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Basel III Capital Requirements: Impact on Loan Structures and Loan Documentation

Structuring Yield Protection and Increased Costs Provisions, Transfer Restrictions, Purpose Clauses, HVCRE Loans, and More

THURSDAY, MAY 5, 2016

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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BANK CAPITAL AND OTHER COSTS – EFFECTS ON LENDING AND LOAN PRICING

MAY 5, 2016

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Regulatory Framework

I. Basel III

- The G20 ratified the Basel Committee's proposals for strengthening capital and liquidity standards in December 2010
- The new accord expands and strengthens bank capital, liquidity and leverage requirements
- Basel III is designed to improve financial stability and avoid government bailouts
- Basel III continually expanding and becoming more detailed

I. Basel III (cont'd)

- Key Basel III objectives
  - To raise the quality, quantity and transparency of capital to ensure banks can absorb losses;
  - To strengthen the capital requirements for counterparty risk exposures;
  - To supplement Basel II risk-based capital through a leverage ratio;
  - To promote higher capital buffers in good times that can be drawn upon in times of stress
  - To set a global minimum liquidity standard

I. Basel III (cont'd)

- Basel III reforms include:
  - Tighter definitions of regulatory capital
  - not all Tier 1 regulatory capital proved to be loss-absorbing during the financial crisis
  - Increased requirements to hold regulatory capital
  - New treatment for counterparty credit risk
- Bank capital effects on bank lending
  - Following increases in capital, banks tend to:
    - -- Maintain their buffers of capital above the regulatory minimums,
    - -- Reduce lending, and
    - -- Change types and risks of assets.

II. Capital and Capital Planning

- How big do you want to be in current regulatory environment? $1 billion? Up to $10 billion; $15 billion or more; $50 billion or more?
  - Costs of being “big”
- OCC – *A Common Sense Approach to Community Banking*
- Has strategy and performance under the strategy been regularly communicated to your bank and BHC regulators?
- The Federal Reserve’s Small Bank Holding Company Policy Statement:
  - Pub. Law 113-250 (Dec. 18, 2014)
  - 80 F.R. 20153 (Apr. 15, 2015), amending Regs. Q, Y and LL
  - Under $1 billion asset qualifying BHCs and SLHCs will be considered “small” and not subject to the capital rules on a consolidated basis. Dodd-Frank Act, Section 171 prevents this from being raised.
  - At Sept. 30, 2015, there were 5,480 insured depository institutions of $1 billion or less in assets.
  - Potentially covers 88.6% of the industry.

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II. Capital and Capital Planning (cont'd)

- Capital levels
- Effects of Basel III
- CCAR, D-FAST and stress testing
- Capital Planning
- Debt and goodwill levels
- Regulatory guidance
  - OCC Bulletin 2012-16 – *Guidance for Evaluating Capital Planning and Adequacy* (June 7, 2012)
  - OCC Bulletin 2012-33 – *Community Bank Stress Testing* (Oct. 18, 2012)
  - Federal Reserve – *Capital Planning at Large Bank Holding Companies: Supervisory Expectations and Range of Current Practice* (Aug. 2013)
  - SR 09-4 (Feb. 24, 2009), rev'd. December 15, 2015 "Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions and Stock Repurchases at Bank Holding Companies."

II. Capital and Capital Planning (cont'd)

- Capital – Certain factors used to assess capital adequacy include:
  - the level and severity of problems and classified assets;
  - asset concentrations;
    - -- growth in CRE
    - -- leveraged lending
  - risk system and internal controls; and
  - adequacy of the ALLR.

III. What Does Basel III Do?

- Federal Reserve – July 2, 2013 release, finalized in 78 F.R. 62018 (Oct. 11, 2013).

- Effective Dates and Phase-Ins

  - January 1, 2015 for standardized approaches banks
  - January 1, 2015 for new PCA rules
  - Various minimum capital ratios phased in
  - AOCI opt-out date – first Call Report or Y-9 after January 1, 2015 for standardized approaches banks
  - January 1, 2016 to January 1, 2019 for capital conservation buffer

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IV. Basel III Capital Ratios

	Jan. 1, 2015	Fully Phased in Jan. 1, 2019
Minimum CET1 / RWA	4.50%	4.50%
CET1 Conservation Buffer	–	2.50%
Total CET1	4.50%	7.00%
Deductions and threshold deductions[1]	40.00%	100.00%
Minimum Tier 1 Capital	6.00%	6.00%
Minimum Tier 1 Capital *plus* capital conservation buffer[2]	–	8.50%
Minimum Total Capital	8.00%	8.00%
Minimum Total Capital *plus* conservation buffer[3]	8.00%	10.50%

1 20% per year phase in starting 2015.

2 6.625%, 7.25%, 7.875% for 2016, 2017 and 2018, respectively.

3 8.625%, 9.25% and 9.875% in 2016, 2017 and 2018, respectively.

IV. Basel III Capital Ratios (cont'd)

Minimum Ratios

	Current	Basel III
CET1 / RWA	—	4.5%
Leverage Ratio	4.0%	4.0%
Tier 1 capital/RWA	4.0%	6.0%
Total capital/RWA	8.0%	8.0%
Capital conservation buffer	—	2.50%

V. Prompt Corrective Action Categories

Effective January 1, 2015

	Minimums	
	Current	**Basel III**
Well capitalized		
CET1	–	6.5%
Tier 1 risk-based capital	6.0%	8.0%
Total risk-based capital	10.0%	10.0%
Tier 1 leverage ratio	5.0%	5.0%
Undercapitalized		
CET1	–	< 6.0%
Tier 1 risk-based capital	< 4.0%	< 6.0%
Total risk-based capital	< 8.0%	< 8.0%
Tier 1 leverage ratio	< 5.0%	< 4.0%
Critically undercapitalized	Tangible equity to total assets ≤ 2.0%	Tangible equity to total assets ≤ 2.0%

VI. Capital Conservation Buffer

- The capital conservation buffer amount does not affect "prompt corrective action" ("PCA") levels.

