Bank Regulators Approve Final Rule to Implement Basel III Capital Requirements in the United States

On July 2, 2013, the Board of Governors of the Federal Reserve System ("Board") approved a final rule ("Final Rule") to establish a new comprehensive regulatory capital framework for all US banking organizations.[1] On July 9, 2013, the Final Rule was approved by the Office of the Comptroller of the Currency ("OCC") and (as an interim final rule) by the Federal Deposit Insurance Corporation ("FDIC") (together with the Board, the "Agencies").

The Final Rule brings the United States substantially into compliance with the Basel III capital framework agreed upon internationally in December 2010, replaces the existing US modified Basel I risk-based capital regime (the "Current Rules") with one based in part on the Basel II standardized approach (previously proposed but not adopted in the United States) and in part on the Basel II advanced approaches, and implements several changes to the US regulatory capital regime required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The new US capital framework imposes higher minimum capital requirements, additional capital buffers above those minimum requirements, a more restrictive definition of capital, and higher risk weights for various assets, which in combination result in substantially more demanding capital standards for US banking organizations.

For large US banking organizations subject to the "advanced approaches" method of computing risk-based regulatory capital ("Advanced Banks") – i.e., those with $250 billion or more in total consolidated assets or $10 billion or more in foreign exposures, as well as other banking organizations that successfully opt-in – the Final Rule takes effect on January 1, 2014. For the majority of US banking organizations that will operate only under the "standardized approach" ("Standardized Banks"), the Final Rule takes effect one year later, on January 1, 2015.

Aside from a handful of key changes primarily responding to the concerns of smaller, less complex banking organizations and some technical clarifications, the major elements of the capital framework adopted in the Final Rule are largely unchanged from the Agencies' capital proposals issued in June 2012 (collectively, the "Proposed Rules").[2] In particular, Advanced Banks received little relief from the most controversial aspects of the Proposed Rules. Moreover, during the Board's consideration of the Final Rule, Governor Tarullo stated that although the Final Rule represents the "last step" in reform of the US regulatory capital framework for the vast majority of US banks,[3] four significant additional capital measures are still to come for the eight US banking organizations that have been identified by the Basel Committee on Banking Supervision (the "Basel Committee") as Global Systemically Important Banks ("G-SIBs"). In fact, on July 9, 2013, the Agencies released a joint notice of proposed rulemaking (the "Leverage Ratio NPR") to implement the first of these four

additional capital measures: an enhanced supplementary leverage ratio for US G-SIBs.[4]

This Legal Update identifies key aspects of the Final Rule and highlights and places in context the forthcoming additional capital requirements for the largest US banking organizations, including the enhanced supplementary leverage ratio requirement set forth in the Leverage Ratio NPR.

I. Scope

The Final Rule applies to all banking organizations currently subject to minimum capital requirements, including national banks, state member banks, state nonmember banks, state and federal savings associations, top-tier US bank holding companies ("BHCs") with more than $500 million in total consolidated assets, and most top-tier savings and loan holding companies ("SLHCs"). In a change from the Proposed Rules, SLHCs with significant commercial or insurance underwriting activities are not subject to the Final Rule. The Board has stated that it will take additional time to evaluate the appropriate regulatory capital framework for these entities.[5]

II. Minimum Capital Requirements[6]

New Minimum Risk-Based Capital Ratios. The Final Rule adopts new minimum capital ratios that are consistent with the Basel III international package and unchanged from the Proposed Rules. These include a new 4.5% common equity tier 1 ("CET1") capital requirement, a 6.0% tier 1 capital requirement (increased from 4.0% under the Current Rules), and an 8.0% total capital requirement (same as under the Current Rules). All US banking organizations will calculate the numerator of their minimum capital ratios using the more restrictive definitions of capital under the Final Rule. Standardized Banks, which as noted above constitute the vast majority of US banking organizations, will apply only the standardized approach under the Final Rule to compute the denominator (i.e., risk-weighted assets) of their risk-based capital ratios. Advanced Banks will calculate their risk-weighted assets using the Final Rule's advanced approaches. However, for Advanced Banks, the standardized approach will be used to establish the minimum "generally applicable" capital floor requirements for purposes of section 171 of Dodd-Frank, commonly referred to as the Collins Amendment.

Capital Buffers. In addition to the minimum capital ratios, the Final Rule requires that all banking organizations maintain a "capital conservation buffer" consisting of CET1 capital in an amount equal to 2.5% of risk-weighted assets in order to avoid restrictions on their ability to make capital distributions and to pay certain discretionary bonus payments to executive officers. Thus, the capital conservation buffer effectively increases the minimum CET1 capital, tier 1 capital, and total capital requirements for US banking organizations to 7.0%, 8.5%, and 10.5%, respectively. Banking organizations with capital levels that fall within the buffer will be forced to limit dividends, share repurchases or redemptions (unless replaced within the same calendar quarter by capital instruments of equal or higher quality), and discretionary bonus payments. The limits consist of a sliding scale, so that as the buffer decreases, so does the maximum payout as a percentage of the banking organization's net income over the past four quarters. For Advanced Banks, the capital buffer may be increased during periods of "excessive credit growth" by an incremental "countercyclical capital buffer" of up to 2.5% of risk-weighted assets. In a change from the Proposed Rules, Advanced Banks would (after completing the "parallel run" process for migrating to the advanced approaches regime)[7] be required to use the lesser of their standardized and advanced approaches risk-based capital ratios as the basis for calculating their capital conservation buffer (and any applicable countercyclical capital buffer). This change likely will increase the capital buffer for

at least some Advanced Banks compared to the Proposed Rules.

