By Electronic Mail

January 23, 2023

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064–AF86
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Advanced Notice of Proposed Rulemaking, Resolution-Related Resource Requirements for Large Banking Organizations; Federal Reserve Docket No. R-1786, RIN 7100–AG44; FDIC RIN 3064-AF86

Dear Ms. Misback and Mr. Sheesley:

The Securities Industry and Financial Markets Association ("SIFMA") appreciates the opportunity to comment on the advance notice of proposed rulemaking ("ANPR") issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve") and Federal Deposit Insurance Corporation (the "FDIC" and, together with the Federal Reserve, the "Agencies") to solicit public input regarding whether an extra layer of loss-absorbing capacity could improve optionality in resolving certain large banking organizations ("LBOs") or their insured depository institutions ("IDIs"), and the costs and benefits of such a requirement.[1]

[1] *See* Federal Reserve and FDIC, Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64,170 (Oct. 24, 2022).

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

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I. Executive Summary

SIFMA is submitting this comment letter to respond to two issues raised by the Agencies in the ANPR:

- ***Non-GSIB LBO With Retail Broker-Dealers Should Be Out-of-Scope for Any New Resolution-Related Resource or Other Enhanced Requirements:*** first, SIFMA believes that it is neither necessary nor appropriate to impose Total Loss Absorbing Capacity ("TLAC"), Long-Term Debt ("LTD") or other enhanced resolution requirements (such as the "clean holding company" requirement) currently applicable to Global Systemically Important Banks ("GSIBs") to non-GSIB LBOs whose primary business model involves the operation of a retail broker-dealer. This owes to the fact that such firms have a simple organization and low-risk profile relative to GSIBs and other non-GSIB LBOs and would be able to be effectively resolved under existing frameworks without adverse consequences for U.S. financial stability.

- ***IHC Subsidiaries of FBOs Should Not Be Subject to Any New Resolution-Related Requirements:*** second, in response to Question 3 in the ANPR[2], SIFMA notes that the Intermediate Holding Company ("IHC") subsidiaries of GSIB and non-GSIB Foreign Banking Organizations ("FBOs") should not be subject to new resolution-related resource requirements. Not only are the existing resolution-related resource requirements for these firms robust, but they also have been subject to extensive examination and deliberation by the Agencies in recent years. Moreover, the IHCs and U.S. operations of FBOs have generally de-risked and reduced their U.S. footprints, reducing any potential risks to U.S. financial stability. To the extent the Agencies consider a future rulemaking in this area, SIFMA recommends they instead revise downward the calibration of the current Internal TLAC requirements applicable to GSIB IHCs to better reflect their risk profiles.

The following sections of this comment letter will address these recommendations in greater detail.

II. Non-GSIB LBOs with Retail Brokerage Business Models Should Not Be Subject to Resolution-Related Resource or Other Enhanced Requirements

Non-GSIB LBOs with retail broker-dealer business have a relatively simple, retail-oriented business model that is exposed to low levels of risk. Such a model offers brokerage and advisory services to retail customers and traditional banking products to facilitate and enhance such services.[3] Retail broker-dealer subsidiaries of such LBOs are regulated by the U.S. Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA"), and state-level securities regulators. They primarily provide retail customers with brokerage accounts where the customers can buy and sell stocks, mutual funds, exchange-traded funds ("ETFs") and/or other securities. An affiliated bank may offer sweep deposit products for retail customers' uninvested cash generated through the customers' activities at the

[2] *See* ANPR at 64,174: "Question 3: The agencies invite comment on how any new requirements should be applied to the U.S. subsidiaries of foreign banking organizations. Top-tier U.S. intermediate holding company (IHC) subsidiaries of foreign GSIBs are currently subject to long-term debt requirements. To what extent should those top-tier U.S. holding companies of foreign firms or their insured depository institutions that have a similar risk profile to the domestic large banking organizations that might be subject to any long-term debt requirement considered in this ANPR, be subject to any new requirements in line with those applied to domestic large banking organizations?"

[3] Banking services might be provided through a bank affiliate, which is regulated and supervised by federal and state banking regulators.

retail broker-dealer subsidiaries; retail affiliate bank sweeps allow customers a safe and operationally simple way to hold uninvested cash in insured deposits.[4]

Non-GSIB LBOs that primarily operate this type of business are exposed to minimal credit risk. For example, a vast majority of assets receive low risk weights under prudential regulatory capital rules, and their primary sources of revenue are likewise low risk (*e.g.*, interest income and fee revenue from asset management and related services). Retail broker-dealers' relatively straight-forward and low risk operations also are reflected in their balance sheets, with the vast majority of assets having no or low risk weights (*e.g.,* overcollateralized eligible margin loans) and liabilities primarily consisting of client cash.