- Capital conservation buffer deficiencies may restrict or limit dividends, share buy-backs and distributions on Tier 1 capital instruments ("capital actions") and discretionary bonuses based on the amount of "eligible retained earnings."

- "Eligible retained earnings" means the most recent 4 quarters of net income less capital distributions (net of certain tax effects, if the tax effects are not already included in net income.

VI. Capital Conservation Buffer (cont'd)

- Calculation of the capital conservation buffer:

  - Subtract the Basel III minimum ratios for each of CET1 (4.5%), Tier 1 Risk-Based Capital (6.0%) and Total Risk-Based Capital Ratio (8.0%) from the bank's actual capital under each of these measures.

  - The actual buffer used to determine capital actions and discretionary bonuses is the lowest buffer percentage for all 3 capital ratios.

  - If any of these capital ratios is less than the minimum required, the capital conservation buffer is zero.

VI. Capital Conservation Buffer (cont'd)

- Fully phased in buffer limits on capital actions and discretionary bonus are subject to regulatory discretion in light of bank risk, CCAR, enforcement actions, etc.

Buffer %	Buffer % Limit
More than 2.50%	None
> 1.875% ≤ 2.50%	60.0%
> 1.250% ≤ 1.875%	40.0
> 0.625% ≤ 1.250%	20.0
≤ 0.625	- 0 -

- The phase-in occurs January 1, 2016 to January 1, 2019.

VII. Potential Effects of Basel III

- Capital Minimums are increased.

- Types of capital are more limited:

  - No new trust preferred with phase out of existing trust preferred for banks over $15 billion of assets. Smaller banks' trust preferreds are grandfathered. The FAST Act of 2015 clarified this in limited circumstances.
  - Common stock and perpetual noncumulative preferred stock are most valuable under the regulations
  - Voting common stock should be a majority of CET1
  - The terms of capital instruments, especially subordinated debt, are changed
  - All buyback and redemptions of capital will be subject to prior regulatory scrutiny and approval

- The PCA Rules of FDI Act, Section 38 are revised to reflect the new capital measures, and will affect deteriorating banks more quickly.

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VII. Potential Effects of Basel III (cont'd)

- Risk weightings of assets and off-balance sheet exposures are revised in various cases.

- The amounts and risk weights of certain assets will require better capital planning, and may cause capital to be reallocated internally to seek better returns on investment.

- The changes in treatment of deferred tax assets and the increased risk weights on NPAs will cause problem banks to be resolved or recapitalized faster.

  - The value of DTAs will be diminished.

- Banks will need continuing and better access to the capital markets.

- Returns and shareholder value will depend on improved capital planning, including capital actions (dividends, redemptions and repurchases).

VIII. 2013 Leveraged Lending Guidance

- Leveraged lending has been a long-term regulatory concern:
  - Federal Reserve SR 98-18 (1998)
  - OCC Advisory Letter AL 99-4 (1999)
  - Federal Reserve SR 99-23 (1999)
  - Interagency Guidance on Leveraged Financing (2001) ("2001 Guidance")
  - Interagency Guidance on Leveraged Lending 78 F.R. 17766 March 22, 2013) ("2013 Guidance")
- Since 2001, regulators have seen:
  - tremendous growth in leveraged credit and participation of unregulated lenders
  - reduced covenants and more PIK toggles
  - more "aggressive" capital structures and repayment prospects

VIII. 2013 Leveraged Lending Guidance (cont'd)

- Applicable to all financial institutions that originate or participate in leveraged lending transactions.
- Not applicable, generally, to
  - Small portfolio C&I loans; and
  - Traditional asset-based lending ("<u>ABL</u>"), subject to the borrower's capital structure.
- Reflects post-credit crisis emphasis on systemic as well as individual institution risks.
- SNC reviews indicate elevated credit issues with leveraged lending.

VIII. 2013 Leveraged Lending Guidance (cont'd)

- Elements of the 2013 Guidance
  - "Leveraged Lending" defined
  - Policy expectations
  - Underwriting standards
  - Valuation standards
  - Pipeline management
  - Reporting and analytics
  - Risk ratings
  - Credit analysis and review
  - Problem credit management
  - Deal sponsors
  - Stress testing
  - Reputational risk
  - Compliance

VIII. 2013 Leveraged Lending Guidance (cont'd)

- Criteria
  - Tested at origination, modification, extension or refinancing.
  - Proceeds used for buyouts, acquisitions or capital distributions.
  - Total Debt (not reduced by cash) divided by EBITDA exceeds 4X; or Senior Debt (not reduced by cash) divided by EBITDA exceeds 3X; or other defined measure appropriate for the industry.
  - Debt exceeding 6X Total Debt/EBITDA after asset sales is generally excessive.
  - Leverage, such as debt to assets, net worth or cash flow exceed industry norms or historical levels.
- Must be applied across all organization business lines and entities.
- Describe clearly the purposes and financial characteristics common to these transactions.
- Must cover direct and indirect risk exposures, including limited recourse financing secured by leveraged loans.

