s HQLA amount as of the calculation date, calculated under subpart C of this part; *divided by*

(2) The [BANK]'s total net cash outflow amount as of the calculation date, calculated under subpart D of this part.

Subpart C—High-Quality Liquid Assets

§ __.20 High-quality liquid asset criteria.

(a) *Level 1 liquid assets.* An asset is a level 1 liquid asset if it is one of the following types of assets:

(1) Reserve Bank balances;

(2) Foreign withdrawable reserves;

(3) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(4) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government, provided that the security is liquid and readily-marketable;

(5) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, European Community, or a multilateral development bank, that is:

(i) Assigned a zero percent risk weight under subpart D of [AGENCY CAPITAL REGULATION] as of the calculation date;

(ii) Liquid and readily-marketable;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or

(6) A security issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity that is not assigned a zero percent risk weight under subpart D of [AGENCY CAPITAL REGULATION], where the sovereign entity issues the security in its own currency, the security is liquid and readily-marketable, and the [BANK] holds the security in order to meet its net cash outflows in the jurisdiction of the sovereign entity, as calculated under subpart D of this part.

(b) *Level 2A liquid assets.* An asset is a level 2A liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

(1) A security issued by, or guaranteed as to the timely payment of principal and interest by, a U.S. government-sponsored enterprise, that is investment grade under 12 CFR part 1 as of the calculation date, provided that the claim is senior to preferred stock; or

(2) A security that is issued by, or guaranteed as to the timely payment of principal and interest by, a sovereign entity or multilateral development bank that is:

(i) Not included in level 1 liquid assets;

(ii) Assigned no higher than a 20 percent risk weight under subpart D of [AGENCY CAPITAL REGULATION] as of the calculation date;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by:

(A) The market price of the security or equivalent securities of the issuer declining by no more than 10 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the security or equivalent securities of the issuer increasing by no more than 10 percentage points during a 30 calendar-day period of significant stress; and

(iv) Not an obligation of a financial sector entity, and not an obligation of a consolidated subsidiary of a financial sector entity.

(c) *Level 2B liquid assets.* An asset is a level 2B liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

(1) A corporate debt security that is:

(i) Investment grade under 12 CFR part 1 as of the calculation date;

(ii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by:

(A) The market price of the corporate debt security or equivalent securities of the issuer declining by no more than 20 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the corporate debt security or equivalent securities of the issuer increasing by no more than 20 percentage points during a 30 calendar-day period of significant stress; and

(iii) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or

(2) A publicly traded common equity share that is:

(i) Included in:

(A) The Russell 1000 Index; or

(B) An index that a [BANK]'s supervisor in a foreign jurisdiction recognizes for purposes of including equity shares in level 2B liquid assets under applicable regulatory policy, if the share is held in that foreign jurisdiction;

(ii) Issued in:

(A) U.S. dollars; or

(B) The currency of a jurisdiction where the [BANK] operates and the [BANK] holds the common equity share in order to cover its net cash outflows in that jurisdiction, as calculated under subpart D of this part;

(iii) Issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by:

(A) The market price of the security or equivalent securities of the issuer declining by no more than 40 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to securities borrowing and lending transactions that are collateralized by the publicly traded common equity shares or equivalent securities of the issuer increasing by no more than 40 percentage points, during a 30 calendar day period of significant stress;

(iv) Not issued by a financial sector entity and not issued by a consolidated subsidiary of a financial sector entity;

(v) If held by a depository institution, is not acquired in satisfaction of a debt previously contracted (DPC); and

(vi) If held by a consolidated subsidiary of a depository institution, the depository institution can include the publicly traded common equity share in its level 2B liquid assets only if the share is held to cover net cash outflows of the depository institution's consolidated subsidiary in which the publicly traded common equity share is held, as calculated by the [BANK] under subpart D of this part.

§ __.21 High-quality liquid asset amount.

(a) *Calculation of the HQLA amount.* As of the calculation date, a [BANK]'s HQLA amount equals:

(1) The level 1 liquid asset amount; plus

(2) The level 2A liquid asset amount; plus

(3) The level 2B liquid asset amount; minus

(4) The greater of:

(i) The unadjusted excess HQLA amount; and

(ii) The adjusted excess HQLA amount.

(b) *Calculation of liquid asset amounts.* (1) *Level 1 liquid asset amount.* The level 1 liquid asset amount equals the fair value of all level 1 liquid assets held by the [BANK] as of the calculation date that are eligible HQLA, less the amount of the reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5).

(2) *Level 2A liquid asset amount.* The level 2A liquid asset amount equals 85 percent of the fair value of all level 2A liquid assets held by the [BANK] as of the calculation date that are eligible HQLA.

(3) *Level 2B liquid asset amount.* The level 2B liquid asset amount equals 50 percent of the fair value of all level 2B liquid assets held by the [BANK] as of the calculation date that are eligible HQLA.

(c) *Calculation of the unadjusted excess HQLA amount.* As of the calculation date, the unadjusted excess HQLA amount equals:

(1) The level 2 cap excess amount; *plus*

(2) The level 2B cap excess amount.

(d) *Calculation of the level 2 cap excess amount.* As of the calculation date, the level 2 cap excess amount equals the greater of:

(1) The level 2A liquid asset amount plus the level 2B liquid asset amount minus 0.6667 times the level 1 liquid asset amount; and

(2) 0.

(e) *Calculation of the level 2B cap excess amount.* As of the calculation date, the level 2B excess amount equals the greater of:

(1) The level 2B liquid asset amount minus the level 2 cap excess amount minus 0.1765 times the sum of the level 1 liquid asset amount and the level 2A liquid asset amount; and

(2) 0.

(f) *Calculation of adjusted liquid asset amounts.* (1) *Adjusted level 1 liquid asset amount.* A [BANK]'s adjusted level 1 liquid asset amount equals the fair value of all level 1 liquid assets that would be eligible HQLA and would be held by the [BANK] upon the unwind of any secured funding transaction (other than a collateralized deposit), secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date where the [BANK] will provide an asset that is eligible HQLA and the counterparty will provide an asset that will be eligible HQLA; less the amount of the reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5).

(2) *Adjusted level 2A liquid asset amount.* A [BANK]'s adjusted level 2A liquid asset amount equals 85 percent of the fair value of all level 2A liquid assets that would be eligible HQLA and would be held by the [BANK] upon the unwind of any secured funding transaction (other than a collateralized deposit), secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date where the [BANK] will provide an asset that is eligible HQLA and the counterparty will provide an asset that will be eligible HQLA.