Leverage Ratios. Consistent with the Proposed Rules, the Final Rule imposes a tier 1 minimum leverage ratio of 4.0% for all banking organizations and an additional supplementary tier 1 leverage ratio of 3.0% for Advanced Banks. The 3.0% supplementary leverage ratio (which, consistent with Basel III, will take effect in January 2018 but be reported beginning in January 2015) incorporates in the denominator certain off-balance sheet exposures that are not included in the standard leverage ratio.[8] Despite significant criticism from the industry, the Final Rule continues to include in the supplementary leverage ratio derivatives exposures based on potential future exposure (without collateral recognition) and 10 percent of unconditionally cancellable commitments.[9]

As noted above, the Agencies on July 9, 2013, approved the Leverage Ratio NPR, which would apply to US top-tier BHCs with at least $700 billion in total consolidated assets or $10 trillion in assets under custody (i.e., the eight largest and most interconnected US banking organizations already identified as G-SIBs) and any insured depository institution subsidiary of these BHCs. For BHCs subject to the proposal, the Leverage Ratio NPR would establish a new 2.0% tier 1 "supplementary leverage buffer" requirement above the 3.0% supplementary leverage ratio requirement established in the Final Rule for all Advanced Banks, effectively increasing the supplementary leverage ratio requirement to 5.0% for these largest BHCs. The leverage buffer would function like the capital conservation buffer under the Final Rule, in that a BHC subject to the requirement that failed to maintain a leverage buffer of tier 1 capital in an amount greater than 2.0% of its total leverage exposure would be subject to restrictions on distributions and discretionary bonus payments.

PCA Regime. The Final Rule makes certain conforming changes to the prompt corrective action ("PCA") regime for insured depository institutions based on the new minimum capital requirements. Among other things, the Final Rule introduces the minimum CET1 requirement into the PCA regime, incorporates changes to the capital definitions and deductions, adds the supplementary leverage ratio as a new PCA category for Advanced Banks, and increases the tier 1 risk-based capital requirement for each PCA category other than "critically undercapitalized." Under the Final Rule, the "well capitalized" standards consist of a minimum 5.0% leverage ratio requirement (same as under the existing PCA regime), plus the 3.0% supplementary leverage ratio for Advanced Banks; a 6.5% CET1 risk-based capital requirement (new); an 8.0% tier 1 risk-based capital requirement (increased from 6.0% required under the current PCA regime); and a 10.0% total risk-based capital requirement (same as under the existing PCA regime). The Leverage Ratio NPR would (if adopted) increase the supplementary leverage ratio "well capitalized" requirement for insured depository institutions that are subsidiaries of US G-SIBs to 6.0%.

III. Capital Definitions; Deductions and Adjustments

Consistent with the Proposed Rules and the Basel III international approach, the Final Rule includes more restrictive definitions for the components of capital and eligibility criteria broadly intended to promote the use of capital instruments better able to absorb losses in times of financial stress. The eligibility criteria for the different components of capital have been adopted essentially as proposed, with some technical clarifications. CET1 capital consists primarily of common stock and retained earnings. Additional tier 1 capital is limited to other paid-in amounts recognized as equity under GAAP, thus excluding contingent capital and going somewhat beyond what is required by Basel III and, potentially, what has been implemented in the European Union. The Final Rule permits recognition of a broader

range of items in tier 2 capital, including loan loss reserves up to 1.25% of total risk-weighted assets for Standardized Banks and the excess of eligible credit reserves over expected credit losses up to 0.6% of credit risk-weighted assets for Advanced Banks.

In addition to restricting the instruments that may qualify as capital, the Final Rule also imposes much stricter deductions from and adjustments to capital. Several key provisions are summarized below.[10]

Phase-Out of TruPS and Other Non-Qualifying Capital. As required by section 171 of Dodd-Frank, the Final Rule requires that capital instruments such as trust preferred securities ("TruPS") and cumulative preferred shares be phased-out of tier 1 capital by January 1, 2016, for banking organizations that had $15 billion or more in total consolidated assets as of December 31, 2009. However, unlike the Proposed Rules, which would have required even banking organizations with less than $15 billion in assets to phase out TruPS and similar instruments (albeit over a longer ten-year transition period), the Final Rule adheres to Dodd-Frank and permanently grandfathers as tier 1 capital such instruments issued by these smaller entities prior to May 19, 2010 (provided they do not exceed 25 percent of tier 1 capital). The Final Rule also permanently grandfathers as tier 2 capital TruPS issued before May 19, 2010, by Standardized Banks with assets of $15 billion or more. Advanced Banks, however, will be permitted to include such instruments only as tier 2 capital until year-end 2015, after which they must begin phasing them out from tier 2 capital as well.

Accumulated Other Comprehensive Income. Consistent with the Basel III international approach, the Proposed Rules would have required all banking organizations to include most components of accumulated other comprehensive income ("AOCI") in CET1 capital, including most notably unrealized gains and losses on "available-for-sale" debt securities. Many commenters objected that reflecting AOCI in CET1 capital would introduce too much volatility into the regulatory capital measure, making it more difficult for banking organizations to manage liquidity and interest rate risk and potentially leading to other unintended consequences such as difficulties complying with legal lending limits. In response to these concerns, the Final Rule provides Standardized Banks with a one-time "opt-out" right to continue excluding AOCI from CET1 capital. Advanced Banks, however, will be required to recognize AOCI in CET1 capital as proposed.

Goodwill. The Final Rule requires that goodwill and other intangible assets (other than mortgage servicing assets ("MSAs"), which are discussed below), net of associated deferred tax liabilities ("DTLs"), be deducted from CET1 capital, including any goodwill embedded in the valuation of significant investments in the common stock of an unconsolidated financial institution (as defined below). Unlike most of the CET1 deductions required in the Final Rule, the deduction for goodwill is not subject to any transition period and, therefore, will apply from the effective date, a result the Agencies believe is required by statute.

DTAs, MSAs, and Significant Investments in Unconsolidated Financial Institutions. Under the Final Rule, deferred tax assets ("DTAs") that arise from net operating loss and tax credit carryforwards, net of associated DTLs and valuation allowances, are fully deducted from CET1 capital. However, DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, along with MSAs and "significant" (defined as greater than 10% of the issued and outstanding common stock of the unconsolidated financial institution) investments in the common stock of unconsolidated "financial institutions" (collectively, "Threshold Deduction Items"),[11] are partially includible in CET1 capital, subject to deductions consistent with the Proposed Rules.

Thus, under the Final Rule, a banking organization generally must take a deduction from CET1 capital to the extent that (i) any Threshold Deduction Item, net of associated DTLs, individually exceeds 10% of CET1 capital (after other adjustments and deductions) or (ii) Threshold Deduction Items in the aggregate (again net of associated DTLs) exceed 15% of CET1 capital. All Threshold Deduction Items would be risk-weighted at 250% to the extent they are not deducted from capital. Notably, in a change from the Proposed Rule, the Final Rule eliminates the existing 10% haircut on fair market value for MSAs.