VIII. 2013 Leveraged Lending Guidance (cont'd)

Policy Expectations

- Risk appetite of the bank and affiliates, including effects on:
  - earnings
  - capital
  - liquidity
  - other risks
- Risk limits
  - Single obligors and transactions
  - Aggregate hold portfolio
  - Aggregate pipeline exposure
  - Industry and geographic exposure
- Management approval authorities
- Underwriting limits, using loss stresses, economic capital usage, earnings at risk, etc. for "significant transactions"

VIII. 2013 Leveraged Lending Guidance (cont'd)

- Appropriate ALLL methodology
- Accurate and timely board and management reporting
- Expected risk adjusted returns
- Minimum underwriting standards for primary and secondary transactions
- Participations purchased require risk management guidelines, and:
  - Full independent credit analyses
  - Copies of all documents
  - Continuing monitoring of borrower performance

VIII. 2013 Leveraged Lending Guidance (cont'd)

Underwriting Standards

- Written and measurable standards consistent with organization's risk appetite
- Borrower's business premise should be sound and capital structure should be sustainable
- Borrower's capacity to repay and deliver over a reasonable period
  - Fully amortize senior secured debt or repay a significant portion of all debt over the medium term (5-7 years)
- Alternative strategies for funding and disposing of loans and potential losses during market disruptions
- Sponsor support
- Covenants, including control over assets sales and collateral
- No intent to discourage pre-pack bankruptcy financings, workouts or stand-alone ABL facilities

VIII. 2013 Leveraged Lending Guidance (cont'd)

Valuation Standards

- Enterprise values often used to evaluate loans, planned asset sales, access to capital markets and sponsors' economic incentive to support a borrower
- Valuations to be performed by "qualified independent persons" outside the loan origination group
- Since valuations may not be realized, lender policies should provide loan-to-value ratios, discount rates and collateral supported by enterprise value

VIII. 2013 Leveraged Lending Guidance (cont'd)

Pipeline Management

- "When the music stops, in terms of liquidity, things will be complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing."

  Large Bank CEO on buyout financing in *Financial Times* (July 9, 2007)
- Need strong risk management and controls over pipelines
- Documented appetite for underwriting risk considering pipeline exposures and effects on earnings, capital, liquidity, and other effects.
- Written policies defining and managing failures and "hung deals" approved by the board of directors.
- Periodic pipeline stress tests, and evaluation of variances from expectations
- Limits on pipeline commitments and amounts an institution will hold on its books
- Hedging policies

VIII. 2013 Leveraged Lending Guidance (cont'd)

Analytics and Reporting

- Comprehensive, detailed reports, at least quarterly with summaries to the board of directors regarding all higher risk credits, including leveraged loans

Risk Ratings

- Fully amortize senior secured debt *or* repay at least 50% of all debt over 5-7 years provides evidence of "adequate repayment capacity"
- Adverse ratings, if refinancing is the only viable repayment option
- Avoid masking problems with loan restructurings or extensions
- Generally, inappropriate . . . to consider enterprise value as a secondary source of repayment, unless that value is well supported
- Strong, independent credit review function should be able to identify risks and other findings to senior management

VIII. 2013 Leveraged Lending Guidance (cont'd)

Risk Ratings (cont'd)

- Credit reviews of leveraged lending portfolio should be performed in greater depth and more often than other portfolios
- At least annual reviews, or more frequently, especially where relying on enterprise value, or other factors
- Credit reviews should include reviewing of leveraged lending practices, policies and procedures and compliance with the 2013 Guidance and other regulatory guidance

VIII. 2013 Leveraged Lending Guidance (cont'd)

Other Elements of 2013 Guidance

- Periodic stress testing – especially for CCAR and DFAST participants
- Problem credit management
- Deal sponsors – what are the levels and experience with sponsor commitments (e.g. verbal assurance, written comfort letters, guarantee or make well) and the sponsor's capacity to perform
- Reputational risks – lenders that distribute loans which have more performance issues or defaults or fail to meet their underwriting and distribution legal responsibilities, will have damaged reputations and less ability to dispose of leveraged loans
- Periodic compliance reviews should be conducted to avoid potential conflicts and evaluate legal compliance, including anti-tying, securities law disclosures and avoidance of inappropriate disclosure of material, nonpublic information

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IX. Basel III Liquidity Standards

- A principal feature of Basel III is the introduction of global liquidity standards:
  - The Liquidity Coverage Ratio ("LCR"), a short-term measure, and
  - The Net Stable Funding Ratio, a complementary longer-term measure ("NSFR")
- The LCR helps ensure that banks hold a defined buffer of high-quality liquid assets to allow self-sufficiency for up to 30 days of stressful conditions and a market downturn
- The NSFR encourages banks to better match the funding characteristics of their assets and liabilities beyond a one-year period
- Interagency NSFR Proposal (May 3, 2016)

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IX. Basel III Liquidity Standards (cont'd)

- The US LCR rule was finalized in 79 Fed Reg 61439 (10/10/14)
- The LCR aims to ensure a bank maintains an adequate level of unencumbered, high-quality assets that can be converted into cash to meet its liquidity needs for a 30-day time horizon under an acute institution-specific and systemic short-term stress scenario that includes:
  - a significant rating downgrade;
  - partial loss of deposits;
  - loss of unsecured wholesale funding;
  - an increase in secured funding haircuts; and
  - increases in collateral calls

X. Commercial Real Estate Lending and Concentrations

- *Interagency Guidance on Concentrations in Commercial Real Estate Lending*, 71 F.R. 74580 (Dec. 12, 2006) (the "2006 CRE Guidance" or "Concentration Guidance"))

- Commercial real estate ("CRE") loans are credit exposures CRE loans include those loans with risk profiles sensitive to the condition of the general CRE market, including land development and construction loans (including 1 - to 4-family residential and commercial construction, loans secured by multifamily property, and nonfarm nonresidential property where the primary source of repayment is derived from rental income associated with the property (that is, loans for which 50% or more of the source of repayment comes from third party, nonaffiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. Loans to real estate investment trusts (REITs) and unsecured loans to developers also should be considered CRE loans for purposes of this Guidance where these closely correlate to the inherent risks in CRE markets would also be considered CRE loans under the Guidance. Loans on owner occupied CRE are generally excluded from the Guidance
- Rumblings about possible increased capital in the case of CRE concentrations/growth

X. Commercial Real Estate Lending and Concentrations (cont'd)

- The Guidance is triggered where either:
  - Total reported loans for construction, land development, and other land represent 100% or more of the bank's total capital; or
  - Total reported loans secured by multifamily and nonfarm nonresidential properties and loans for construction, land development, and other land represent 300% or more of the bank's total capital, and an institution's CRE portfolio increased by 50% or more during the prior 36 months.