(3) *Adjusted level 2B liquid asset amount.* A [BANK]'s adjusted level 2B liquid asset amount equals 50 percent of the fair value of all level 2B liquid assets that would be eligible HQLA and would be held by the [BANK] upon the unwind of any secured funding transaction (other than a collateralized deposit), secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date where the [BANK] will provide an asset that is eligible HQLA and the counterparty will provide an asset that will be eligible HQLA.

(g) *Calculation of the adjusted excess HQLA amount.* As of the calculation date, the adjusted excess HQLA amount equals:

(1) The adjusted level 2 cap excess amount; *plus*

(2) The adjusted level 2B cap excess amount.

(h) *Calculation of the adjusted level 2 cap excess amount.* As of the calculation date, the adjusted level 2 cap excess amount equals the greater of:

(1) The adjusted level 2A liquid asset amount plus the adjusted level 2B liquid asset amount minus 0.6667 times the adjusted level 1 liquid asset amount; and

(2) 0.

(i) *Calculation of the adjusted level 2B excess amount.* As of the calculation date, the adjusted level 2B excess liquid asset amount equals the greater of:

(1) The adjusted level 2B liquid asset amount minus the adjusted level 2 cap excess amount minus 0.1765 times the sum of the adjusted level 1 liquid asset amount and the adjusted level 2A liquid asset amount; and

(2) 0.

§ __.22 Requirements for eligible high-quality liquid assets.

(a) *Operational requirements for eligible HQLA.* With respect to each asset that is eligible for inclusion in a [BANK]'s HQLA amount, a [BANK] must meet all of the following operational requirements:

(1) The [BANK] must demonstrate the operational capability to monetize the HQLA by:

(i) Implementing and maintaining appropriate procedures and systems to monetize any HQLA at any time in accordance with relevant standard settlement periods and procedures; and

(ii) Periodically monetizing a sample of HQLA that reasonably reflects the composition of the [BANK]'s eligible HQLA, including with respect to asset type, maturity, and counterparty characteristics;

(2) The [BANK] must implement policies that require eligible HQLA to be under the control of the management function in the [BANK] that is charged with managing liquidity risk, and this management function must evidence its control over the HQLA by either:

(i) Segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity; or

(ii) Demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk management strategy of the [BANK];

(3) The fair value of the eligible HQLA must be reduced by the outflow amount that would result from the termination of any specific transaction hedging eligible HQLA;

(4) The [BANK] must implement and maintain policies and procedures that determine the composition of its eligible HQLA on each calculation date, by:

(i) Identifying its eligible HQLA by legal entity, geographical location, currency, account, or other relevant identifying factors as of the calculation date;

(ii) Determining that eligible HQLA meet the criteria set forth in this section; and

(iii) Ensuring the appropriate diversification of the eligible HQLA by asset type, counterparty, issuer, currency, borrowing capacity, or other factors associated with the liquidity risk of the assets; and

(5) The [BANK] must have a documented methodology that results in a consistent treatment for determining that the [BANK]'s eligible HQLA meet the requirements set forth in this section.

(b) *Generally applicable criteria for eligible HQLA.* A [BANK]'s eligible HQLA must meet all of the following criteria:

(1) The assets are unencumbered in accordance with the following criteria:

(i) The assets are free of legal, regulatory, contractual, or other restrictions on the ability of the [BANK] to monetize the assets; and

(ii) The assets are not pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, but the assets may be considered unencumbered if the assets are pledged to a central bank or a U.S. government-sponsored enterprise where:

(A) Potential credit secured by the assets is not currently extended to the [BANK] or its consolidated subsidiaries; and

(B) The pledged assets are not required to support access to the payment services of a central bank;

(2) The asset is not:

(i) A client pool security held in a segregated account; or

(ii) An asset received from a secured funding transaction involving client pool securities that were held in a segregated account;

(3) For eligible HQLA held in a legal entity that is a U.S. consolidated subsidiary of a [BANK]:

(i) If the U.S. consolidated subsidiary is subject to a minimum liquidity standard under this part, the [BANK] may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of net cash outflows of the U.S. consolidated subsidiary calculated by the U.S. consolidated subsidiary for its own minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223); and

(ii) If the U.S. consolidated subsidiary is not subject to a minimum liquidity standard under this part, the [BANK] may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of the net cash outflows of the U.S. consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the [BANK] for the [BANK]'s minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223);

(4) For HQLA held by a consolidated subsidiary of the [BANK] that is organized under the laws of a foreign jurisdiction, the [BANK] may include the eligible HQLA of the consolidated subsidiary organized under the laws of a foreign jurisdiction in its HQLA amount up to:

(i) The amount of net cash outflows of the consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the [BANK] for the [BANK]'s minimum liquidity standard under this part; *plus*

(ii) Any additional amount of assets that are available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions;

(5) The [BANK] must not include as eligible HQLA any assets, or HQLA resulting from transactions involving an asset that the [BANK] received with rehypothecation rights, if the counterparty that provided the asset or the beneficial owner of the asset has a contractual right to withdraw the assets without an obligation to pay more than de minimis remuneration at any time during the 30 calendar days following the calculation date; and

(6) The [BANK] has not designated the assets to cover operational costs.

(c) *Maintenance of U.S. eligible HQLA.* A [BANK] is generally expected to maintain as eligible HQLA an amount and type of eligible HQLA in the United States that is sufficient to meet its total net cash outflow amount in the United States under subpart D of this part.

Subpart D—Total Net Cash Outflow

§ __.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a [BANK]'s total net cash outflow amount equals:

(1) The sum of the outflow amounts calculated under § __.32(a) through (l); *minus*

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § __.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; *plus*

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

(b) *Calculation of maturity mismatch add-on.* (1) For purposes of this section:

(i) The net cumulative maturity outflow amount for any of the 30 calendar days following the calculation date is equal to the sum of the outflow amounts for instruments or transactions identified in § __.32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date prior to or on that calendar day *minus* the sum of the inflow amounts for instruments or transactions identified in § __.33(c), (d), (e), and (f) that have a maturity date prior to or on that calendar day.

(ii) The net day 30 cumulative maturity outflow amount is equal to, as of the 30th day following the calculation date, the sum of the outflow amounts for instruments or transactions identified in § __.32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date 30 calendar days or less from the calculation date *minus* the sum of the inflow amounts for instruments or transactions identified in § __.33(c), (d), (e), and (f) that have a maturity date 30 calendar days or less from the calculation date.