Investments in the Capital of Other Financial Institutions. As noted above, significant investments in the capital of unconsolidated financial institutions in the form of common stock are among the Threshold Deduction Items under the Final Rule and, up to the limits stated above, need not be deducted from CET1 capital. If a banking organization holds a significant investment in an unconsolidated financial institution, any holdings not in the form of common stock are fully deducted from capital using the "corresponding deduction approach" (i.e., the investing banking organization must make deductions from the component of capital—CET1, tier 1, or tier 2—for which the underlying instrument would qualify if it were issued by the banking organization). Non-significant investments in the capital of unconsolidated financial institutions (i.e., investments consisting of 10% or less of issued and outstanding common stock of the unconsolidated institution) are deducted using the corresponding deduction approach, but only to the extent that such investments in the aggregate exceed 10% of the investing banking organization's CET1 capital.[12]

Minority Interest. The Final Rule also adopts without change the proposed treatment of capital issued by consolidated subsidiaries and not owned by the parent banking organization (i.e., "minority interest"). Thus, the Final Rule permits, subject to various restrictions, the recognition of minority interest in a fully consolidated subsidiary as capital of the parent banking organization. In order for any minority interest to be recognized, the instrument giving rise to the minority interest must meet all of the criteria for recognition as capital (i.e., CET1 capital, additional tier 1 capital, or tier 2 capital) that would apply if the instrument had been issued by the parent banking organization. Moreover, only CET1 capital issued to third parties by a subsidiary that is an insured depository institution or a foreign bank may be recognized (subject to applicable limits) as CET1 of the parent banking organization. The Final Rule retains the Proposed Rules' complex limitations designed to limit the amount of "surplus capital" at the subsidiary level that can be included as regulatory capital by the consolidated parent. Despite negative comments from the industry, the Final Rule also subjects "REIT preferred" to this minority interest regime, including the requirements that dividends be cancellable (although consent dividends may be used to satisfy this requirement) and that the subsidiary be actively managed to earn a profit (which will likely disqualify many REIT subsidiaries established for the purpose of raising tax-advantaged tier 1 capital).

IV. Standardized Approach for Risk-Weighted Assets

Consistent with the Proposed Rules, the Final Rule requires all banking organizations to calculate standardized risk-weighted asset amounts for on- and off-balance sheet exposures and, for "market risk banks" (i.e., those with aggregate trading assets and trading liabilities equal to (i) 10% or more of total assets or (ii) $1 billion), standardized market risk-weighted assets. Standardized risk-weighted asset amounts generally are determined by assigning on-balance sheet assets to broad risk

weight categories according to the counterparty (or, if relevant, the guarantor or collateral). Risk-weighted asset amounts for off-balance sheet items are calculated by: (1) multiplying the amount of the off-balance sheet exposure by a credit conversion factor ("CCF") to determine a credit equivalent amount and (2) assigning the credit equivalent amount to a relevant risk weight category. Set forth below is a discussion of how certain key assets will be risk-weighted under the Final Rule.

Residential Mortgages. The Final Rule abandons the highly controversial treatment of residential mortgages under the Proposed Rules. As originally proposed, residential mortgage exposures would have been subject to a risk-weighting of 35% - 200% based on a combination of characteristics of the loan, including the loan-to-value ("LTV") ratio. In response to criticism that the proposed risk-weighting framework failed to properly categorize the relative riskiness of certain loans, entailed unnecessary regulatory burden, and, combined with the still uncertain effects of the Consumer Financial Protection Bureau's recently adopted "Qualified Mortgage" standards, ultimately would inhibit lending to creditworthy borrowers, the Final Rule retains the treatment of residential mortgage loans that applies under the Current Rules. Thus, under the Final Rule, residential mortgage loans secured by a first lien on a one-to-four family residential property that is owner-occupied or rented, that are prudently underwritten, that are not 90 days or more past due or in nonaccrual status, and that have not been modified or restructured (other than pursuant to the Home Affordable Modification Program) will continue to receive a 50 percent risk weight. All other residential mortgage loans, including exposures secured by a junior lien on residential property, will continue to be assigned a 100 percent risk weight.[13]

Although the Final Rule retains the existing risk weights for residential mortgages, higher capital requirements for perceived higher risk mortgages could still be imposed through other means. For example, banking organizations with $50 billion or more in assets are subject to the Board's stress testing requirements, which could effectively require more capital for certain residential mortgages. In addition, the Agencies retain substantial discretion under the "prudently underwritten" standard to preclude reliance on the 50% risk weight for residential mortgage loans with perceived high-risk features.

Non-US Sovereigns. The standardized approach under the Final Rule continues to risk-weight exposures to non-US sovereign entities, foreign banks, and non-US public sector entities according to OECD Country Risk Classifications ("CRC") as proposed, albeit with changes necessary to account for the OECD decision to cease providing CRCs for certain high-income jurisdictions.[14] Under the Final Rule, sovereign exposures would be risk-weighted from 0% (for OECD members with no CRC, and those rated 0-1) to 150% (for those rated 7 and those in default).

High-Volatility CRE Exposures. Consistent with the Proposed Rules, high-volatility commercial real estate ("HVCRE") exposures will receive a risk-weighting of 150% under the Final Rule's standardized approach, as compared to 100% under the Current Rules. However, in response to industry comment, the Agencies have revised the definition of HVCRE exposures to exclude loans used to finance (i) the acquisition, development, or construction of real property that would qualify as a community development investment and (ii) the purchase or development of agricultural land.

Past Due Exposures. Also consistent with the Proposed Rules, exposures that are more than 90 days past due will receive a risk weight of 150% under the standardized approach, up from 100% under the Current Rules.

Off-Balance Sheet Items. As proposed (and consistent with the Current Rules), off-balance sheet exposures are risk-weighted under the

standardized approach by applying a CCF and assigning the resulting credit equivalent amount to the appropriate risk weight category. The Final Rule retains without change the CCFs for off-balance sheet exposures that had been included in the Proposed Rules, including a 20 percent CCF for commitments with an original maturity of one year or less that are not unconditionally cancelable by a banking organization, a provision that represents a significant increase over the current 0% CCF and had been opposed by many commenters.