X. Commercial Real Estate Lending and Concentrations (cont'd)

- Capital Levels and actions on Concentrations
   - Existing capital adequacy guidelines note that an institution should hold capital commensurate with the level and nature of the risks to which it is exposed.
   - Accordingly, institutions with CRE concentrations are reminded that their capital levels should be commensurate with the risk profile of their CRE portfolios. In assessing the adequacy of an institution's capital, the Agencies will consider the level and nature of inherent risk in the CRE portfolio as well as management expertise, historical performance, underwriting standards, risk management practices, market conditions, and any loan loss reserves allocated for CRE concentration risk.
   - An institution with inadequate capital to serve as a buffer against unexpected losses from a CRE concentration should develop a plan for reducing its CRE concentrations or for maintaining capital appropriate to the level and nature of its CRE concentration risk.

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X. Commercial Real Estate Lending and Concentrations (cont'd)

- *Interagency Statement on Prudent Risk Management for Commercial Real Estate Lending (Dec. 18, 2015) and guidance attached thereto.*
  - "During 2016, supervisors from the banking agencies will continue to pay special attention to potential risks associated with CRE lending. When conducting examinations that include a review of CRE lending activities, the agencies will focus on financial institutions' implementation of the prudent principles in the Concentration Guidance as well as other applicable guidance relative to identifying, measuring, monitoring, and managing concentration risk in CRE lending activities.
  - In particular, the agencies will focus on those financial institutions that have recently experienced, or whose lending strategy plans for, substantial growth in CRE lending activity, or that operate in markets or loan segments with increasing growth or risk fundamentals.

X. Commercial Real Estate Lending and Concentrations (cont'd)

- The agencies may ask financial institutions found to have inadequate risk management practices and capital strategies to develop a plan to identify, measure, monitor, and manage CRE concentrations, to reduce risk tolerances in their underwriting standards, or to raise additional capital to mitigate the risk associated with their CRE strategies or exposures.

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XI. FDIC Deposit Insurance Costs

- The Dodd-Frank Act revised deposit insurance assessments by applying these to all liabilities, not just deposits or insured deposits. Now FDIC assessments are calculated on average consolidated total assets minus average tangible equity.
- All deposit insurance assessment rates are risk-based, and depend on size and complexity of the insured depository institution:
  - Small Banks – less than $10 billion in assets
  - Large Banks – $10 billion or more in assets
  - Highly Complex Banks – $50 billion of assets and a holding company with more than $500 billion of assets

XI. FDIC Deposit Insurance Costs (cont'd)

- Small Banks are assigned to one of four risk categories based upon their capital levels and composite CAMELS ratings. Group A generally has a CAMELS score of 1 or 2, Group B has a score of 3 and Group C includes banks with lower CAMELS scores.

	Supervisory Subgroups		
Capital Groups	A	B	C
Well Capitalized	I	II	III
Adequately Capitalized	II	II	III
Under Capitalized	III	III	IV

XI. FDIC Deposit Insurance Costs (Cont'd)

- Large Banks are assessed individually based on a scorecard that considers the CAMELS component ratings, measures of asset and funding related stress, and loss severity and risk of potential losses to the FDIC

SCORECARD FOR LARGE INSTITUTIONS

Scorecard Measures and Components	**Measure Weights (percent)**	**Component Weights (percent)**
Performance Score		
Weighted Average CAMELS Rating	100%	*30%*
Ability to Withstand Asset-Related Stress:		*50%*
Leverage Ratio	10%	
Concentration Measure	35%	
Core Earnings/Average Quarter-End Total Assets*	20%	
Credit Quality Measure	35%	
Ability to Withstand Funding-Related Stress:		*20%*
Core Deposits/Total Liabilities	60%	
Balance Sheet Liquidity Ratio	40%	
Loss Severity Score		
Loss Severity Measure		*100%*

XI. FDIC Deposit Insurance Costs (Cont'd)

- Assessment rates are:

	Risk Category I	Risk Category II	Risk Category III	Risk Category IV	Large & Higher Complex Banks
Initial Assessment Rate	5 to 9	14	23	35	5 to 35
Unsecured Debt Adjustment (added)	-4.5 to 0	-5 to 0	-5 to 0	-5 to 0	-5 to 0
Brokered Deposit Adjustment (added)	N/A	0 to 10	0 to 10	0 to 10	0 to 10
Total Assessment Rate	2.5 to 9	9 to 24	18 to 33	30 to 45	2.5 to 45

XI. FDIC Deposit Insurance Costs (Cont'd)

- FDIC Staff Paper, *Deposit Insurance Funding: Assuring Confidence (Nov. 2013) provides a history of the FDIC funding process and includes the following chart that show the interplay between risks, capital and deposit insurance premiums:*

- **Risk Measures Used to Determine Risk-Based Premium Rates for Banks with Assets Greater than $10 Billion**
  - Tier 1 Leverage Ratio
  - Higher Risk Assets / Tier 1 Capital & Reserves
  - Level of, and Growth in, Risk Concentrations
  - Core Earnings / Average Assets
  - Past Due Assets / Tier 1 Capital & Reserves
  - Criticized and Classified Assets / Tier 1 Capital & Reserves
  - Core Deposits / Total Liabilities
  - Highly Liquid Assets / Potential Cash Outflows
  - Projected Loss Given Default / Domestic Deposits
  - Weighted Average Examination Component Ratings

XI. FDIC Deposit Insurance Costs (Cont'd)

- Additional risk measures for highly complex institutions:
- Largest Counterparty Exposure / Tier 1 Capital & Reserves
- Top 20 Counterparty Exposures / Tier 1 Capital & Reserves
- Trading Revenue Volatility / Tier 1 Capital
- Market Risk Capital / Tier 1 Capital
- Level 3 Trading Assets / Tier 1 Capital
- Short Term Borrowing / Average Assets
- Additional adjustments for all large banks:
- High reliance on brokered deposits (only applies to higher risk large institutions)
- Reliance on long term unsecured debt

