

To: Public Comment File – Docket No. OCC–2023–0011

From: Carl Kaminski, Assistant Director, Bank Advisory

Date: October 26, 2023 and October 30, 2023

Subject: Meetings Between Staff of the Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency, and Representatives from RBC Capital Markets LLC

On October 26, 2023, staff of the Federal Deposit Insurance Corporation, Federal Reserve System, and Office of the Comptroller of the Currency (collectively, the “agencies”) met with representatives from RBC Capital Markets LLC regarding the agencies’ Notice of Proposed Rulemaking on Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, which was published in the Federal Register on September 19, 2023 (88 Fed. Reg. 64524).

The representatives from RBC Capital Markets LLC discussed the impact of different aspects of the NPR on debt investors and the banking organizations that would be subject to the proposed rule, the treatment for legacy long-term debt (“LTD”), timing requirements, LTD eligibility requirements, the interaction between the NPR and resolution planning requirements and deposit insurance assessments, calibration of the minimum LTD requirement, clean holding company requirements, and authority for the NPR.

On October 30, 2023, the group met again to discuss follow-up questions about the potential treatment of LTD under the agencies’ regulatory capital rules.

Attendees

OCC

Andrew Tschirhart
Carl Kaminski

FDIC

Elizabeth Falloon
Julia Paris
Michael Norton
Ken Stinson
Zrinka Dusevic
Dena Kessler

Federal Reserve Board

Juan Climent
Helen Xu
Francis Kuo
Lesley Chao
Lars Arneson
Benjamin Kay
James Caldera
Josh Strazanac
Brian Kesten
Jacob Fraley

RBC Capital Markets LLC

Anthony Ragozino
Diego Nogales

RBC Capital Markets

Proposed Long-Term Debt Requirement for U.S. Non-GSIBs

- Questions for Agency Staff

October 16, 2023



Capital
Markets

Proposed Long-Term Debt Requirement for U.S. Non-GSIBs

- We are pleased to speak with staff of the Board of Governors of the Federal Reserve System (“FRB Staff”) about the U.S. banking regulators’ notice of proposed rulemaking (“NPR”) to impose Long-Term Debt (“LTD”) requirements on firms in Categories II, III and IV.
- The RBC Capital Markets team has spent considerable time analyzing key elements of the proposal, assessing the proposal’s potential impact on covered firms, and discussing those insights with our bank clients.
- On the following pages, we include one excerpt from our broader analysis, i.e., a ***list of questions*** compiled through our own analysis and discussions with bank clients and institutional investors, in order to seek clarification from the regulators on certain aspects of the LTD NPR.

RBC Capital Markets looks forward to the opportunity to discuss this significant rulemaking initiative with the FRB Staff



**Capital
Markets**

Note: We are submitting these materials in our capacity as advisers to our external clients and not on behalf of Royal Bank of Canada or any of its affiliated entities.