Early Payment Default Repurchase Obligations. Under the general risk-based capital rules as well as the Final Rule, a banking organization is generally subject to a capital charge when it provides credit-enhancing representations and warranties on assets sold or otherwise transferred to third parties. The Agencies had proposed to eliminate the safe harbor that permits a banking organization to avoid incurring such a regulatory capital charge for residential mortgage loans sold subject to early default clauses or similar warranties that permit the return of a loan for a period not to exceed 120 days from the date of transfer. Significantly, however, in the Final Rule, the Agencies elected to retain the 120-day safe harbor, thus avoiding substantially higher capital requirements for banks that sell large volumes of mortgage loans. The Final Rule also clarifies that the capital requirement applies to the maximum contractual exposure (e.g., refunds of servicing premium and other fees), not to the underlying loan, and confirms that representations about the value of the underlying collateral will not trigger additional capital requirements.

OTC Derivatives and Cleared Transactions. Consistent with the Proposed Rules, the Final Rule generally retains the treatment of OTC derivatives (now including certain unsettled securities, commodities or foreign exchange transactions) under the current risk-based capital rules for both Standardized and Advanced Banks. Accordingly, OTC derivatives exposures will be calculated using the "Current Exposure Method," consisting generally of current mark-to-market exposure, plus potential future exposure calculated by applying a specified set of conversion factors (multipliers that vary based on the type and remaining maturity of the specific derivatives contract) to the notional principal amount, with only limited recognition of netting.[15] An Advanced Bank would have the option to use internal models, but only if approved by its regulator. Special rules apply to equity derivatives and credit derivatives.[16] Despite industry opposition, the Final Rule removes the 50% risk weight cap for OTC derivatives exposures under the Current Rules. Consistent with the current advanced approaches rules and the Proposed Rules, the Final Rule also provides greater recognition of collateral and guaranties than the Current Rules. Under the Final Rule, derivatives transactions between a clearing member bank and its client are treated as OTC derivatives exposures (rather than cleared transactions) but benefit from a reduced exposure calculation.

The Final Rule generally incorporates more favorable capital treatment for cleared derivatives (as well as securities financing) transactions, based on the Basel Committee's July 2012 interim framework.[17] The requirements differ based on whether (i) the clearing organization meets certain requirements (and is therefore a "Qualifying Central Counterparty" or "QCCP"); (ii) the bank is a clearing member or a client of a clearing member; (iii) the exposure is a trade exposure (generally, risk-weighted at 2% or 4% for QCCPs; 100% for non-QCCPs) or default fund contribution (capital charge calculated using either a three-step formula (with more liberalized netting benefits recognition than originally proposed) or by applying a 1250% risk weight capped at 18% of the bank's overall trade exposures to the QCCP); and (iv) if the bank is a

clearing member, whether it is facing its client (as noted above, generally treated as an OTC derivative) or the CCP (generally treated as a cleared transaction).

In addition to maintaining capital against their OTC derivatives exposures, Advanced Banks also must maintain capital to cover "credit valuation adjustment" ("CVA") risk (i.e, the risk of mark-to-market losses to a derivatives contract resulting from deterioration in the counterparty's credit risk). The Final Rule provides Advanced Banks with a choice of a "simple" or "advanced" CVA approach. The Final Rule clarifies that the CVA requirement is calculated on a portfolio rather than counterparty-by-counterparty basis, but explicitly rejects commenters' proposals to exclude certain counterparties (such as sovereigns, pension funds and corporate end-users) from the CVA requirement.[18]

Equity Exposures. The Final Rule substantially revises the risk weights for equity exposures as compared to the Current Rules, adopting a range of risk weights from 0% (for sovereigns and other entities whose debt securities are eligible for a 0% risk weight) to 400% or 600% (for non-publicly traded equity exposures and equity exposures to certain leveraged investment firms that otherwise meet the definition of "traditional securitization," respectively). Publicly traded equities generally attract a risk weight of 300%, while (as discussed above) that portion of a significant investment in the common stock of an unconsolidated financial institution that is not deducted from capital attracts a risk weight of 250%. In order to obtain the risk weight amount for an equity exposure under the Final Rule, the adjusted carrying value of the exposure is multiplied by the appropriate risk weight. For off-balance sheet equity exposures, the adjusted carrying value is equal to the effective notional principal amount of the exposure (i.e., the amount of a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value for a given small change in the price of the underlying equity instrument).

Equity exposures to investment funds are subject to a separate regime, which consists of three different options for risk-weighting these exposures: (1) a new "full look-through approach" where the aggregate risk-weighted asset amounts for all investments held by the fund are multiplied by the banking organization's proportional interest in the fund; (2) a "simple modified look-through approach," similar to one of two methods available under the Current Rules, pursuant to which a banking organization multiplies its exposure to the fund by the highest risk weight of the assets in the fund (excluding derivatives used for hedging purposes); and (3) an "alternative modified look-through approach," similar to the other method currently available for risk-weighting equity exposures to investment funds, pursuant to which a banking organization assigns risk weights on a pro rata basis according to the investment limits in the fund's offering documents. Each method is subject to a risk-weight floor of 20%. The Agencies acknowledged in the preamble to the Final Rule that investment funds that hold securitization exposures may be subject to punitive risk weights under these look-through approaches if a banking organization lacks the information needed about the underlying securitization exposure to apply the SSFA or even "gross-up" treatment (discussed below), and banking organizations thus would potentially be forced to apply a 1250% risk weight to the investment fund. However, rather than offer any relief, the Agencies simply indicated their belief that this aspect of the Final Rule provides appropriate incentives for banking organizations to perform the necessary diligence on the underlying securitization exposures.[19]

V. Securitization Framework

The Final Rule adopts the more restrictive securitization framework generally as proposed.