(2) As of the calculation date, a [BANK]'s maturity mismatch add-on is equal to:

(i) The greater of:

(A) 0; and

(B) The largest net cumulative maturity outflow amount as calculated under paragraph (b)(1)(i) of this section for any of the 30 calendar days following the calculation date; *minus*

(ii) The greater of:

(A) 0; and

(B) The net day 30 cumulative maturity outflow amount as calculated under paragraph (b)(1)(ii) of this section.

(3) Other than the transactions identified in § __.32(h)(2), (h)(5), or (j) or § __.33(d) or (f), the maturity of which is determined under § __.31(a), transactions that have no maturity date are not included in the calculation of the maturity mismatch add-on.

§ __.31 Determining maturity.

(a) For purposes of calculating its liquidity coverage ratio and the components thereof under this subpart, a [BANK] shall assume an asset or transaction matures:

(1) With respect to an instrument or transaction subject to § __.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction as follows:

(i) If an investor or funds provider has an option that would reduce the maturity, the [BANK] must assume that the investor or funds provider will exercise the option at the earliest possible date;

(ii) If an investor or funds provider has an option that would extend the maturity, the [BANK] must assume that the investor or funds provider will not exercise the option to extend the maturity;

(iii) If the [BANK] has an option that would reduce the maturity of an obligation, the [BANK] must assume that the [BANK] will exercise the option at the earliest possible date, except if either of the following criteria are satisfied, in which case the maturity of the obligation for purposes of this part will be the original maturity date at issuance:

(A) The original maturity of the obligation is greater than one year and the option does not go into effect for a period of 180 days following the issuance of the instrument; or

(B) The counterparty is a sovereign entity, a U.S. government-sponsored enterprise, or a public sector entity.

(iv) If the [BANK] has an option that would extend the maturity of an obligation it issued, the [BANK] must assume the [BANK] will not exercise that option to extend the maturity; and

(v) If an option is subject to a contractually defined notice period, the [BANK] must determine the earliest possible contractual maturity date regardless of the notice period.

(2) With respect to an instrument or transaction subject to § __.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction as follows:

(i) If the borrower has an option that would extend the maturity, the [BANK] must assume that the borrower will exercise the option to extend the maturity to the latest possible date;

(ii) If the borrower has an option that would reduce the maturity, the [BANK] must assume that the borrower will not exercise the option to reduce the maturity;

(iii) If the [BANK] has an option that would reduce the maturity of an instrument or transaction, the [BANK] must assume the [BANK] will not exercise the option to reduce the maturity;

(iv) If the [BANK] has an option that would extend the maturity of an instrument or transaction, the [BANK] must assume the [BANK] will exercise the option to extend the maturity to the latest possible date; and

(v) If an option is subject to a contractually defined notice period, the [BANK] must determine the latest possible contractual maturity date based on the borrower using the entire notice period.

(3) With respect to a transaction subject to § __.33(f)(1)(iii) through (vii) (secured lending transactions) or § __.33(f)(2)(ii) through (x) (asset exchanges), to the extent the transaction is secured by collateral that has been pledged in connection with either a secured funding transaction or asset exchange that has a remaining maturity of 30 calendar days or less as of the calculation date, the maturity date is the later of the maturity date determined under paragraph (a)(2) of this section for the secured lending transaction or asset exchange or the maturity date determined under paragraph (a)(1) of this section for the secured funding transaction or asset exchange for which the collateral has been pledged.

(4) With respect to a transaction that has no maturity date, is not an operational deposit, and is subject to the provisions of § __.32(h)(2), (h)(5), (j), or (k) or § __.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has no maturity date and is subject to the provisions of § __.32 must be considered to mature within 30 calendar days of the calculation date.

(5) With respect to a transaction subject to the provisions of § __.33(g), on the date of the next scheduled calculation of the amount required under applicable legal requirements for the protection of customer assets with respect to each broker-dealer segregated account, in accordance with the [BANK]'s normal frequency of recalculating such requirements.

(b) [Reserved]

§ __.32 Outflow amounts.

(a) *Retail funding outflow amount.* A [BANK]'s retail funding outflow amount as of the calculation date includes (regardless of maturity or collateralization):

(1) 3 percent of all stable retail deposits held at the [BANK];

(2) 10 percent of all other retail deposits held at the [BANK];

(3) 20 percent of all deposits placed at the [BANK] by a third party on behalf of a retail customer or counterparty that are not brokered deposits, where the retail customer or counterparty owns the account and the entire amount is covered by deposit insurance;

(4) 40 percent of all deposits placed at the [BANK] by a third party on behalf of a retail customer or counterparty that are not brokered deposits, where the retail customer or counterparty owns the account and where less than the entire amount is covered by deposit insurance; and

(5) 40 percent of all funding from a retail customer or counterparty that is not:

(i) A retail deposit;

(ii) A brokered deposit provided by a retail customer or counterparty; or

(iii) A debt instrument issued by the [BANK] that is owned by a retail customer or counterparty (see paragraph (h)(2)(ii) of this section).

(b) *Structured transaction outflow amount.* If the [BANK] is a sponsor of a structured transaction where the issuing entity is not consolidated on the [BANK]'s balance sheet under GAAP, the structured transaction outflow amount for each such structured transaction as of the calculation date is the greater of:

(1) 100 percent of the amount of all debt obligations of the issuing entity that mature 30 calendar days or less from such calculation date and all commitments made by the issuing entity to purchase assets within 30 calendar days or less from such calculation date; and

(2) The maximum contractual amount of funding the [BANK] may be required to provide to the issuing entity 30 calendar days or less from such calculation date through a liquidity facility, a return or repurchase of assets from the issuing entity, or other funding agreement.

(c) *Net derivative cash outflow amount.* The net derivative cash outflow amount as of the calculation date is the sum of the net derivative cash outflow amount for each counterparty. The net derivative cash outflow amount does not include forward sales of mortgage loans and any derivatives that are mortgage commitments subject to paragraph (d) of this section. The net derivative cash outflow amount for a counterparty is the sum of:

(1) The amount, if greater than zero, of contractual payments and collateral that the [BANK] will make or deliver to the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (c)(2) of this section, less the contractual payments and collateral that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (c)(2) of this section, provided that the derivative transactions are subject to a qualifying master netting agreement; and

(2) The amount, if greater than zero, of contractual principal payments that the [BANK] will make to the

counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day, less the contractual principal payments that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day.

(d) *Mortgage commitment outflow amount.* The mortgage commitment outflow amount as of a calculation date is 10 percent of the amount of funds the [BANK] has contractually committed for its own origination of retail mortgages that can be drawn upon 30 calendar days or less from such calculation date.