Questions for Agency Staff on LTD Proposal

Questions	
1	Would currently existing intercompany debt be captured in the grandfathering provision? Or would it need to be restructured to meet the LTD eligibility criteria? [We note the definition of “legacy internal debt” appears to only contemplate debt issued externally by the bank.]
2	Was consideration given to aligning the three-year phase-in period of the LTD proposal with the three-year phase-in period of the Basel III endgame proposal?
3	Regarding non-qualifying debt issued up until the rule’s finalization. If banks continue to issue external debt, will the regulator exercise its discretion (as provided by the proposed rule) to exclude such debt from the bank’s eligible LTD amount?
4	Regarding the agencies’ estimated LTD shortfall: a) Are these amounts based on the four-quarter average ended Q3 2022? b) Does the analysis include any existing (as of Q3 ’22) inter-company debt? [fn98 suggests it does not] If so, how much of such inter company debt was assumed to be included? And is it included on the assumption that it could be restructured to be LTD compliant? c) If the agencies assume some amount of inter-company debt could be restructured to be LTD compliant, was consideration given to how this could impact parent company liquidity requirements/needs, e.g., LCR, as applicable, other liquidity requirements?
5	Does the agencies’ shortfall analysis incorporate any assumptions about changes in RWAs due to balance sheet changes (e.g., loan growth, asset sales, etc.)?
6	Other than satisfying the eligibility criteria for internal LTD, will the agencies impose any other requirement or expectations re internal LTD, e.g., interest rates, interest payment dates, call options, extension options, etc.?
7	Would it be useful to provide feedback from institutional investors on the proposed \$400,000 minimum denomination requirement for external LTD?
8	Does the dual LTD requirement effectively mandate an MPOE resolution strategy for all Category II-IV firms? a) In some places of the NPR, it appears that SPOE may still be an option (e.g., page 68: “In the case of SPOE resolution...”), but most places seem to assume MPOE. And then there’s the following statement on page 69: “[C]overed entities that currently plan for an MPOE resolution strategy may nevertheless be resolved pursuant to an SPOE resolution strategy or adopt an SPOE resolution strategy in the future.”] b) If a covered entity has adopted an SPOE resolution strategy, could it only be subject to a BHC-level LTD requirement? Or would it still also be subject to the IDI-level requirement?

Questions for Agency Staff on LTD Proposal (*continued*)

Questions (<i>continued</i>)	
9	<p>On page 27 of the NPR, the agencies note that the proposed rule would “reserve the authority for the Board to require a covered entity to maintain more, or allow a covered entity to maintain less, eligible LTD than the minimum amount required by the proposed rule under certain circumstances.” (See also, proposed rule text at pg. 162 similar reference on page 38 re the IDI holding more than the minimum amount of required LTD, though no reference to the IDI being permitted to hold less than the minimum required amount of LTD)</p> <ul style="list-style-type: none"> a) While the text then indicates how this authority can be used to increase a covered entity’s required LTD amount, it does not indicate how the authority could be used to require a covered entity to maintain less LTD than what the rule requires. Can you explain what type of situation would result in a covered entity being required to hold less LTD than the minimum required by the rule? b) Does the lack of a reference to the IDI being permitted to hold less than the minimum required LTD amount mean the IDI regulator does not have the same authority on this point as the Board has with respect to the entities it regulates? c) Where in the proposed rule text is this authority with respect to the FDIC and OCC? (Board authority is at pg. 162)
10	<p>The NPR provides the Board with the right, after notice and opportunity to respond, “to order the covered entity to exclude from its outstanding eligible LTD amount any otherwise eligible debt securities with features that would significantly impair the ability of such debt securities to absorb losses in a resolution.”</p> <ul style="list-style-type: none"> a) Is this intended to capture securities that (1) did not comply with the eligible LTD criteria when issued, but that the firm nevertheless included in its LTD amount? Or (2) debt that fully complied with the LTD criteria when issued, but that the Board subsequently determined could be problematic if the firm went into resolution? b) The language also captures “eligible legacy external LTD.” Are there any examples of outstanding securities that could be excluded from the grandfathering provision? c) Should covered entities pre-clear debt securities that they seek to include in their LTD amount with their local regulator in advanced of issuance? If so: <ul style="list-style-type: none"> i. Will local regulators be trained on what criteria to look for in order to make such an assessment? ii. What materials should the covered entity provide? E.g., term sheet, prospectus, indenture iii. Will the local regulator’s assessment be binding (i.e., not subject to subsequent reversal) by the applicable agency?
11	<p>Have the agencies considered recalibrating the FDIC insurance assessment or the limit on the Unsecured Debt Adjustment benefit, as a result of the proposal’s requirement for IDIs to hold a significantly higher amount of unsecured debt that would be contractually subordinated to deposits?</p>
12	<p>Regarding the “clean holding company” prohibition on third-party debt with an original maturity of less than 1 year: Will any outstanding securities be permitted to roll off; i.e., be held until their maturity? Or will firms need to repurchase/tender for these securities?</p> <ul style="list-style-type: none"> a) Similar question re the 5% of CET1 limit on non-eligible LTD liabilities?
13	<p>Does the “downstream” requirement of the LTD proposal effectively rely on the “source of strength” doctrine?</p>
14	<p>If a bank needs Tier 2 capital, can the BHC issue senior debt and downstream the proceeds in exchange for a Tier 2 bond? Would that intercompany Tier 2 bond count toward the IDI’s LTD requirement, if it included all the required eligibility criteria?</p>

Disclaimer

This presentation was prepared exclusively for the benefit of and internal use by the recipient for the purpose of considering the transaction or transactions contemplated herein.