Accordingly, consistent with Section 939A of Dodd-Frank and with the Proposed Rules, the existing ratings-based approach under the Current Rules is replaced by the Simplified Supervisory Formula Approach ("SSFA") for both Standardized and Advanced Banks. The SSFA calculates capital for securitization exposures based on the risk-weights and performance (measured by delinquencies) of the underlying exposures, and the relative position of the exposure in the structure—i.e., attachment (when losses are first allocated to the tranche) and detachment (when the tranche suffers total loss) points.[20] Standardized Banks must use either the SSFA or "gross-up" approach (calculate risk weight of underlying assets allocable to the securitization exposure plus all senior positions). Advanced Banks must, if possible, use the Supervisory Formula Approach ("SFA"), or otherwise the SSFA. Compared to the SSFA, the SFA requires substantially more data on the underlying exposures in order to compute loan-level parameters such as probability of default, exposure at default and loss given default that are used by Advanced Banks to determine the risk weights for the underlying exposures. Significantly, the Final Rule retains the controversial 20% risk weight floor under both the SFA and the SSFA, as well as the new due diligence requirements and accompanying 1250%[21] risk weight penalty for inadequate due diligence.[22]

The Final Rule retains in the definition of "traditional securitization exposure" the proposed distinction between operating companies and investment firms, as well as the Agencies' discretion to "scope out" certain investment firms from the definition based upon various factors intended to distinguish structured finance transactions (such as managed CDOs and SIVs) from certain hedge funds and private equity firms that are deemed to "exercise substantially unfettered control over the size and composition of [their] assets, liabilities and off-balance sheet exposures." In this regard, the Final Rule simply repeats language from the Proposed Rules and the existing advanced approaches rule and offers no additional guidance on various ambiguities that have arisen, including treatment of various types of exposures to hedge funds.

The Agencies explicitly rejected adopting a blanket exclusion for short-term loans to support day-to-day investments of investment firms. The Final Rule does add an exclusion for pension funds, however. Helpfully, the Agencies also clarified that specialized loans to finance the construction or acquisition of large-scale projects or commodities would not be securitization exposures since the assets backing the loans are non-financial (the facility or commodity being financed).

The Final Rule continues to treat as a resecuritization any securitization exposure in which even a minimal amount of the underlying assets are securitization exposures (explicitly rejecting comments that suggested a proportionate treatment), but it does exclude retranched single underlying exposures (e.g., re-REMICs) from treatment as a resecuritization. The Final Rule also provides clarification as to when an exposure to an asset-backed commercial paper ("ABCP") program must be treated as a resecuritization.[23]

Consistent with the Proposed Rule and the Basel III international framework, the Final Rule permits an eligible ABCP liquidity facility to be risk-weighted based on the highest risk weight applicable to any of the underlying exposures, and permits a securitization exposure that is in a second-loss position or better to an ABCP program to be risk-weighted at the higher of 100% or the highest risk weight applicable to any of the underlying exposures, provided certain conditions are met.

One of the major objections to the securitization framework as set forth in the Proposed Rules was the potential impact on the competitive position of US banks relative to non-US banks,

especially as a result of the 20% risk weight floor for securitization exposures, which as noted above has been retained in the Final Rule. The Basel Committee answered that objection in December with a new proposal for the securitization framework,[24] which includes the 20% floor that has now been adopted in the United States as well as other measures that would substantially increase the risk weights for many securitization exposures. It is likely that the Agencies will adopt at least some of these changes as amendments to the Final Rule once the new securitization framework is finalized internationally by the Basel Committee.

VI. Credit Risk Mitigation

The Final Rule permits a broader range of credit risk mitigation ("CRM") techniques than is recognized under the Current Rules, including through the use of guarantees, credit derivatives, and collateral, essentially extending the CRM principles available to Advanced Banks to Standardized Banks as well. In order to apply CRM under the Final Rule, a banking organization must implement operational procedures and risk-management processes sufficient to ensure that all documentation used in collateralizing or guaranteeing a transaction is legal, valid, binding, and enforceable under applicable law in all relevant jurisdictions. This includes a "legal review" requirement to ensure documentation meets applicable standards and an ongoing monitoring obligation.

Guarantees and Credit Derivatives. Like the Current Rules, the Final Rule permits a banking organization to apply a "substitution approach" to recognize the CRM effect of an eligible guarantee or credit derivative from an eligible guarantor. The Final Rule permits a broader range of eligible guarantors than what is currently permitted under the general risk-based capital rules, including sovereigns, various international development organizations, the Federal Home Loan Banks, depository institutions, BHCs and SLHCs, and foreign banks. Eligible guarantors also include entities (other than special purpose entities and monoline insurers) that have issued and outstanding unsecured debt securities (without credit enhancements) that are investment grade. In a change from the Proposed Rules, the Final Rule adds QCCPs to the list of eligible guarantors to accommodate the use of the substitution approach for credit derivatives that are centrally cleared. Provided that the guarantor is an eligible guarantor and the guarantee or credit derivative meets applicable eligibility requirements, including as to enforceability, the substitution approach permits a banking organization to substitute the risk weight applicable to the guarantor or credit derivative protection provider for the risk weight applicable to the hedged exposure to the extent that the protection amount exceeds the amount of the hedged exposure. The protection amount is determined by applying any applicable haircuts for maturity mismatch, lack of restructuring coverage, or currency mismatch to the effective notional amount of the guarantee or credit derivative.

Collateral. The Final Rule also expands the definition of "financial collateral" that may be recognized for CRM purposes beyond what is permitted under the Current Rules. Under the Final Rule, eligible financial collateral includes: (1) cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee); (2) gold bullion; (3) investment grade debt securities (long-term and short-term) other than resecuritization exposures; (4) publicly traded equity securities; (5) publicly traded convertible bonds; and (6) shares of money market funds and mutual funds that are publicly quoted on a daily basis.[25] Thus, despite industry objections, the Final Rule adopts the Proposed Rules' exclusion of resecuritizations, conforming residential mortgages, and non-investment grade debt securities as eligible financial collateral. For items (2) through (6),

the banking organization must have a perfected, first-priority security interest in the collateral or, if outside the United States, the "legal equivalent thereof," in order to recognize the collateral for CRM purposes.