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XI. FDIC Deposit Insurance Costs (Cont'd)

- FDIC March 15, 2016 Rule
  - Added a 4.5 BP surcharge to Large and Highly Complex Banks' assessment rate to fund the increase in the DIF reserve from 1.15% to the 1.35% required by the Dodd-Frank Act
  - Small Banks are not funding this increase
- FICO assessments declining and will end in 2019. Currently .56 BP
- FDIC Final Rules FIL 28-2016 (Apr. 26, 2016) revise assessments for Small Banks that have been insured for 5 or more years. The Final Rules:
  - Determine assessment rates for all established small banks using financial measures and supervisory ratings derived from a statistical model estimating the probability of failure over three years
  - Eliminate risk categories, but establishes minimum and maximum assessment rates for established small banks based on a bank's CAMELS composite ratings
  - Maintain the range of initial assessment rates that will apply once the DIF reaches 1.15%. Deposit insurance assessment rates for Small Banks will fall once the reserve ratio reaches 1.15%

XII. New Capital Rules and Proposals

- Supplementary Leverage Ratio: On September 3, 2014, the Board, FDIC and OCC adopted the supplementary leverage ratio requirement ("SLR") for Advanced Approaches Institutions. 79 Fed. Reg. 57,725 (Sep. 16, 2014).
- Enhanced Supplementary Leverage Ratio: On April 8, 2014, the Board, FDIC and OCC adopted the enhanced supplemental leverage ratio ("eSLR") for G-SIBs. 79 Fed. Reg. 24,528. (May 1, 2014).
- Capital Conservation Buffers: On July 2, 2013, the Board, FDIC and OCC adopted the "capital conservation buffer" for all national banks and FDIC-supervised institutions. 78 Fed. Reg. 55,340 (Sep. 10, 2013).

XII. New Capital Rules and Proposals (cont'd)

- TLAC Requirements: On October 30, 2015, the Board issued a notice of proposed rulemaking requiring the eight G-SIBs and the U.S. operations of foreign G-SIBs to meet a new long-term debt requirement and a new "total loss-absorbing capacity" requirement ("TLAC"). 80 Fed. Reg. 74,926 (Nov. 30, 2015).
- G-SIB Surcharge: On July 20, 2015, the Board approved a final rule implementing a "G-SIB surcharge" requirement for all G-SIBs 80 Fed. Reg. 49,082 (Aug. 14, 2015).
- Countercyclical Capital Buffer: On December 21, 2015, the Board announced that it is seeking public comment on a proposed policy statement detailing the framework the Board would follow in setting the countercyclical capital buffer. 81 Fed. Reg. 5,661 (Feb. 3, 2016).

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XIII. Additional Capital Requirements for Large Banks

Interagency Final Supplementary Leverage Rule 79 F.R. 57725 (New Federal Reserve Reg. Q) (Sept. 16, 2014)

- Advanced approaches institutions must maintain at least a 3% supplementary leverage ratio that takes into account off-balance sheet exposures
- Uses Tier 1 capital to total leverage exposure
- Total leverage exposure means the sum of (1) the mean of the on-balance sheet assets calculated as of each day of the reporting quarter; and (2) the mean of the off-balance sheet exposures calculated as of the last day of each of the most recent three months, minus the applicable regulatory capital deductions. *See*, e.g. OCC Regs., §3.10
- Effective January 1, 2018

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XIII. Additional Capital Requirements for Large Banks (cont'd)

Total Loss Absorbing Capacity ("TLAC") Proposal 80 F.R. 74926 (Nov. 30, 2016)

- Domestic G-SIBs would be required to issue at a minimum:
  - Long-term debt equal to the greater of 6% of risk-weighted assets plus its G-SIB surcharge of risk-weighted assets and 4.5% of total leverage exposure; and
  - TLAC equal to the greater of 18% of risk-weighted assets and 9.5% of "total leverage exposure." Total leverage exposure equals, among other things, the value of the bank's assets, the potential future exposure of each derivative contract, the value of the cash received from a counterparty to a derivative contract less the value of the underlying asset, the notional principal amount of a credit derivative through which the bank provides credit protection, the gross value of receivables associated with the repo-style transactions less any on-balance sheet receivables amount associated with a repo-style transaction, and the counterparty credit risk of a repo-style transaction. *See*, *e.g.* OCC. Regs., §3.10.

XIII. Additional Capital Requirements for Large Banks (cont'd)

TLAC

- The U.S. operations of foreign G-SIBs generally would be required to hold at a minimum:
  - Long-term debt equal to the greater of 7% of risk-weighted assets and 3% of total leverage exposure and 4 % of average total consolidated assets; and
  - A TLAC equal to the greater of 16% of risk-weighted assets and 6% of total leverage exposure and 8% of average total consolidated assets.
  - GSIB would have used five broad categories—size, interconnectedness, cross-jurisdictional activity, substitutability and complexity. Each of the categories has a 20% weighting.
  - The proposal identified 12 systemic indicators. A BHC would have calculated a score for each systemic indicator by dividing its systemic indicator value by an aggregate global measure for that indicator.

XIII. Additional Capital Requirements for Large Banks (cont'd)

G-SIB Surcharge Final Rule 80 F.R. 49082 (Aug. 14, 2015)

- The highest amount calculated under 2 methods:
  - Method 1 – Basel Framework
    - The resulting – value for each systemic indicator would then have been multiplied by the prescribed weighting indicated in Table 1 above, and by 10,000 to reflect the result in basis points. A BHC would then sum the weighted values for the 12 systemic indicators to determine its method 1 score.
    - The value of the substitutability indicator scores would be capped at 100. A BHC would have been identified as a G-SIB if its method 1 score exceeded 130. The surcharges under method 1 range from 0% of risk weighted assets if the method 1 score is less than 130 basis points and goes as high as 3.5% of risk weighted assets if the method 1 score is 530 basis points or more.