(e) *Commitment outflow amount.* (1) A [BANK]'s commitment outflow amount as of the calculation date includes:

(i) Zero percent of the undrawn amount of all committed credit and liquidity facilities extended by a [BANK] that is a depository institution to an affiliated depository institution that is subject to a minimum liquidity standard under this part;

(ii) 5 percent of the undrawn amount of all committed credit and liquidity facilities extended by the [BANK] to retail customers or counterparties;

(iii) 10 percent of the undrawn amount of all committed credit facilities extended by the [BANK] to a wholesale customer or counterparty that is not a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of such wholesale customer or counterparty;

(iv) 30 percent of the undrawn amount of all committed liquidity facilities extended by the [BANK] to a wholesale customer or counterparty that is not a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of such wholesale customer or counterparty;

(v) 50 percent of the undrawn amount of all committed credit and liquidity facilities extended by the [BANK] to depository institutions, depository institution holding companies, and foreign banks, but excluding commitments described in paragraph (e)(1)(i) of this section;

(vi) 40 percent of the undrawn amount of all committed credit facilities extended by the [BANK] to a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of a financial sector entity, but excluding other commitments described in paragraph (e)(1)(i) or (v) of this section;

(vii) 100 percent of the undrawn amount of all committed liquidity facilities extended by the [BANK] to a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of a financial sector entity, but excluding other commitments described in paragraph (e)(1)(i) or (v) of this section and liquidity facilities included in paragraph (b)(2) of this section;

(viii) 100 percent of the undrawn amount of all committed credit and liquidity facilities extended to a special purpose entity that issues or has issued commercial paper or securities (other than equity securities issued to a company of which the special purpose entity is a consolidated subsidiary) to finance its purchases or operations, and excluding liquidity facilities included in paragraph (b)(2) of this section; and

(ix) 100 percent of the undrawn amount of all other committed credit or liquidity facilities extended by the [BANK].

(2) For the purposes of this paragraph (e), the undrawn amount of a committed credit facility or committed liquidity facility is the entire unused amount of the facility that could be drawn upon within 30 calendar days of the calculation date under the governing agreement, less the amount of level 1 liquid assets and the amount of level 2A liquid assets securing the facility.

(3) For the purposes of this paragraph (e), the amount of level 1 liquid assets and level 2A liquid assets securing a committed credit or liquidity facility is the fair value of level 1 liquid assets and 85 percent of the fair value of level 2A liquid assets that are required to be pledged as collateral by the counterparty to secure the facility, provided that:

(i) The assets pledged upon a draw on the facility would be eligible HQLA; and

(ii) The [BANK] has not included the assets as eligible HQLA under subpart C of this part as of the calculation date.

(f) *Collateral outflow amount.* The collateral outflow amount as of the calculation date includes:

(1) *Changes in financial condition.* 100 percent of all additional amounts of collateral the [BANK] could be contractually required to pledge or to fund under the terms of any transaction as a result of a change in the [BANK]'s financial condition;

(2) *Derivative collateral potential valuation changes.* 20 percent of the fair value of any collateral securing a derivative transaction pledged to a counterparty by the [BANK] that is not a level 1 liquid asset;

(3) *Potential derivative valuation changes.* The absolute value of the largest 30-consecutive calendar day cumulative net mark-to-market collateral outflow or inflow realized during the preceding 24 months resulting from derivative transaction valuation changes;

(4) *Excess collateral.* 100 percent of the fair value of collateral that:

(i) The [BANK] could be required by contract to return to a counterparty because the collateral pledged to the [BANK] exceeds the current collateral requirement of the counterparty under the governing contract;

(ii) Is not segregated from the [BANK]'s other assets such that it cannot be rehypothecated; and

(iii) Is not already excluded as eligible HQLA by the [BANK] under § __ .22(b)(5);

(5) *Contractually required collateral.* 100 percent of the fair value of collateral that the [BANK] is contractually required to pledge to a counterparty and, as of such calculation date, the [BANK] has not yet pledged;

(6) *Collateral substitution.* (i) Zero percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 1 liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with other assets that qualify as level 1 liquid assets, without the consent of the [BANK];

(ii) 15 percent of the fair value of collateral pledged to the [BANK] by a counterparty, where the collateral qualifies as level 1 liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 2A liquid assets, without the consent of the [BANK];

(iii) 50 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 1 liquid assets and eligible HQLA and where under, the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 2B liquid assets, without the consent of the [BANK];

(iv) 100 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 1 liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that do not qualify as HQLA, without the consent of the [BANK];

(v) Zero percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2A liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 1 or level 2A liquid assets, without the consent of the [BANK];

(vi) 35 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2A liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 2B liquid assets, without the consent of the [BANK];

(vii) 85 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2A liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that do not qualify as HQLA, without the consent of the [BANK];

(viii) Zero percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2B liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with other assets that qualify as HQLA, without the consent of the [BANK]; and

(ix) 50 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2B liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that do not qualify as HQLA, without the consent of the [BANK].

(g) *Brokered deposit outflow amount for retail customers or counterparties.* The brokered deposit outflow amount for retail customers or counterparties as of the calculation date includes:

(1) 100 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which mature 30 calendar days or less from the calculation date;

(2) 10 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which mature later than 30 calendar days from the calculation date;

(3) 20 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which are held in a transactional account with no contractual maturity date, where the entire amount is covered by deposit insurance;

(4) 40 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which are held in a transactional account with no contractual maturity date, where less than the entire amount is covered by deposit insurance;

(5) 10 percent of all reciprocal brokered deposits at the [BANK] provided by a retail customer or counterparty, where the entire amount is covered by deposit insurance;

(6) 25 percent of all reciprocal brokered deposits at the [BANK] provided by a retail customer or counterparty, where less than the entire amount is covered by deposit insurance;

(7) 10 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty:

(i) That are deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary; and

(ii) Where the entire amount of the deposits is covered by deposit insurance;

(8) 25 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty:

(i) That are not deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary; and

(ii) Where the entire amount of the deposits is covered by deposit insurance; and

(9) 40 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty where less than the entire amount of the deposit balance is covered by deposit insurance.