Provided all applicable eligibility and risk management requirements are satisfied, the Final Rule permits recognition of financial collateral using either the "simple approach" (which can be applied for any type of exposure) or the "collateral haircut approach" (which can be applied only with respect to repo-style transactions, collateralized derivative transactions, eligible margin loans, or single-product netting sets of such transactions). Under the simple approach, the collateralized portion of an exposure generally receives the risk weight applicable to the financial collateral, subject in most cases to a 20% floor (with exceptions for exposures collateralized by cash on deposit, certain OTC derivatives marked-to-market daily, and exposures to sovereigns that qualify for a 0% risk weight). Under the collateral haircut approach, a banking organization uses a supervisory formula and either supervisory or its own estimates of collateral haircuts in order to arrive at the measure of exposure for eligible transactions. The supervisory haircuts adopted under the Final Rule for securitization exposures and other financial collateral provide some relief from the Proposed Rules (e.g., a reduction in the standard supervisory market price volatility haircuts for financial collateral issued by non-sovereign issuers with a risk weight of 100% from 25% to a range of 4.0% to 16.0% based on maturity).

VII. Revisions to the Advanced Approaches for Risk-Weighted Assets

The Agencies in June 2012 proposed a number of revisions to the existing advanced approaches rule to incorporate Basel 2.5 and III requirements to hold more appropriate levels of capital for counterparty credit risk, CVA risk, and "wrong-way" risk (i.e., the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of that counterparty), as well as to strengthen the risk-based capital requirements for certain securitization exposures. The Proposed Rules also included revisions intended to meet the requirements of section 939A of the Dodd-Frank Act regarding elimination of references to credit ratings. The Final Rule adopts these revisions to the advanced approaches framework largely as proposed (with some technical and clarifying changes), and in a manner consistent with the international framework.

Among the revisions to the existing advanced approaches rule is a set of requirements to enhance the internal models methodology ("IMM") for calculating exposures, including through the use of stressed inputs and periodic review and validation; new risk management requirements intended to ensure that Advanced Banks monitor and control wrong-way risk; and measures related to CVA risk as described above with respect to derivatives transactions. The Final Rule also imposes (through the "asset value correlation" or "AVC" factor) increased capital requirements for exposures to non-regulated financial institutions and to regulated financial institutions with total consolidated assets in excess of $100 billion in order to address risks related to the correlation of credit risk among financial institutions.

VIII. Disclosure Requirements

Under the Final Rule, each Advanced Bank and each top-tier US BHC or SLHC with $50 billion or more in total consolidated assets that is a Standardized Bank is subject to quantitative and qualitative disclosure requirements with respect to its regulatory capital. These disclosures will be required on a quarterly basis, beginning in 2015. Advanced Banks that do not complete their parallel run phase by the beginning of 2015 will be subject to the disclosure obligations set forth under the standardized approach until the

parallel run is complete. The Final Rule includes ten separate tables of quantitative and qualitative information that must be disclosed by Standardized Banks and 12 tables for Advanced Banks, addressing topics such as the scope of capital reporting and consolidation; capital structure, including a detailed breakdown of the individual components of a banking organization's reported capital levels; risk-weighted assets broken down by category; capital buffer information; CRM practices; securitization; and risk management.

IX. Implementation Schedule and Transition Provisions

As proposed, Advanced Banks will be required to begin transitioning to the new minimum capital requirements imposed by the Final Rule on January 1, 2014. As of that date, Advanced Banks will be required to comply with the Final Rule's advanced approaches for determining risk-weighted assets, while still computing risk-weighted assets under the Current Rules as their Collins Amendment "floor." In addition, this will begin the transition to the higher Basel III minimum regulatory capital ratios (other than the capital buffers) as well as the more restrictive definition of regulatory capital and stricter regulatory adjustments and deductions. Beginning January 2015, the Collins Amendment risk-weighted assets floor would be determined based on the standardized approach under the Final Rule rather than the Current Rules. In January 2016, Advanced Banks would begin to phase-in the capital conservation and (as applicable) countercyclical capital buffers.

Standardized Banks received a one-year delay under the Final Rule and will not be required to begin implementing the standardized approach under the Final Rule until January 1, 2015. Like Advanced Banks, Standardized Banks also would begin to phase-in the capital conservation buffer in January 2016.

The specific transition rules and schedules for different aspects of the new capital regime for both Standardized and Advanced Banks are complex and highly detailed (e.g., with different schedules for the phase in of the capital buffers and the new deductions from/adjustments to capital, phase out of non-qualifying capital instruments). The Final Rule sets out these transition arrangements in a series of charts and timelines. Of course, market expectations and other considerations often force banking organizations to comply with new or emerging capital requirements even before they formally take effect.

X. Market Risk Rule

The Final Rule incorporates the Agencies' existing market risk capital rule into the comprehensive US capital framework.[26] In conjunction with adoption of the Final Rule, the Agencies are also issuing a market risk NPR that would, among other things, make changes to the risk weights for sovereign exposures, non-publicly traded mutual funds, and certain student loans to conform to the Final Rule. The market risk NPR will be subject to a 60-day comment period upon publication in the *Federal Register*.

XI. Additional Capital Requirements for G-SIBs

As noted above, while the Final Rule may constitute the last major step in the reform of the US regulatory capital regime for the vast majority of banking organizations, significant additional measures remain pending for those US banks designated as G-SIBs. In remarks offered at the July 2 Board meeting, Governor Tarullo summarized those additional measures as follows:

- An NPR to impose a significantly higher supplementary leverage capital requirement beyond that which is currently required under Basel III and incorporated in the Final Rule. As discussed above, the Leverage Ratio NPR was approved by the Agencies on July 9, 2013, and would impose this enhanced

supplementary leverage requirement on US G-SIBs and their depository institution subsidiaries.

- Within the next several months, the Board expects to issue another NPR imposing requirements with respect to the combined amount of equity and long-term debt these firms should maintain in order to facilitate orderly resolution, including a new minimum long-term unsecured debt requirement.
- After the Basel Committee has completed its framework for risk-based capital surcharges on G-SIBs, the Agencies intend to issue another NPR to implement the risk-based capital surcharge framework in the United States. This proposal, which, based on the work of the Basel Committee to date, is expected to include capital surcharges of 1.0% to 2.5% beyond existing minimum requirements, is expected in late 2013.
- Finally, Board staff is working on an advanced notice of proposed rulemaking ("ANPR") to address risks associated with reliance on short-term wholesale funding, including the possibility of additional capital requirements for large firms that rely substantially on such funding.