XIII. Additional Capital Requirements for Large Banks (cont'd)

- Method 1 – Basel Committee Method
  - This is – based on the five categories related to systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. Each of the categories received a 20% weighting in the calculation of a firm's Method 1 score, 12 categories of systemic indicators used to create a score.

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XIII. Additional Capital Requirements for Large Banks (cont'd)

- Method 2 – This method is calibrated to result in significantly higher surcharges and replaces substitutability with a measure of the firm's reliance on short-term wholesale funding.
  - The final rule assigns specified constants, or coefficient, to each systemic indicator that includes the average aggregate global indicator amount, the indicator weight, the conversion to basis points, and doubling of firm scores.
  - The surcharges under method 2 range from 0% of risk weighted assets if the method 2 score is below 130 basis points and can reach 6.5% of risk weighted assets plus an additional .5% for each 100 basis points the G-SIB's method two score exceeds 1130 basis points.
  - The surcharges will be phased in beginning on January 1, 2016, becoming fully effective on January 1, 2019.

XIII. Additional Capital Requirements for Large Banks (cont'd)

Final Enhanced Supplementary Leverage Ratio Rule 79 F.R. 24528 (May 1, 2014)

- Applies to "Covered BHCs" with more than $700 billion in consolidated assets or more than $10 trillion in assets under custody
- Covered BHCs must maintain a leverage buffer greater than 2 percentage points above the minimum supplementary leverage ratio requirement of 3%, for a total of more than 5%, to avoid restrictions on capital distributions and discretionary bonus payments
- IDI subsidiaries of covered BHCs must maintain at least a 6% supplementary leverage ratio to be considered "well capitalized" under PCA

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XIII. Additional Capital Requirements for Large Banks (cont'd)

Final Enhanced Supplementary Leverage Ratio

- Purpose -- The "maintenance of a strong base of capital among the largest, most interconnected U.S. banking organizations is particularly important because capital shortfalls at these institutions have the potential to result in significant adverse economic consequences and to contribute to systemic distress on both a domestic and an international scale. Higher capital standards for these institutions place additional private capital at risk before the federal deposit insurance fund and the federal government's resolution mechanisms would be called upon, and reduce the likelihood of economic disruptions caused by problems at these institutions"
- Effective January 1, 2018
- Modification of the denominator calculation for the supplementary leverage ratio is consistent with recent Basel Committee changes
- Would apply to all internationally active banking organizations, including those subject to the enhanced supplementary leverage ratio final rule
- Separate proposal to change the definition of "eligible guarantee"

XIV. Other Capital Rules and Proposals

- Capital Requirements for Covered Swap Entities: On October 22, 2015, the OCC, Board, and FDIC, adopted rules regarding capital requirements for all swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency. 80 Fed. Reg. 74,916 (Nov. 30, 2015).
- Leverage Ratio Revisions: On April 6, 2016, the Basel Committee proposed several revisions to the Basel III leverage ratio. Basel Committee, *Revisions to the Basel III Leverage Ratio Framework* (April 2016).
- Interest Rate Risk Management and Supervision: On April 21, 2016, the Basel Committee announced that it has abandoned plans to impose a new capital regime tied to interest rate risk and adopted a more flexible approach that leaves the matter to national regulators. Basel Committee, *Principals for Management and Supervision of Interest Rate Risk* (April 2016).

XIV. Other Capital Rules and Proposals (cont'd)

- Definitions of "Non-performing Exposures" and "Forbearance": On April 25, 2016, the Basel Committee proposed the adoption of standardized definitions for the terms "non-performing exposures" and "forbearance." Basel Committee, *Prudential treatment of problem assets - definitions of non-performing exposures and forbearance* (July 2016).

XIV. Other Capital Rules and Proposals (cont'd)

Proposed Policy Statement for Federal Reserve Framework for Countercyclical Capital Buffer ("CCyB") (Dec. 21, 2015)

- Responds, in part, to Section 616 of the Dodd-Frank Act to make capital countercyclical, so it increases during economic expansions and decreases in economic contraction, but yet consistent with safety and soundness.
- The proposed countercyclical buffer, once fully phased-in, would range from 0% of risk-weighted assets in times of moderate financial-system vulnerabilities to a maximum of 2.5% when vulnerabilities are significantly elevated
- Banks that fail to maintain the requisite buffer would face restrictions on capital distributions and the payment of discretionary bonuses.

XV. Volcker Rule Affects Distributions, Liquidity and Capital

- BHC Act §13(a)(1)(B) prohibits "banking entities" from acquiring or retaining an ownership interest in, or sponsoring a private equity or hedge fund
- §13(g)(2) permits the sale or securitization of loans
- "Hedge fund" and "private equity fund" means a fund that would be an "investment company" but for §§3(c)(1) or 3(c)(7) of the ICA of 1940. Most CLOs rely on these exemptions

XV. Volcker Rule Affects Distributions, Liquidity and Capital (Cont'd)

- Volcker Regulations adopted in 79 F.R. 5536 (Jan. 31, 2014)
  - CLOs are used to distribute leveraged loans
  - CLOs generally have included junk bonds up to 10% of assets, which are not "permitted securities," and bring the CLOs within Volcker's prohibition
  - Volcker Regulations may even include "notes" as ownership interests. *See* Volcker Regs. §___.10(d)(G)(i)
- Proprietary trading restrictions reduce market liquidity

XVI. Treasury Rate Effects

- Liquidity, including Liquidity Coverage Ratio ("LCR") and Net Stable Funding Ratio ("NSFR")
- Capital
- Low returns on required liquidity in a low rate environment = high opportunity costs
- Interest rate risk
  - Duration
  - Yield
- Commercial banks hold a record $500 billion of U.S. Treasuries, 10X as much as in 2007, according to FDIC data