Unlike GSIBs, these types of firms generally do not provide institutional broker-dealer services and engage in limited principal trading activities that could generate losses and depletion of capital. The limited scope of their activities reduces their interconnectedness with other GSIBs, non-GSIB LBOs and large financial companies, thereby making them easier to resolve. In addition, non-GSIB LBOs with retail broker-dealer business only engage in a *de minimis* level of complex and/or cross-border transactions.

Due to the limited scope and relatively low risk activities of these organizations, the risk of contagion or other adverse consequences for financial stability from the failure of this type of institution is minimal. SIFMA, therefore, believes that these types of organizations do not trigger the risks necessitating the types of enhanced resolution-related resources and other requirements previously only reserved for institutions with more complex principal and intermediation activities and cross-border operations.[5]

LBO Retail Broker-Dealers Can Effectively be Resolved Using Existing Frameworks

These types of firms would also be resolvable under existing frameworks without the need for additional TLAC and LTD resources, or the imposition of other enhanced resolution requirements (such as the clean holding company requirement). For example, as evidenced by the required IDI resolution plans, the FDIC would be able to resolve a large IDI affiliated with a non-GSIB LBO retail broker-dealer under a range of scenarios and circumstances without risk to the Deposit Insurance Fund ("DIF") or U.S. financial stability. Importantly, such a resolution would not require the bank to be sold to a GSIB or another LBO but generally could be separated into relatively small components and sold to one or more institutions. Moreover, since the bank's balance sheet and liquidity requirements would decrease significantly in a receivership, the FDIC would be able to act as receiver for a significantly smaller institution. An effective resolution of an IDI affiliated with a retail broker-dealer could, therefore, be accomplished under the existing bank resolution framework without the need for additional resolution-related resources or other requirements that are necessary to carry out the single-point-of-entry ("SPOE") resolution of a GSIB.

In terms of the retail broker-dealer and registered investment adviser subsidiaries: these entities could be sold to a variety of banking organizations or nonbank firms, thereby expanding the range of potential acquirers (*e.g.*, another retail broker-dealer firm or one wishing to expand into the space) without also

[4] The Net Stable Funding Ratio ("NSFR") recognized the stability of funds swept from an affiliated institution under a free-credit sweep program. SIFMA notes that the Agencies promised to make similar changes in the Liquidity Coverage Ratio ("LCR"). *See* Office of the Comptroller of the Currency, Federal Reserve, FDIC, *Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements* 86 Fed. Reg. 9120, 9145 (Feb. 11, 2021).

[5] SIFMA notes that the Financial Stability Board ("FSB") has recently discussed additional resolution planning requirements for non-GSIBs that "could be systemic in failure." *See* 2022 Resolution Report: "Completing the agenda and sustaining progress", FSB (Dec. 8, 2022). As explained in this letter, a non-GSIB LBO with a retail broker-dealer's failure does not pose material risks to U.S. financial stability and therefore should not be considered such a "systemic non-G-SIB." Moreover, as the FSB continues to consider certain types of systemic non-G-SIBs, SIFMA believes that any TLAC or LTD requirements should follow, and be informed by, such international efforts.

transferring an affiliated bank as part of the sale. An affiliated IDI is not necessary to operate a retail broker-dealer business: the various business-lines of a typical retail broker-dealer that require a relationship with a banking organization, such as a bank-sweep program, could be established in another depository institution (affiliated or unaffiliated with the acquirer). These operational and structural options further ensure that a bank affiliate (or its assets and liabilities) could exit FDIC receivership through one or more relatively small sales to other institutions.

There are also existing resolution mechanisms for retail broker-dealer firms. These types of firms can be sold or wound down under the Securities Investment Protection Act ("SIPA") framework—which is designed to protect retail investors[6]—without adverse effects on financial stability.[7] This is due in large part to the limited risk and retail nature of such activities. As noted above, retail broker-dealers generally do not provide institutional broker-dealer services, and therefore have limited interconnections with other major financial institutions or large corporates. As a result, the SIPA framework can be effectively employed to resolve retail broker-dealers and protect investors without any adverse impacts on financial stability by transferring client accounts.