XII. Conclusion

With the approval of the Final Rule, the United States joins the 23 other members of the 27-member Basel Committee (including the EU members) that have adopted final regulations implementing the Basel III capital regime.[27] Despite this significant step, however, the post-financial crisis evolution of regulatory capital requirements in the United States (and elsewhere) remains far from complete.[28] In the United States, separate proposals to implement enhanced capital requirements for various categories of the largest banks, as discussed earlier, are already well under way, and the first of these (the recently released Leverage Ratio NPR) by itself raises significant policy and practical considerations. At the international level, the Basel Committee, as noted throughout this Update, has issued proposals that would affect many areas covered by the Final Rule, including the Basel III supplementary leverage ratio, capital treatment of exposures to central counterparties, capital treatment of equity investments in funds, methodologies for measuring counterparty credit risk exposure under derivatives transactions, and the securitization framework.[29] In most instances, the Agencies already have indicated they will likely consider reflecting in the US regime any final changes made by the Basel Committee. More broadly, policy debates over the proper purpose, calibration, consistency, complexity, and economic impact of regulatory capital requirements continue and, if anything, grow in intensity. As a result, at the same time US banking organizations begin the difficult work of navigating a completely overhauled regulatory capital landscape, they must do so with the understanding that yet more changes are likely and that regulatory capital requirements are themselves only part of a series of fundamental changes taking place in the overall regulatory environment.

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Endnotes

[1] "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," Federal Register publication pending, available in draft at http://www.federalreserve.gov/bcreg20130702a.pdf.

[2] The Final Rule incorporates and consolidates three separate notices of proposed rulemaking: "Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action," 77 Fed Reg. 52792 (Aug. 30, 2012) (the "Basel III NPR"); "Regulatory Capital Rules: Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements," 77 Fed. Reg. 52888 (Aug. 30, 2012) (the "Standardized Approach NPR"); and "Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule," 77 Fed. Reg. 52978 (Aug. 30, 2012) (the "Advanced Approaches NPR"). For a summary of the June 2012 NPRs, please see our Legal Update available at http://www.mayerbrown.com/publications/detail.aspx?publication=8039. Because it represents a complete restatement of existing US regulatory capital requirements, the Final Rule eliminates often subtle differences among the capital rules of the different Agencies.

[3] As discussed later in this update, however, the Basel Committee has recently adopted or proposed revisions to several important elements of the Basel III international framework that could, in fact, lead to additional changes to the Final Rules, even for Standardized Banks.

[4] "Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions," Federal Register publication pending, available in draft at http://www.federalreserve.gov/newsevents/press/bcreg/20130709a.htm. The FDIC's decision to approve the Final Rule as an interim final rule appears to have been based on its view that the Leverage Ratio NPR is a critical piece of the overall US regulatory framework and its desire to receive comments on the interrelationships between the Final Rule and proposed enhanced supplementary leverage standards.

[5] Under separate proposals issued by the Board pursuant to the enhanced prudential standards contained in Section 165 of Dodd-Frank, the Final Rule also would apply to US intermediate holding companies required to be established by large foreign banking organizations with significant US operations and (subject to modification) to nonbank financial companies designated as systemically important. For more information on the Section 165 proposal for FBOs, see our Legal Update available at http://www.mayerbrown.com/Federal-Reserve-Proposes-Enhanced-Prudential-Standards-for-Non-US-Banking-Organizations-12-20-2012/.

[6] The Final Rule emphasizes that these requirements are in fact minimums, and that banking organizations, especially those contemplating significant expansion or raising other supervisory concerns, are generally expected to operate with capital levels "well above" the minimum ratios.

[7] As of the date of this update, no US banking organization has yet received approval to exit the parallel run.

[8] On June 26, 2013, the Basel Committee published a consultative paper proposing certain revisions to the supplementary leverage ratio, primarily related to the treatment of derivatives and securities financing transactions, and setting forth the public disclosure requirements that would apply beginning in January 2015. The paper, "Revised Basel III leverage ratio framework and disclosure requirements," is available at http://www.bis.org/publ/bcbs251.htm. In the Leverage Ratio NPR and the Final Rule, the Agencies indicated they will consider the appropriateness for US banking organizations of any adjustments ultimately made by the Basel Committee.

[9] The denominator of the supplementary leverage ratio, or "total leverage exposure," includes the full notional amount of all off-balance sheet exposures other than securities financing transactions, derivatives and unconditionally cancellable commitments (the latter two of which are incorporated as described above).

[10] In addition to the adjustments discussed below, the Final Rule also retains the proposed deductions from CET1 of any after-tax gain-on-sale associated with a securitization exposure, but clarifies that any recognized mortgage servicing asstes ("MSAs") that would already be subject to deduction (as discussed below) would not be subject to double deduction.

[11] The term "financial institution" for this purpose (and other aspects of the Final Rule requiring deductions for investments in the capital of "financial institutions") remains broadly defined to include all manner of regulated entities (e.g., banks and BHCs; savings and loan holding companies; nonbank financial institutions supervised by the Board; foreign banks; credit unions; industrial loan companies and similar entities; insurance companies; SEC-registered brokers and dealers; futures commission merchants and swap dealers and security-based swap dealers) as well as entities "predominantly engaged" in financial activities. In a change from the Proposed Rules, the definition of "financial institution" under the Final Rule does not include "commodity pools" or Volcker Rule "covered funds," and several explicit exceptions to the definition of "financial institution" have been added, including for ERISA plans and investment funds registered with the SEC under the Investment Company Act of 1940. In addition, in recognition of the burden of applying the functional "predominantly engaged" test, the Final Rule requires that functional test to be used only for large investments (i.e., those in which the banking organization has an investment of at least $10 million or 10% of the outstanding common shares).

[12] The rules regarding capital treatment of investments in other financial institutions are complex, and the Final Rule includes a helpful flow chart on page 190 of the draft Federal Register notice (see link in note 1 above).

[13] Consistent with the Proposed Rules and the Current Rules (and as required by statute), the Final Rule retains the 50% risk weight for residential construction and multi-family residential loans that meet certain criteria.

[14] Under the revisions in the Final Rule, exposures to unrated sovereigns that are OECD members would be risk-weighted at 0%, while those to unrated sovereigns that are not members of the OECD would be risk-weighted at 100% (i.e., the approach to all sovereign exposures under the Current Rules).