(h) *Unsecured wholesale funding outflow amount.* A [BANK]'s unsecured wholesale funding outflow amount, for all transactions that mature within 30 calendar days or less of the calculation date, as of the calculation date includes:

(1) For unsecured wholesale funding that is not an operational deposit and is not provided by a financial sector entity or consolidated subsidiary of a financial sector entity:

(i) 20 percent of all such funding, where the entire amount is covered by deposit insurance and the funding is not a brokered deposit;

(ii) 40 percent of all such funding, where:

(A) Less than the entire amount is covered by deposit insurance; or

(B) The funding is a brokered deposit;

(2) 100 percent of all unsecured wholesale funding that is not an operational deposit and is not included in paragraph (h)(1) of this section, including:

(i) Funding provided by a company that is a consolidated subsidiary of the same top-tier company of which the [BANK] is a consolidated subsidiary; and

(ii) Debt instruments issued by the [BANK], including such instruments owned by retail customers or counterparties;

(3) 5 percent of all operational deposits, other than operational deposits that are held in escrow accounts, where the entire deposit amount is covered by deposit insurance;

(4) 25 percent of all operational deposits not included in paragraph (h)(3) of this section; and

(5) 100 percent of all unsecured wholesale funding that is not otherwise described in this paragraph (h).

(i) *Debt security buyback outflow amount.* A [BANK]'s debt security buyback outflow amount for debt securities issued by the [BANK] that mature more than 30 calendar days after the calculation date and for which the [BANK] or a consolidated subsidiary of the [BANK] is the primary market maker in such debt securities includes:

(1) 3 percent of all such debt securities that are not structured securities; and

(2) 5 percent of all such debt securities that are structured securities.

(j) *Secured funding and asset exchange outflow amount.* (1) A

[BANK]'s secured funding outflow amount, for all transactions that mature within 30 calendar days or less of the calculation date, as of the calculation date includes:

(i) Zero percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 1 liquid assets;

(ii) 15 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 2A liquid assets;

(iii) 25 percent of all funds the [BANK] must pay pursuant to secured funding transactions with sovereign entities, multilateral development banks, or U.S. government-sponsored enterprises that are assigned a risk weight of 20 percent under subpart D of [AGENCY CAPITAL REGULATION], to the extent that the funds are not secured by level 1 or level 2A liquid assets;

(iv) 50 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 2B liquid assets;

(v) 50 percent of all funds received from secured funding transactions that are customer short positions where the customer short positions are covered by other customers' collateral and the collateral does not consist of HQLA; and

(vi) 100 percent of all other funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by assets that are not HQLA.

(2) If an outflow rate specified in paragraph (j)(1) of this section for a secured funding transaction is greater than the outflow rate that the [BANK] is required to apply under paragraph (h) of this section to an unsecured wholesale funding transaction that is not an operational deposit with the same counterparty, the [BANK] may apply to the secured funding transaction the outflow rate that applies to an unsecured wholesale funding transaction that is not an operational deposit with that counterparty, except in the case of:

(i) Secured funding transactions that are secured by collateral that was received by the [BANK] under a secured lending transaction or asset exchange, in which case the [BANK] must apply the outflow rate specified in paragraph (j)(1) of this section for the secured funding transaction; and

(ii) Collateralized deposits that are operational deposits, in which case the [BANK] may apply to the operational deposit amount, as calculated in accordance with § __.4(b), the operational deposit outflow rate specified in paragraph (h)(3) or (4) of this section, as applicable, if such outflow rate is lower than the outflow rate specified in paragraph (j)(1) of this section.

(3) A [BANK]'s asset exchange outflow amount, for all transactions that mature within 30 calendar days or less of the calculation date, as of the calculation date includes:

(i) Zero percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 1 liquid assets from the asset exchange counterparty;

(ii) 15 percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 2A liquid assets from the asset exchange counterparty;

(iii) 50 percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 2B liquid assets from the asset exchange counterparty;

(iv) 100 percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(v) Zero percent of the fair value of the level 2A liquid assets that [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where [BANK] will receive level 1 or level 2A liquid assets from the asset exchange counterparty;

(vi) 35 percent of the fair value of the level 2A liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 2B liquid assets from the asset exchange counterparty;

(vii) 85 percent of the fair value of the level 2A liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(viii) Zero percent of the fair value of the level 2B liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive HQLA from the asset exchange counterparty; and

(ix) 50 percent of the fair value of the level 2B liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(x) Zero percent of the fair value of the level 1 liquid assets the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days;

(xi) 15 percent of the fair value of the level 2A liquid assets the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days;

(xii) 50 percent of the fair value of the level 2B liquid assets the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days; and

(xiii) 100 percent of the fair value of the non-HQLA the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days.

(k) *Foreign central bank borrowing outflow amount.* A [BANK]'s foreign central bank borrowing outflow amount is, in a foreign jurisdiction where the [BANK] has borrowed from the jurisdiction's central bank, the outflow amount assigned to borrowings from central banks in a minimum liquidity standard established in that jurisdiction. If the foreign jurisdiction has not specified a central bank borrowing outflow amount in a minimum liquidity standard, the foreign central bank borrowing outflow amount must be calculated in accordance with paragraph (j) of this section.

(l) *Other contractual outflow amount.* A [BANK]'s other contractual outflow amount is 100 percent of funding or amounts, with the exception of operating expenses of the [BANK] (such as rents, salaries, utilities, and other similar payments), payable by the [BANK] to counterparties under legally binding agreements that are not otherwise specified in this section.

(m) *Excluded amounts for intragroup transactions.* The outflow amounts set forth in this section do not include amounts arising out of transactions between:

(1) The [BANK] and a consolidated subsidiary of the [BANK]; or

(2) A consolidated subsidiary of the [BANK] and another consolidated subsidiary of the [BANK].

§ __.33 Inflow amounts.

(a) The inflows in paragraphs (b) through (g) of this section do not include:

(1) Amounts the [BANK] holds in operational deposits at other regulated financial companies;

(2) Amounts the [BANK] expects, or is contractually entitled to receive, 30 calendar days or less from the calculation date due to forward sales of mortgage loans and any derivatives that are mortgage commitments subject to § __.32(d);

(3) The amount of any credit or liquidity facilities extended to the [BANK];

(4) The amount of any asset that is eligible HQLA and any amounts payable to the [BANK] with respect to that asset;

(5) Any amounts payable to the [BANK] from an obligation of a customer or counterparty that is a nonperforming asset as of the calculation date or that the [BANK] has reason to expect will become a nonperforming exposure 30 calendar days or less from the calculation date; and

(6) Amounts payable to the [BANK] with respect to any transaction that has no contractual maturity date or that matures after 30 calendar days of the calculation date (as determined by § __ .31).