XVI. Treasury Rate Effects (cont'd)

- Loan pricing
  - Treasuries provide a "risk-free" rate as a base to price risk
  - 30-year fixed rate mortgage loans priced off of 10-year Treasury rate
  - CRE cap rates and the 10-year Treasury note rates are correlated
  - The 10-year Treasury and CRE capitalization rate spread are used to determine CRE investment risk premia
  - Recently, CRE loan pricing is tied less to prime and more to medium to long-term Treasuries
  - Treasury volatility leads to pricing volatility and inconsistencies

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Sources: American Bankers Association
Ernst & Young, *Commercial Property Outlook in a Rising Rate Environment* (Sept. 2015)

XVII. Cost Reimbursement in Credit Agreements

- Traditionally banks have priced loans assuming borrowers would cover extraneous costs
- Lenders' legal fees, lien search charges and other due diligence items, and similar expenses have been charged to borrowers for decades
- Once established, reimbursement categories tend to stay in place (e.g. "reserve-adjusted LIBOR")

XVIII. Increased Costs

- Lenders traditionally included increased costs protections in credit agreements.
- As with other similar provisions, purpose is to preserve lenders’ anticipated return.

XIX. Increased Costs – Example

(a) Increased Costs. If at any time a Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to the making, the commitment to make or the maintaining of any Eurodollar Loan because of (i) any adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority including, without limitation, the imposition, modification or deemed applicability of any reserves, deposits or similar requirements (such as, for example, but not limited to, a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the Adjusted Eurodollar Rate) (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted or issued), then the Borrower shall pay to such Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender may determine in its sole discretion) as may be required to compensate such Lender for such increased costs or reductions in amounts receivable hereunder.

XX. Increased Capital Protection

- Lenders have also sought to protect their yields from being eroded by increased capital charges.
- Beginning with the first Based Accords in 1988, lenders began adding “increased capital” gross-up requirements to credit agreements.
- The complexity of these provisions has increased as the extent and complexity of the capital requirements imposed by central banks and other regulators have grown.

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XXI. Increased Capital Protection -- Example

- (a) <u>Capital **Adequacy**</u>

- If, after the date hereof, any Lender has determined that the adoption or effectiveness of any applicable Law, rule or regulation regarding capital adequacy or liquidity, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's (or its parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Lender, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's (or its parent corporation's) policies with respect to capital adequacy) (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted or issued), then the Borrower shall pay to such Lender within 15 days after demand, which demand shall contain the basis and calculations supporting such demand, such additional amount or amounts as will compensate such Lender for such reduction. Each determination by any such Lender of amounts owing under this Section 4.2 shall, absent manifest error, be conclusive and binding on the parties hereto.

XXII. Tax Reimbursement

- Reimbursement or “gross-up” for taxes is another broad category of expense reimbursement

- Aside from taxes on lender’s net income, tax gross ups cover all types of taxes and other government-imposed charges.

XXIII. Tax Reimbursement -- Example

(a) Tax Liabilities Imposed on a Lender. (i) Any and all payments by the Borrower hereunder or under any of the Credit Documents shall be made, in accordance with the terms hereof and thereof, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (A) taxes measured by net income and franchise taxes imposed on any Lender by the jurisdiction under the laws of which such Lender is organized or transacting business or any political subdivision thereof and (B) any U.S. federal withholding taxes imposed under FATCA (all such non-excluded taxes, being hereinafter referred to as "Taxes"). If any applicable Laws (as determined in the good faith discretion of the Administrative Agent or Borrower, as applicable) require the deduction or withholding of any tax from any such payment hereunder, then the Administrative Agent or Borrower shall be entitled to make such deduction or withholding.

XXIII. Tax Reimbursement – Example (cont'd)

(b) Other Taxes. In addition, the Borrower agrees to pay, upon written notice from a Lender and prior to the date when penalties attach thereto, all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any state or political subdivision thereof or any applicable foreign jurisdiction that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement (collectively, the "Other Taxes").

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XXIV. Yield Protection

- In addition to cost reimbursement, Lenders require borrowers to maintain their bargained-for yield in loans
- Yield protection provisions for LIBOR and similar “match funded” loans have long been included in credit agreements.

XXV. Libor Yield Protection -- Example

(a) Unavailability. In the event that the Administrative Agent shall have determined in good faith (i) that Dollar deposits in the principal amounts requested with respect to a Eurodollar Loan are not generally available in the London interbank Eurodollar market or (ii) that reasonable means do not exist for ascertaining the Eurodollar Rate or the Required Lenders shall have notified the Administrative Agent that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent shall, as soon as practicable thereafter, give written notice of such determination to the Borrower and the Lenders. In the event of any such determination under clauses (i) or (ii) above, until the Administrative Agent shall have advised the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any request by the Borrower for Eurodollar Loans shall be deemed to be a request for Base Rate Loans and (B) any request by the Borrower for conversion into or continuation of Eurodollar Loans shall be deemed to be a request for conversion into or continuation of Base Rate Loans.

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XXVI. Legality Protections

- Similarly, lenders protect themselves from having to fund LIBOR loans if it becomes unlawful for them to do so.

XXVII. Legality Protection -- Example

- (b) Change in Legality. Notwithstanding any other provision herein, if (i) any adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority (provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes hereof, regardless of the date enacted, adopted or issued) shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower and to the Administrative Agent, such Lender may, until such time as the circumstances giving rise to such unlawfulness no longer exists:

- (A) declare that Eurodollar Loans, and conversions to or continuations of Eurodollar Loans, will not thereafter be made by such Lender hereunder, whereupon any request by the Borrower for, or for conversion into or continuation of, Eurodollar Loans shall, as to such Lender only, be deemed a request for, or for conversion into or continuation of, Base Rate Loans, unless such declaration shall be subsequently withdrawn; and
- (B) require that all outstanding Eurodollar Loans made by it be converted to Base Rate Loans in which event all such Eurodollar Loans shall be automatically converted to Base Rate Loans.

