

Total Loss Absorbency Requirement to Help Ensure G-SIBs Can Be Resolved

Industry calls TLAC requirement a “final piece in the regulatory puzzle” needed to end risk of TBTF

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Washington, DC – February 22, 2016 – Late Friday, The Clearing House, the Securities Industry and Financial Markets Association, the American Bankers Association, the Financial Services Roundtable, and the Financial Services Forum submitted comments ([U.S. G-SIBs](#); [U.S. IHCs of foreign G-SIBs](#)) to the Federal Reserve in response to its proposal to impose total loss absorbing capacity, long-term debt and related “clean holding company” requirements on global systemically important banking groups (G-SIBs). The associations express the industry’s strong support for a TLAC requirement for G-SIBs, which is a crucial aspect of ending “Too Big to Fail” by helping ensure that these institutions can be resolved in an orderly way at the expense of creditors and shareholders (and not taxpayers).

“[We] strongly support imposing a properly structured and calibrated TLAC requirement on U.S. G-SIBs, which we believe would be the final piece in the regulatory puzzle needed to ensure that U.S. G-SIBs have enough loss-absorbing resources to result in a durable end to the risk of ‘too big to fail,’” the associations wrote. “Such a requirement will ensure that U.S. G-SIBs will always have enough usable TLAC to be recapitalized without the need for public capital support.”

While supporting the framework of the proposed rule, the associations assert that the proposal contains a number of requirements that are counterproductive or unnecessary to achieving the Fed’s policy objectives. In response, the associations provide a number of suggestions aimed at making the proposal more workable and effective.

Most notable, the associations recommend the elimination of the proposed rule’s unnecessary separate long-term debt requirements, which would permit G-SIBs to hold TLAC in the form of equity if they so wished. The standalone debt requirements, which are in addition to the TLAC requirements, mandate that G-SIBs hold a specific portion of their loss absorbing capacity as debt and not equity. The associations believe that banks should have the option to fund TLAC with debt and/or equity due to the fact that equity functions as both going-concern and gone-concern capital.

Additionally, the associations note that the required amounts of TLAC and long-term debt under the proposed rule are substantially higher than necessary to ensure that a U.S. G-SIBs can be resolvable under any reasonably foreseeable severely adverse scenario, and recommended that the TLAC minimum (and the long-term debt minimum, if retained) should be more appropriately calibrated.

Absent sensible recalibration, the associations note that “these excessive requirements will increase the cost of borrowing by U.S. G-SIBs, which in turn may increase the cost of credit to the market and run a risk of reducing the amount of credit available to the economy.”

Lastly, the associations provide a number of other technical suggestions for improvement in their comments.

- The definition of eligible debt security should be amended to include all long-term debt securities unless they are unlikely to remain outstanding and be available to absorb losses and recapitalize the banking organization at the point of failure, including in particular senior long-term debt securities with traditional acceleration events or which are governed by foreign law.
- The proposed rule should not treat any capital structure liabilities as “unrelated liabilities” subject to its clean holding company requirements.
- The Federal Reserve should include grandfathering provisions in the final rule, especially if it decides not to make the modifications to the definition of eligible debt security or the clean holding company framework suggested by the associations.

The associations also made a number of recommendations specific to how the requirements apply to the U.S. operations of foreign G-SIBs.

- The Federal Reserve should treat resolution entity intermediate holding companies of foreign G-SIBs generally the same as U.S. G-SIBs under the proposed rule.
- The Federal Reserve should reduce the proposed internal TLAC (and if retained, long-term debt) requirements applicable to non-resolution entity intermediate holding companies of foreign G-SIBs to not more than 75% of the TLAC (and long-term debt) requirements applicable to resolution entity IHCs.
- The Federal Reserve should confirm that intermediate holding companies of foreign G-SIBs can rely on either structural or contractual subordination and permit those relying on structural subordination to have the same 5% allowance for unrelated liabilities as applies to U.S. G-SIBs.
- The Federal Reserve should eliminate the proposed requirement that eligible internal long-term debt contain contractual triggers exercisable outside of insolvency proceedings by the Federal Reserve in order to avoid a variety of adverse consequences, including adverse consequences under the U.S. Federal and State tax laws.

The Clearing House. The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Clearing House is the only private-sector ACH and wire operator in the United States, processing nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. Its affiliate, The Clearing House Association L.L.C. is a nonpartisan organization that engages in

research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

SIFMA. The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

American Bankers Association. The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

Financial Services Roundtable. As advocates for a strong financial future™, Financial Services Roundtable (FSR) represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for \$98.4 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs.

The Financial Services Forum. The Financial Services Forum is a non-partisan financial and economic policy organization comprised of the CEOs of 16 of the largest and most diversified financial services institutions with business operations in the United States. The purpose of the Forum is to pursue policies that encourage savings and investment, promote an open and competitive global marketplace, and ensure the opportunity of people everywhere to participate fully and productively in the 21st-century global economy.