The imposition of TLAC, LTD and/or clean holding company requirements is unnecessary for an LBO with a retail broker-dealer because such firms, unlike GSIBs, do not have—or need—a SPOE resolution plan. The Federal Reserve designed these requirements based on the Financial Stability Board's ("FSB's") international framework with the intent of facilitating an SPOE resolution at the holding company level for institutions with complex operations and high levels of cross-jurisdictional activity.[8] The goal was to downstream resources to subsidiaries that would then be able to remain operational, limiting the impact of a major institutional failure on the broader financial system. A non-GSIB LBO with a retail broker-dealer model can be resolved outside of an SPOE resolution under the U.S. Bankruptcy Code because its main operating subsidiaries (*i.e.,* an IDI and retail-broker dealer) are able to be separately and effectively resolved under existing special resolution regimes (under which specific regulators control the entry point to resolution). Because these types of institutions do not pose a systemic risk to the U.S. financial system, a non-SPOE resolution for this type of firm can be achieved without adverse effects on U.S. financial stability and without imposing additional costly requirements that are necessary to successfully carry out an SPOE resolution of a GSIB.

Potential Scoping Criteria for Enhanced LBO Resolution Requirements

As stated above, LBO retail broker-dealers operate relatively simple, low-risk business models and should be excluded from any enhanced resolution requirements that may be extended to LBOs in the future. There are several potential metrics the Agencies could use to determine whether an LBO is sufficiently low risk and lacking in complexity to be excluded from enhanced requirements. One approach would be to examine a firm's balance sheet and regulatory capital calculations. For example, the Agencies could consider the percentage of risk-weighted assets to total consolidated assets being

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[6] *See*, *e.g.*, 15 U.S.C. § 78fff(a).

[7] The main insolvency imperative would be to transfer customer accounts to another broker-dealer, and SIPC has a well-established and proven process for executing such a resolution. A similar bulk transfer could also occur before SIPC is appointed. *See*, *e.g.*, *Bulk Transfer Initiative Playbook*, Securities Industry and Financial Markets Association, PricewaterhouseCoopers LLP, Bulk Transfer Steering Committee (Apr. 2019), https://www.sifma.org/wp-content/uploads/2019/04/SIFMA_Bulk_Transfer_Playbook_April_2019.pdf.

[8] *See* Federal Reserve, Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8266 (Jan. 24, 2017) (codified at 12 CFR part 252).

significantly lower than that of a GSIB as one potential mechanism for scoping such firms out of any future enhanced resolution framework for LBOs.

A low-risk profile and simple business model can also be captured by other metrics. For example, the Agencies could consider low level 3 assets and a relatively low amount of off-balance sheet exposures in making their scoping determinations. The Agencies could also consider a low level of cross-jurisdictional activity and low level of over-the-counter derivatives. Alternatively, the Agencies could simply scope out firms that have a low "Method 1" GSIB surcharge score.[9] The Agencies could also consider a firm's overall risk-weighted assets ("RWA") levels and whether they meet existing External TLAC requirements (*i.e.,* 18 percent RWA plus a buffer).

Another approach would be to examine the specific composition of a firm's assets and liabilities. Pursuant to this approach, SIFMA recommends that the Agencies refrain from adopting a measure of simple non-bank assets as a scoping mechanism. Non-bank assets are not inherently a sign of complexity. For example, in the case of a retail broker-dealer, non-bank assets might consist largely of overcollateralized eligible margin loans as defined in the regulatory capital rule that generally are subject to Regulation T with a zero percent risk weight. The Agencies could consider low loss rates on such loans as part of the scoping criteria. In addition, most of the liabilities in a retail broker-dealer are client cash held on balance sheet (instead of in sweep money funds or swept to an affiliated or nonaffiliated bank). The difference between the assets and liabilities, as required for purposes of meeting the SEC's Customer Protection Rule (Rule 15c3-3) is held in a portfolio that invests only in segregated cash and government guaranteed securities.[10] Moreover, the Agencies could consider that the vast majority of such a retail broker-dealer's non-bank assets receive a very low (less than 1 percent) risk weight.

In sum, a "one-size fits all" non-bank asset scoping mechanism would obscure the simple, low-risk nature of a non-GSIB LBO's affiliated retail broker-dealer's assets and liabilities. Furthermore, such firms already are subject to the full panoply of other enhanced prudential standards established by the Agencies in the aftermath of the last financial crisis and the Dodd-Frank Act, including capital and liquidity requirements.[11] The Agencies would be better served by examining the specific composition of a firm's non-bank assets and liabilities to determine a firm's riskiness and complexity, possibly in combination with one or more of the other metrics identified in this section.

More generally, SIFMA suggests that the Federal Reserve engage in a holistic study of the retail broker-dealer business model (working with applicable functional regulators, such as the SEC and FINRA) to better understand it and determine how consolidated supervision should be designed for firms predominantly engaged in this business before proposing any future enhanced resolution-related resource requirements.

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[9] SIFMA notes that such firms may have a larger "Method 2" score, for example, due to the incongruent treatment under the prudential framework of simple, retail affiliate bank sweep deposit activities. These activities are penalized under the Method 2 calculation despite being recognized as stable funding in the NSFR rule; *see* NSFR: Liquidity Risk Measurement Standards and Disclosure Requirements, 86 Fed. Reg. 9120, 9145 (Feb. 11, 2021) ("[S]table retail deposits and certain fully insured retail affiliate sweep deposits, regardless of tenor, have the highest stability characteristics for deposits under the final rule…").