This presentation is confidential and proprietary to RBC Capital Markets, LLC (“RBCCM”) and may not be disclosed, reproduced, distributed or used for any other purpose by the recipient without RBCCM’s express written consent; provided, however, that by acceptance of these materials, and notwithstanding any other express or implied agreement, arrangement, or understanding to the contrary, RBCCM, its affiliates and the recipient agree that the recipient (and its employees, representatives, and other agents) may disclose to any and all persons, without limitation of any kind from the commencement of discussions, the tax treatment, structure or strategy of the transaction and any fact that may be relevant to understanding such treatment, structure or strategy, and all materials of any kind (including opinions or other tax analyses) that are provided to the recipient relating to such tax treatment, structure, or strategy.

The information and any analyses contained in this presentation are taken from, or based upon, information obtained from the recipient or from publicly available sources, the completeness and accuracy of which have not been independently verified, and cannot be assured by RBCCM. The information and any analyses in these materials reflect prevailing conditions and RBCCM’s views as of this date, all of which are subject to change.

To the extent projections and financial analyses are set forth herein, they may be based on estimated financial performance prepared by or in consultation with the recipient and are intended only to suggest reasonable ranges of results. The printed presentation is incomplete without reference to the oral presentation or other written materials that supplement it.

References herein to “SOFR”, “SOFR Rate”, or other SOFR abbreviations means the Secured Overnight Financing Rate as administered by The Federal Reserve Bank of New York (or any other person that takes over the administration of such rate).

Employees of RBCCM are prohibited from directly or indirectly, explicitly or implicitly: (a) promising any company favorable research coverage, a particular research rating or recommendation, as an inducement for the receipt of business or compensation; or (b) threatening to retaliate with adverse coverage or comments if such business or compensation is not awarded. All recommendations, ratings, price targets and opinions regarding a company are determined independently by RBCCM’s Research Department.

RBCCM and its affiliates do not provide tax advice, and nothing contained herein should be construed as tax advice. Accordingly, you should seek advice based upon your particular circumstances from an independent tax advisor.

In the event that RBCCM is engaging in any discussion of activities that may be subject to the provisions of Section 15B of the Securities Exchange Act of 1934 or of any rules or regulations adopted thereunder by the Securities and Exchange Commission or the Municipal Securities Rulemaking Board (together, the “Municipal Regulations”), RBCCM hereby provides notice to you that it is providing the information contained in this document for discussion purposes only in anticipation of serving as Underwriter to you and/or any of your affiliates in which RBCCM would be acting solely as a principal in a commercial, arm’s-length transaction and not as a municipal advisor, financial advisor or fiduciary to you and/or any of your affiliates or any other person or entity. The information provided herein or in connection herewith is not intended to be and should not be construed as “advice” within the meaning of the Municipal Regulations.

RBC Capital Markets is the global brand name for the capital markets businesses of Royal Bank of Canada and its affiliates, including RBC Capital Markets, LLC (member FINRA, NYSE and SIPC), RBC Dominion Securities Inc. (member IIROC and CIPF) and RBC Europe Limited (authorized in the United Kingdom by the Prudential Regulation Authority (“PRA”) and regulated by the Financial Conduct Authority (“FCA”) and the PRA). This material is not for distribution to anyone without the express written permission of RBC Capital Markets. ® Registered trademark of Royal Bank of Canada. Used under license.

© Copyright 2023. All rights reserved.