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AGGRESSIVE IN THE ENDGAME: THE U.S. BANK REGULATORS' PROPOSALS WOULD HIKE BANK CAPITAL

On July 27, 2023, the Federal banking agencies approved notices of proposed rulemaking to implement the remaining Basel III framework and to revise the methodology for calculating the G-SIB surcharge. The capital proposal will significantly increase required capital levels for covered banks and may have other less obvious and potentially unintentional consequences for the US banking and financial system. It also eliminates any tailoring of the capital rules for banks with \$100 billion or more in assets, almost entirely collapsing current Federal Reserve categories II, III, and IV into a single category, at least for capital purposes. In addition to the impact on regional banks, the proposals will drive significant capital increases for foreign banking organizations with significant US presence, US G-SIBs, and capital markets activities. The agencies' failure to articulate a credible factual rationale for these far-reaching reforms, including their deviations from Basel and past publicly stated goals, leaves them vulnerable to policy and legal challenges.

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On July 27, 2023, the Federal banking agencies (“Agencies”) approved a notice of proposed rulemaking to implement the remaining Basel III framework, referred to as the Basel III endgame (the “Capital Proposal”).¹ The Agencies simultaneously approved a notice of proposed rulemaking that would revise the methodology for calculating the so-called “G-SIB surcharge,” an additional capital requirement that applies

to the largest and most complex banks (the “G-SIB Surcharge Proposal”).²

The Capital Proposal would implement December 2017 standards from the Basel Committee on Banking Supervision (“Basel”) and revisions to the market risk capital framework following Basel’s “Fundamental Review of the Trading Book”, among other things. The

¹ Federal Reserve, FDIC, OCC, “Regulatory capital rule: Amendments applicable to large banking organizations and to banking organizations with significant trading activity,” 88 Fed. Reg. 64028 (Sept. 18, 2023).

² Federal Reserve, FDIC, OCC, “Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15),” 88 Fed. Reg. 60385 (Sept. 1, 2023).

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