[10] 17 CFR § 240.15c3-3

[11] In this respect, SIFMA notes that such non-GSIB LBO affiliated with a retail broker-dealer is subject to full (100 percent) standardized liquidity requirements (liquidity coverage ratio and NSFR) based on the retail affiliated bank sweep funding that the agencies recognized as stable in the NSFR. See supra note 9.

III. IHC Subsidiaries of FBOs Should Not Be Subject to Any New Resolution-Related Requirements

Question 3 of the ANPR asks "how any new requirements [for LBOs] should be applied to the U.S. subsidiaries of [FBOs]." In general, SIFMA supports the comments submitted by the Institute of International Bankers ("IIB") in response to the ANPR. SIFMA believes that no new resolution-related resource requirements should be applied to either GSIB IHCs or non-GSIB IHCs of FBOs operating in the United States.

It is wholly unnecessary to impose any new resolution-related resource requirements to IHC subsidiaries of FBOs. GSIB IHCs are already subject to extensive TLAC, LTD and clean holding company requirements, and so it is unnecessary to impose any additional requirements.[12] More generally, all FBOs now have put in place well-developed home-country resolution plans, guided by international, home and host-country standards, that include plans for their U.S. operations.[13] In addition to being included in these home country plans, the IHCs and other U.S. operations of FBOs are also subject to extensive U.S. resolution planning requirements overseen by the Agencies. Taken together, these robust requirements are already more than sufficient to effectively resolve both GSIB and non-GSIB IHCs—and indeed the U.S. operations of FBOs more generally.

The risk profile of these institutions has also grown smaller in recent years. As the IIB letter highlights, IHCs maintain exceptionally high capital levels and have significantly de-risked their U.S. operations and shrunk their U.S. footprints. This suggests that the risks to U.S. financial stability arising from the failure of an IHC have also significantly attenuated. Thus, there is little rationale for imposing new resolution-related resource requirements on institutions that pose less risk today than they did at the time the original TLAC rule was finalized.

Furthermore, resolution regulatory requirements for FBOs have been subject to an extensive process of public comment and deliberation in recent years, culminating in a final rule issued by the Agencies in 2019 that addressed FBO resolution planning requirements,[14] and then followed by resolution planning guidance issued by the agencies for large FBOs in 2020.[15] There does not appear to be any reason to impose any new IHC resolution-related resource requirements or other enhanced resolution requirements for FBOs so soon after the conclusion of this process, particularly in the absence of any specific event that would provoke concerns about their resolvability.

Finally, SIFMA agrees with the IIB that to the extent the Agencies were to consider a rulemaking related to IHC resolution-related resource requirements, they should revise downward the calibration of the current Internal TLAC requirements applicable to GSIB IHCs to more accurately reflect the risk profile of those institutions and to mitigate against misallocation risks from excessive pre-positioning of resources in the United States.[16]

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[12] Regulation YY, 12 CFR Part 252 (Board's enhanced prudential standards, including TLAC).

[13] The Agencies have recognized that these home country resolution plans are the preferred resolution strategies for several firms. *See* Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*, 85 Fed. Reg. 83,557, 83,558 (Dec. 22, 2020) ("2020 Resolution Plan Guidance").

[14] *See* Federal Reserve and FDIC, *Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations*, 84 Fed. Reg. 59032 (Nov. 1, 2019) (the "Tailoring Rule"); Federal Reserve and FDIC, *Resolution Plans Required* (Nov. 1, 2019).

[15] 2020 Resolution Plan Guidance.

[16] Such a rulemaking would be consistent with prior statements from the Federal Reserve. For example, former Vice Chair Quarles had stated that the Federal Reserve was considering recalibrating the Internal TLAC requirements for IHCs towards the lower end of the FSB's range and/or streamlining the elements of the resolution loss absorbency

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SIFMA appreciates the Agencies' consideration of these comments and would be pleased to discuss any of these views in greater detail if it would assist with their deliberations. Please contact Peter Ryan at pryan@sifma.org or at (202) 962-7452 if you wish to discuss the points raised in this letter further.

Sincerely,

Kenneth E. Bentsen, Jr.
CEO and President
Securities Industry and Financial Markets Association

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regime, which include both TLAC and LTD requirements. See Randal K. Quarles, Vice Chair for Supervision, Federal Reserve, "Trust Everyone—But Brand Your Cattle: Finding the Right Balance in Cross-Border Resolution" (May 16, 2018).