(b) *Net derivative cash inflow amount.* The net derivative cash inflow amount as of the calculation date is the sum of the net derivative cash inflow amount for each counterparty. The net derivative cash inflow amount does not include amounts excluded from inflows under paragraph (a)(2) of this section. The net derivative cash inflow amount for a counterparty is the sum of:

(1) The amount, if greater than zero, of contractual payments and collateral that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (b)(2) of this section, less the contractual payments and collateral that the [BANK] will make or deliver to the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (b)(2) of this section, provided that the derivative transactions are subject to a qualifying master netting agreement; and

(2) The amount, if greater than zero, of contractual principal payments that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day, less the contractual principal payments that the [BANK] will make to the counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day.

(c) *Retail cash inflow amount.* The retail cash inflow amount as of the calculation date includes 50 percent of all payments contractually payable to the [BANK] from retail customers or counterparties.

(d) *Unsecured wholesale cash inflow amount.* The unsecured wholesale cash inflow amount as of the calculation date includes:

(1) 100 percent of all payments contractually payable to the [BANK] from financial sector entities, or from a consolidated subsidiary thereof, or central banks; and

(2) 50 percent of all payments contractually payable to the [BANK] from wholesale customers or counterparties that are not financial sector entities or consolidated subsidiaries thereof, provided that, with respect to revolving credit facilities, the amount of the existing loan is not included in the unsecured wholesale cash inflow amount and the remaining undrawn balance is included in the outflow amount under § __.32(e)(1).

(e) *Securities cash inflow amount.* The securities cash inflow amount as of the calculation date includes 100 percent of all contractual payments due to the [BANK] on securities it owns that are not eligible HQLA.

(f) *Secured lending and asset exchange cash inflow amount.* (1) A [BANK]'s secured lending cash inflow amount as of the calculation date includes:

(i) Zero percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, including margin loans extended to customers, to the extent that the payments are secured by collateral that has been rehypothecated in a transaction and, as of the calculation date, will not be returned to the [BANK] within 30 calendar days;

(ii) 100 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraph (f)(1)(vii) of this section, to the extent that the payments are secured by assets that are not eligible HQLA, but are still held by the [BANK] and are available for immediate return to the counterparty at any time;

(iii) Zero percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i) or (ii) of this section, to the extent that the payments are secured by level 1 liquid assets;

(iv) 15 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i) or (ii) of this section, to the extent that the payments are secured by level 2A liquid assets;

(v) 50 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i) or (ii) of this section, to the extent that the payments are secured by level 2B liquid assets;

(vi) 100 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i), (ii), or (vii) of this section, to the extent that the payments are secured by assets that are not HQLA; and

(vii) 50 percent of all contractual payments due to the [BANK] pursuant to collateralized margin loans extended to customers, not described in paragraph (f)(1)(i) of this section, provided that the loans are secured by assets that are not HQLA.

(2) A [BANK]'s asset exchange inflow amount as of the calculation date includes:

(i) Zero percent of the fair value of assets the [BANK] will receive from a counterparty pursuant to asset exchanges, to the extent that the asset received by the [BANK] from the counterparty has been rehypothecated in a transaction and, as of the calculation date, will not be returned to the [BANK] within 30 calendar days;

(ii) Zero percent of the fair value of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 1 liquid assets to the asset exchange counterparty;

(iii) 15 percent of the fair value of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 2A liquid assets to the asset exchange counterparty;

(iv) 50 percent of the fair value of level 1 liquid assets the [BANK] will receive from counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 2B liquid assets to the asset exchange counterparty;

(v) 100 percent of the fair value of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are not HQLA to the asset exchange counterparty;

(vi) Zero percent of the fair value of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 1 or level 2A liquid assets to the asset exchange counterparty;

(vii) 35 percent of the fair value of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 2B liquid assets to the asset exchange counterparty;

(viii) 85 percent of the fair value of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are not HQLA to the asset exchange counterparty;

(ix) Zero percent of the fair value of level 2B liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are HQLA to the asset exchange counterparty; and

(x) 50 percent of the fair value of level 2B liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are not HQLA to the asset exchange counterparty.

(g) *Broker-dealer segregated account inflow amount.* A [BANK]'s broker-dealer segregated account inflow amount is the fair value of all assets released from broker-dealer segregated accounts maintained in accordance with statutory or regulatory requirements for the protection of customer trading assets, provided that the calculation of the broker-dealer segregated account inflow amount, for any transaction affecting the calculation of the segregated balance (as required by applicable law), shall be consistent with the following:

(1) In calculating the broker-dealer segregated account inflow amount, the [BANK] must calculate the fair value of the required balance of the customer reserve account as of 30 calendar days from the calculation date by assuming that customer cash and collateral positions have changed consistent with the outflow and inflow calculations required under §§ __.32 and __.33.

(2) If the fair value of the required balance of the customer reserve account as of 30 calendar days from the calculation date, as calculated consistent with the outflow and inflow calculations required under §§ __.32 and __.33, is less than the fair value of the required balance as of the calculation date, the difference is the segregated account inflow amount.

(3) If the fair value of the required balance of the customer reserve account as of 30 calendar days from the calculation date, as calculated consistent with the outflow and inflow calculations required under §§ __.32 and __.33, is more than the fair value of the required balance as of the calculation date, the segregated account inflow amount is zero.

(h) *Other cash inflow amounts.* A [BANK]'s inflow amount as of the calculation date includes zero percent of other cash inflow amounts not included in paragraphs (b) through (g) of this section.

(i) *Excluded amounts for intragroup transactions.* The inflow amounts set forth in this section do not include amounts arising out of transactions between:

(1) The [BANK] and a consolidated subsidiary of the [BANK]; or

(2) A consolidated subsidiary of the [BANK] and another consolidated subsidiary of the [BANK].

Subpart E—Liquidity Coverage Shortfall

§ __.40 Liquidity coverage shortfall: Supervisory framework.

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] on any business day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § __ .10.

(b) *Liquidity plan.* (1) For the period during which a [BANK] must calculate a liquidity coverage ratio on the last business day of each applicable calendar month under subpart F of this part, if the [BANK]'s liquidity coverage ratio is below the minimum requirement in § __.10 for any calculation date that is the last business day of the applicable calendar month, or if the [AGENCY] has determined that the [BANK] is otherwise materially noncompliant with the requirements of this part, the [BANK] must promptly consult with the [AGENCY] to determine whether the [BANK] must provide to the [AGENCY] a plan for achieving compliance with the minimum liquidity requirement in § __.10 and all other requirements of this part.