[15] The conversion factors are the same as under the Current Rules, with new categories added for credit derivatives in accordance with the existing risk-based capital rules for Advanced Banks. On June 28, 2013, the Basel Committee published a consultative paper proposing to improve the methodology for assessing the counterparty credit risk associated with derivative transactions. The proposal would replace the Basel III international capital framework's existing non-internal model methods (the Current Exposure Method and the Standardised Method) with a new Non-Internal Model Method that contains updated supervisory factors, provides a more meaningful recognition of netting benefits, reduces the scope for discretion by banks, and avoids undue complexity. The paper, "The non-internal model method for capitalising counterparty credit risk exposures," is available at http://www.bis.org/publ/bcbs254.htm. The Agencies will likely consider amending the Final Rule to implement any new method ultimately adopted by the Basel Committee.

[16] Equity derivatives generally will be treated as equity exposures, rather than being subject to a counterparty credit risk capital requirement, unless they are subject to the market risk rules. A bank that purchases a credit derivative as protection for a banking book exposure generally will not have to compute a separate counterparty credit risk capital requirement, and a bank that provides protection under a credit derivative will treat the exposure as an exposure to the underlying reference asset with no counterparty credit risk capital requirement unless the protection-providing bank treats the credit derivative as subject to the market risk rules.

[17] On June 28, 2013, the Basel Committee published a consultative paper proposing certain revisions to the July 2012 interim framework, intended primarily to ensure that banks' exposures to qualifying central counterparties are adequately capitalized, while also preserving incentives for central clearing. The paper, "Capital treatment of bank exposures to central counterparties," is available at http://www.bis.org/publ/bcbs253.htm. Again, the Agencies indicated they will consider whether to adopt any changes ultimately made by the Basel Committee.

[18] Failure to exclude these counterparties places the Final Rule at odds with the European Union's approach in CRD IV. The potential for placing US banking organizations at a competitive disadvantage has already become a political issue, with the House of Representatives recently passing a bill (HR 1341) directing the Financial Stability Oversight Council to assess the impact of differences between the US and other jurisdictions in implementing the CVA requirement.

[19] On July 5, 2013, the Basel Committee published a consultative paper proposing certain revisions to the prudential treatment of banks' equity investments in funds, primarily related to clarification of the treatment of the risk of a fund's underlying investments and its leverage. The paper, "Capital requirements for banks' equity investments in funds," is available at http://www.bis.org/publ/bcbs257.htm.

[20] In response to comments, the Final Rule modifies the delinquency parameter ("W") of the proposed SSFA to exclude non-credit-related deferrals of payments on student (and other consumer) loans.

[21] Although conceding that a 1250% risk-weight is more onerous than a simple deduction for those banks that

maintain capital above the required minimums, the Final Rule retains the 1250% approach "for consistency and simplicity."

[22] Under the due diligence standard, banking organizations must demonstrate a "comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure" through an analysis (conducted prior to acquisition and documented within three business days) of specified structural, performance and market data that is "commensurate with the complexity of the...exposure and the materiality of the position in relation to regulatory capital...." While not changing the actual regulatory standard or the 1250% penalty from the Proposed Rules, the preamble to the Final Rule suggests that the Agencies will permit appropriate flexibility where, for example, market data is not available (e.g., for foreign exposures) or loan-level data is not available (in which case the Agencies indicate that pool-level data can be used).

[23] For example, the Final Rule indicates that a pool-specific liquidity facility for a typical multi-seller ABCP conduit generally will not be a resecuritization exposure, whereas a program-wide credit enhancement that does not cover all losses above the seller-provided credit enhancement generally will be a resecuritization exposure.

[24] Basel Committee, "Revisions to the Basel Securitisation Framework" (December 2012), available at http://www.bis.org/publ/bcbs236.pdf.

[25] Under the Current Rules, eligible collateral is generally limited to cash, US government and agency securities, obligations of certain international organizations and non-US central governments.

[26] The Agencies adopted final amendments to the market risk rule in June 2012 in conjunction with the issuance of the Proposed Rules. "Risk-Based Capital Guidelines: Market Risk," 77 Fed. Reg. 53060 (Aug. 30, 2012).

[27] Basel Committee, "Progress report on implementation of the Basel regulatory framework" 6-7 (April 4, 2013), available at http://www.bis.org/publ/bcbs247.htm. The EU has adopted Basel III in the form of a new Regulation, known as the Capital Requirements Regulation or CRR (Regulation (EU) No. 575/2013, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0001:0337:EN:PDF), and a Directive known as the Capital Requirements Directive IV or (sometimes together with the CRR) as CRD IV (Directive 2013/36/EU, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:EN:PDF). The Regulation (which includes rules on capital requirements for credit institutions and investment firms, as well as large exposure limits and other prudential rules) will apply directly in EU member states without further legislative action, while the Directive (which governs among other things the framework for member states' authorisation and supervision of those institutions) will need to be separately adopted in each member state. CRR and CRD IV together supersede and replace the existing Capital Requirements Directive or CRD (which refers collectively to the Banking Consolidation Directive, 2006/48/EC, and the Capital Adequacy Directive, 2006/49/EC), as amended. The CRR and CRD IV were published in final form on Jun. 26, 2013, and will become effective beginning Jan. 1, 2014, subject to various transition rules generally consistent with those in Basel III. The existing CRD already incorporated the Basel II framework and several later amendments.

[28] Moreover, of course, the Final Rule does not include the liquidity aspects of the Basel III international framework. The Agencies are expected within the next several months to publish a proposal to implement the Basel III liquidity coverage ratio ("LCR") in the United States, which itself was revised by the Basel Committee in January of this year. Basel Committee, "Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools" (January 2013), available at http://www.bis.org/publ/bcbs238.pdf. The second even more controversial Basel Committee liquidity measure—the net stable funding ratio—remains a work in progress at the Basel Committee level so any US action on that aspect of Basel III remains some time away.

[29] The Basel Committee also recently released a discussion paper designed to establish the framework for efforts to simplify the existing Basel capital regime. Basel Committee, "The regulatory framework: balancing risk sensitivity, simplicity and comparability" (July 8, 2013), available at http://www.bis.org/publ/bcbs258.htm.

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