Basel III
HVCRE Impact on Loan Structures and Documentation

Steven M. Regan

Basel III

High Volatility Commercial Real Estate

HVCRE and its affect on lending

- HVCRE – High Volatility Commercial Real Estate
- A HVCRE exposure means a credit facility that, prior to conversion to permanent financing, finances the acquisition, development or construction (ADC) of real property.
- According to the CRE Finance Council, HVCRE regulations have added 80 bps to the average cost of a construction loan.

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HVCRE Risk Weight

- Basel III uses a risk weighting system to determine the capital ratios for higher risk assets.
- Most commercial real estate loans have a 100% risk weight.
- HVCRE loans carry a 150% risk weight
- The higher risk weight requires the bank to retain more capital for a HVCRE exposure
- Higher capital retention reduces equity bank can deploy which increases loan pricing.

Avoiding HVCRE

- Bank and Borrower are both incentivized to avoid HVCRE
- Borrower: Avoiding HVCRE means lower pricing
- Bank: Avoiding HVCRE means more capital is available to deploy in the market.

Exclusions from HVCRE Rule

- ADC loans are not HVCRE if the loan finances:
  - 1 to 4 family residential property;
  - Purchase of agricultural land;
  - Certain Community Development / Small Business loans.

Exclusions from HVCRE Rule

- Commercial Real Estate Project in which:
- The LTV is less than or equal to the applicable maximum supervisory LTV in the OCC's real estate lending standards;
- The borrower has contributed capital to the project in the form of unencumbered readily marketable assets or has paid development expenses out of pocket of at least 15% of the "as completed" appraised value; and

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HVCRE Exclusion (cont.)

- All of Borrower's required capital must be contributed (or spent) before any proceeds of the loan are advanced;
- All capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project.
- The life of the project ends when: (a) the credit facility is converted to permanent financing, (b) the project is sold; or (c) the loan is paid in full.

Loan-to-Value Ratio

- To avoid 150% risk weighting, an ADC loan must have an LTV equal to or less than the OCC real estate lending standards:
  - Raw Land – 65% LTV
  - Land Development or Improved Lots – 75%
  - Construction – 80% for commercial, multi-family and other non-residential
  - Construction - 85% for 1 to 4 family residential
  - Improved Property – 85% for commercial, multi-family and other non-residential.
  - Improved Property – 90% for 1 to 4 family residential

Loan-to-Value Ratio (Cont.)

- The LTV requirement is tested and must be satisfied at closing.
- A subsequent appraisal after closing that satisfies the LTV requirement would not reverse the HVCRE classification.

HVCRE LTV Ratio Affect on Loan Documents

- Loan documents for ADC loans do not appear to require any additional or different terms regarding the LTV requirement for exclusion from HVCRE treatment.
- LTV is addressed by the bank through underwriting and credit approval and required LTV is typically addressed in the bank's term sheet and then reflected in the loan documents.
- Definitions of Appraisal in a construction loan agreement may be revised to require an "as completed" appraisal.

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15% Equity Requirement

- The HVCRE regulations require a borrower to infuse at least 15% of the “as completed” value of the project in equity into a project to avoid the HVCRE risk weighting.
- The assets invested by Borrower must be unencumbered and readily marketable assets.
- Development expenses paid out-of-pocket count toward the 15% equity requirement.

Contributed Capital

- Land acquisition cost rather than value of land counts toward contributed capital. Appreciation in value of land held is lost in terms of calculating borrower's 15% capital.
- No guidance as to whether mezzanine loans or preferred equity qualify as contributed capital.
- Prevailing view is that mezz debt and preferred equity do not qualify as contributed capital.

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Contributed Capital and Loan Advances

- Borrower's equity must be "all-in" prior to the first loan advance.
- Document paid development expenses
- Address Borrower's Equity in loan documents
- Definition of "Borrower's Capital Contribution"
- Borrower's Capital Account: Lender requires borrower to open capital account into which remaining 15% is deposited at closing.
- Satisfy 15% capital contribution condition precedent to first loan advance.

Distributions of Equity or Income

- Final element of HVCRE exclusion requires that all capital contributed by borrower or internally generated by the project be contractually required to remain in the project throughout the life of the project.
- “Contractually Required” means that the loan documentation must prohibit distributions of equity and income.
- Negative covenants in loan agreement would prohibit all return of equity, distributions of income and any other distributions until the project is sold, the loan is paid off or converts to permanent financing.

15% Equity Requirement

- Contributed capital and internally generated income required to remain in the project throughout the life of the project.
  - Life of the Project means:
    - Conversion to permanent financing;
    - Pay off loan; or
    - Project is sold.

Conversion to Permanent Finance

- For purposes of HVCRE regulations, conversation to permanent financing means:
  - Permanent financing provided by the same bank as long as permanent loan is subject to lender's underwriting criteria for long term mortgage loans.
  - Refinance with another lender for term financing.

Change in Law

- HVCRE regulations could change or be subject to further regulatory interpretation during the life of a loan.
- Change in Law provisions in loan documents allow lender to pass increased costs as a result to change in law onto borrower.

Change in Law

- If a change in law occurs after loan closing that increases Lender's costs or reduces its return, Lender may request Borrower to compensate it for such increased costs or reduced return.
- Changes in law may (i) increase Lender's costs of funding, (ii) decrease Lender's return, or (iii) increase other costs.
- Lenders concerned Basel III may not constitute a change in law because not all of the regulations implementing Basel III have been enacted.

Change in Law

- Lenders, and the LSTA, have revised the definition of "Change in Law" in loan and credit agreements to specifically provide that any "requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued."

Questions?

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