(2) For the period during which a [BANK] must calculate a liquidity coverage ratio each business day under subpart F of this part, if a [BANK]'s liquidity coverage ratio is below the minimum requirement in § __.10 for three consecutive business days, or if the [AGENCY] has determined that the [BANK] is otherwise materially noncompliant with the requirements of this part, the [BANK] must promptly provide to the [AGENCY] a plan for achieving compliance with the minimum liquidity requirement in § __ .10 and all other requirements of this part.

(3) The plan must include, as applicable:

(i) An assessment of the [BANK]'s liquidity position;

(ii) The actions the [BANK] has taken and will take to achieve full compliance with this part, including:

(A) A plan for adjusting the [BANK]'s risk profile, risk management, and funding sources in order to achieve full compliance with this part; and

(B) A plan for remediating any operational or management issues that contributed to noncompliance with this part;

(iii) An estimated time frame for achieving full compliance with this part; and

(iv) A commitment to report to the [AGENCY] no less than weekly on progress to achieve compliance in accordance with the plan until full compliance with this part is achieved.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum liquidity standard and other requirements of this part.

Subpart F—Transitions

§ __.50 Transitions.

(a) Covered depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody. For any depository institution holding company that has total consolidated assets equal to $700 billion or more, as reported on the company's most recent Consolidated Financial Statements for Holding Companies (FR Y–9C), or $10 trillion or more in assets under custody, as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15), and any depository institution that is a consolidated subsidiary of such depository institution holding company that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income:

(1) Beginning January 1, 2015, through June 30, 2015, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, in accordance with this part, that is equal to or greater than 0.80.

(2) Beginning July 1, 2015 through December 31, 2015, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.80.

(3) Beginning January 1, 2016, through December 31, 2016, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.90.

(4) On January 1, 2017, and thereafter, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date that is equal to or greater than 1.0.

(b) *Other [BANK]s.* For any [BANK] subject to a minimum liquidity standard under this part not described in paragraph (a) of this section:

(1) Beginning January 1, 2015, through December 31, 2015, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, in accordance with this part, that is equal to or greater than 0.80.

(2) Beginning January 1, 2016, through June 30, 2016, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, in accordance with this part, that is equal to or greater than 0.90.

(3) Beginning July 1, 2016, through December 31, 2016, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.90.

(4) On January 1, 2017, and thereafter, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date that is equal to or greater than 1.0.

[End of Common Rule Text]

List of Subjects

12 CFR Part 50

Administrative practice and procedure; Banks, banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 249

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation, FDIC; Liquidity; Reporting and recordkeeping requirements.

Adoption of Common Rule

The adoption of the common rules by the agencies, as modified by the agency-specific text, is set forth below:

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, the OCC adds the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 50 of chapter I of title 12 of the Code of Federal Regulations and further amends part 50 as follows:

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 is added to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, and 1462 *et seq.*

■ 2. Part 50 is amended by:

■ a. Removing ''[AGENCY]'' and adding ''OCC'' in its place, wherever it appears;

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''(12 CFR part 3)'' in its place, wherever it appears;

■ c. Removing ''[BANK]'' and adding ''national bank or Federal savings association'' in its place, wherever it appears;

■ d. Removing ''[BANK]s'' and adding ''national banks and Federal savings associations'' in its place, wherever it appears;

■ e. Removing ''[BANK]'s'' and adding ''national bank's or Federal savings association's'' in its place, wherever it appears;

■ f. Removing ''[REGULATORY REPORT]'' and adding ''Consolidated Reports of Condition and Income'' in its place, wherever it appears; and

■ g. Removing ''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 3.404'' in its place, wherever it appears.

■ 3. Section 50.1 is amended by:

■ a. Revising paragraph (b)(1)(iii);

■ b. Removing the word ''or'' at the end of paragraph (b)(3)(i);

■ c. Removing the period at the end of paragraph (b)(3)(ii) and adding ''; or'' in its place; and

■ d. Adding paragraph (b)(3)(iii).

The addition and revision read as follows:

§ 50.1 Purpose and applicability.

* * * * *

(b) * * *

(1) * * *

(iii) It is a depository institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income; or

(C) A covered depository institution holding company or depository institution that has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

* * * * *

(3) * * *

(iii) A Federal branch or agency as defined by 12 CFR 28.11.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board adds the text of the common rule as set forth at the end of the SUPPLEMENTARY INFORMATION as part 249 of chapter II of title 12 of the Code of Federal Regulations and further amends part 249 as follows:

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 4. The authority citation for part 249 is added to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 5. Revise the heading for part 249 as set forth above.

■ 6. Part 249 is amended by:

■ a. Removing ''[AGENCY]'' and adding ''Board'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''Regulation Q (12 CFR part 217)'' in its place wherever it appears.

■ c. Removing ''[BANK]'' and adding ''Board-regulated institution'' in its place wherever it appears.

■ d. Removing ''[BANK]s'' and adding ''Board-regulated institutions'' in its place wherever it appears.

■ e. Removing ''[BANK]'s'' and adding ''Board-regulated institution's'' in its place wherever it appears.

■ f. Removing''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 263.202'' in its place wherever it appears.

■ 7. Amend § 249.1 by:

■ a. Revising paragraph (b)(1)(i);

■ b. Removing the word ''or'' at the end of paragraph (b)(1)(iii);

■ c. Redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(vi);

■ d. Adding new paragraphs (b)(1)(iv) and (v);

■ e. Revising paragraphs (b)(2)(iii) and (5); and

■ f. Adding new paragraph (c).

The additions and revisions read as follows:

§ 249.1 Purpose and applicability.

* * * * *

(b) * * *

(1) * * *

(i) It has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end (as applicable):

(A) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the Board-regulated institution is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(B) Consolidated Report of Condition and Income (Call Report);

* * * * *

(iv) It is a covered nonbank company;

(v) It is a covered depository institution holding company that meets the criteria in § 249.60(a) but does not meet the criteria in paragraphs (b)(1)(i) or (ii) of this section, and is subject to complying with the requirements of this part in accordance with subpart G of this part; or

* * * * *

(2) * * *

(iii) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(vi) of this section after September 30, 2014, must comply with the requirements of this part subject to a transition period specified by the Board.

* * * * *

(5) In making a determination under paragraphs (b)(1)(vi) or (4) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard for a designated company under this part by rule or order. In establishing such standard, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company or any other risk-related factor that the Board determines is appropriate.

■ 8. In § 249.3, add definitions for ''Board'', ''Board-regulated institution'', and ''State member bank'' in alphabetical order, to read as follows:

§ 249.3 Definitions.

* * * * *

Board means the Board of Governors of the Federal Reserve System.

Board-regulated institution means a state member bank, covered depository institution holding company, or covered nonbank company.

* * * * *

State member bank means a state bank that is a member of the Federal Reserve System.

* * * * *

■ 9. In § 249.22, revise paragraph (b)(3) to read as follows:

§ 249.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(3) For eligible HQLA held in a legal entity that is a U.S. consolidated subsidiary of a Board-regulated institution:

(i) If the U.S. consolidated subsidiary is subject to a minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329, the Board-regulated institution may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of net cash outflows of the U.S. consolidated subsidiary calculated by the U.S. consolidated subsidiary for its own minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier Board-regulated institution during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223);

(ii) If the U.S. consolidated subsidiary is not subject to a minimum liquidity standard under this part, or 12 CFR part 50, or 12 CFR part 329, the Board-regulated institution may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of the net cash outflows of the U.S. consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the Board-regulated institution for the Board-regulated institution's minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier Board-regulated institution during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223); and

* * * * *

■ 10. In § 249.40, revise paragraph (b)(1) to read as follows:

§ 249.40 Liquidity coverage shortfall: Supervisory framework.

* * * * *

(b) *Liquidity plan.* (1) For the period during which a Board-regulated institution must calculate a liquidity coverage ratio on the last business day of each applicable calendar month under subparts F or G of this part, if the Board-regulated institution's liquidity coverage ratio is below the minimum requirement in § 249.10 for any calculation date that is the last business day of the applicable calendar month, or if the Board has determined that the Board-regulated institution is otherwise materially noncompliant with the requirements of this part, the Board-regulated institution must promptly consult with the Board to determine whether the Board-regulated institution must provide to the Board a plan for achieving compliance with the minimum liquidity requirement in § 249.10 and all other requirements of this part.

* * * * *

■ 11. Add subpart G to read as follows:

Subpart G—Liquidity Coverage Ratio for Certain Bank Holding Companies

Sec.
249.60 Applicability.
249.61 Liquidity coverage ratio.
249.62 High-quality liquid asset amount.
249.63 Total net cash outflow.

§ 249.60 Applicability.

(a) *Scope.* This subpart applies to a covered depository institution holding company domiciled in the United States that has total consolidated assets equal to $50 billion or more, based on the average of the Board-regulated institution's four most recent FR Y–9Cs (or, if a savings and loan holding company is not required to report on the FR Y–9C, based on the average of its estimated total consolidated assets for the most recent four quarters, calculated in accordance with the instructions to the FR Y–9C) and does not meet the applicability criteria set forth in § 249.1(b).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A through E of this part apply to covered depository institution holding companies that are subject to this subpart.

(c) *Applicability.* Subject to the transition periods set forth in § 249.61:

(1) A Board-regulated institution that meets the threshold for applicability of this subpart under paragraph (a) of this section on September 30, 2014, must comply with the requirements of this subpart beginning on January 1, 2015; and

(2) A Board-regulated institution that first meets the threshold for applicability of this subpart under paragraph (a) of this section after September 30, 2014, must comply with the requirements of this subpart beginning on the first day of the first quarter after which it meets the threshold set forth in paragraph (a).

§ 249.61 Liquidity coverage ratio.

(a) *Calculation of liquidity coverage ratio.* A Board-regulated institution subject to this subpart must calculate and maintain a liquidity coverage ratio in accordance with § 249.10 and this subpart, provided however, that such Board-regulated institution shall only be required to maintain a liquidity coverage ratio that is equal to or greater than 1.0 on last business day of the applicable calendar month. A Board-regulated institution subject to this subpart must calculate its liquidity coverage ratio as of the same time on each calculation day (elected calculation time). The Board-regulated institution must select this time by written notice to the Board prior to the effective date of this rule. The Board-regulated institution may not thereafter change its elected calculation time without prior written approval from the Board.

(b) *Transitions.* For any Board-regulated institution subject to a minimum liquidity standard under this subpart:

(1) Beginning January 1, 2016, through December 31, 2016, the Board-regulated institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date, in accordance with this subpart, that is equal to or greater than 0.90.

(2) Beginning January 1, 2017 and thereafter, the Board-regulated institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date, in accordance with this subpart, that is equal to or greater than 1.0.

§ 249.62 High-quality liquid asset amount.

A covered depository institution holding company subject to this subpart must calculate its HQLA amount in accordance with subpart C of this part.

§ 249.63 Total net cash outflow.

(a) A covered depository institution holding company subject to this subpart must calculate its cash outflows and inflows in accordance with subpart D of this part, provided, however, that as of the calculation date, the total net cash outflow amount of a covered depository institution subject to this subpart equals 70 percent of:

(1) The sum of the outflow amounts calculated under § 249.32(a) through (l); *less:*

(2) The lesser of:

(i) The sum of the inflow amounts under § 249.33(b) through (g); and

(ii) 75 percent of the amount in paragraph (a)(1) of this section as calculated for that calendar day.

(b) [Reserved]

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 12. The authority citation for part 329 is added to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 13. Part 329 is added as set forth at the end of the common preamble.

■ 14. Part 329 is amended by:

■ a. Removing ''[AGENCY]'' and adding ''FDIC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 324'' in its place wherever it appears.

■ c. Removing ''A [BANK]'' and adding ''An FDIC-supervised institution'' in its place wherever it appears.

■ d. Removing ''a [BANK]'' and add ''an FDIC-supervised institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'' and adding ''FDIC-supervised institution'' in its place wherever it appears.

■ f. Removing ''[BANK]s'' and adding ''FDIC-supervised institutions'' in its place wherever it appears.

■ g. Removing ''[BANK]'s'' and adding ''FDIC-supervised institution's'' in its place wherever it appears.
■ h. Removing ''[REGULATORY REPORT]'' and adding ''Consolidated Report of Condition and Income'' in its place wherever it appears.
■ i. Removing ''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 324.5'' in its place wherever it appears.

■ 15. In § 329.1, revise paragraph (b)(1)(iii) to read as follows:

§ 329.1 Purpose and applicability.

* * * * *

(b) * * *

(1) * * *

(iii) It is a depository institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company.

* * * * *

■ 16. In § 329.3, add definitions for ''FDIC'' and ''FDIC-supervised institution'' in alphabetical order, to read as follows:

§ 329.3 Definitions.

* * * * *

FDIC means the Federal Deposit Insurance Corporation.

FDIC-supervised institution means any state nonmember bank or state savings association.

* * * * *

Dated: September 3, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 3rd day of September 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–22520 Filed 10–9–14; 8:45 am]

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