VIII. Federal Reserve Adopts New Bailout Rule

In an effort to improve "the resiliency and resolvability" of large banking organizations, the Federal Reserve Board (Board) has adopted a new bailout-prevention rule (Rule) as the latest installment to its series of post-financial crisis regulations.[861] Enacted on December 15, 2016, the Rule imposes several new capital and long-term debt standards on U.S. global systemically important bank holding companies (covered BHCs) and certain U.S. intermediate holding companies of foreign global systematically important intermediate holding companies (covered IHCs).[862] Most of the Rule's meaningful changes are effective on January 1, 2019 with a transition period extending to January of 2022.[863] The crux of the Rule surrounds primarily three new obligations: (1) a total loss-absorbing capacity (TLAC) standard, (2) a supplemental long-term debt (LTD) requirement, and (3) additional "clean holding company" standards.[864]

The TLAC standard is a combination of capital and LTD requirements designed to equip banks with their own means to navigate

[861] *See* Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding 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) (to be codified at 12 C.F.R. pt. 252), https://www.gpo.gov/fdsys/pkg/FR-2017-01-24/pdf/2017-00431.pdf [https://perma.cc/UJ9Q-DWXN] [hereinafter Bailout Rule].

[862] *See* Evan Weinberger, *Fed Rule Aims to Make Investors Pay for Big Bank Failure*, LAW360 (Dec. 15, 2016, 1:36 PM), https://www.law360.com/articles/873088/fed-rule-aims-to-make-investors-pay-for-big-bank-failure [https://perma.cc/3ACT-FQ5P] (explaining that the rule, passed on December 15, 2016, "mandated that the eight largest U.S. banks maintain a combined amount of long-term debt and high-quality capital that would increase the chance that investors would be on the hook for their failure rather than taxpayers.").

[863] *See* Ryan Tracy, *Federal Reserve Adopts Bailout-Prevention Rule Without Major Changes*, WALL ST. J. (Dec. 15, 2016), https://www.wsj.com/articles/federal-reserve-set-to-finalize-bailout-prevention-rule-without-major-changes-1481816849 [https://perma.cc/E3HG-VR4B] ("The Fed also tightened the deadline for fully complying with the rule, moving it to Jan. 1, 2019, from January 2022, saying that banks' debt shortfalls have "declined substantially" and the changes to the rule should make the debt requirements easier to meet.").

[864] *See* Bailout Rule, *supra* note 1, at 3266.

times of economic distress.[865] The Rule demands that the covered BHCs, maintain a TLAC of no less than 18 percent of the institution's total risk-weighted assets and 7.5 percent of the institution's total leverage exposure.[866] Somewhat related to the TLAC standard are the new LTD requirements, which require covered Global Systemically Important Banks (G-SIBs) to issue a minimum amount of long-term unsecured debt,[867] and obligate covered G-SIBs to maintain an LTD baseline no less than 6 percent of risk-weighted assets and 4.5 percent of total leverage exposure.[868] Finally, the "clean holding company" standards prevent the parent holding company of domestic G-SIBs from entering into certain types of financial arrangements.[869] In addition to these three requirements, the Rule contains several similar, yet distinct, requirements for covered IHCs.[870]

This article will provide a detailed summary of the Rule. First, Section A discusses a short history of the Rule, tracing it from its European roots to the initial proposal by the Federal Reserve in 2015. Section B explores the contents of the Rule as applied to covered BHCs. This section includes a more thorough examination of its affected parties, the TLAC and LTD requirements, and clean holding company standards. Finally, Section C reviews the separate requirements for covered IHCs.

A. Background

As the 2008 financial crisis demonstrated, failures of large financial institutions have the potential to devastate the world economy.[871] The crisis prompted an international effort to stabilize and

---

[865] *See* Weinberger, *supra* note 2.
[866] Bailout Rule, *supra* note 1, at 8272–73.
[867] *See id*. at 8269.
[868] *See id.* at 8275.
[869] *See* Press Release, Fed. Reserve Bd., Federal Reserve Board adopts final rule to strengthen the ability of government authorities to resolve in orderly way largest domestic and foreign banks operating in the United States (Dec. 15, 2016), https://www.federalreserve.gov/newsevents/press/bcreg/20161215a.htm [https://perma.cc/6LDG-45JM] ("These 'clean holding company' requirements will include bans on issuance of short-term debt to external investors and on entering into derivatives and certain other types of financial contracts with external counterparties.").
[870] *See id*.
[871] *See* Anthony Elson, *Global Financial Reform in the Wake of the Finan-*

reinvigorate the global financial market.[872] In this international effort, the Financial Stability Board (FSB) was forged.[873] The FSB is an international body that monitors and prescribes recommendations on issues facing the global financial system, which was established at the G20 Leaders' Summit of April 2009.[874] Replacing its predecessor, the Financial Stability Forum (FSF), the FSB seeks to augment the FSF's objectives "with a broadened mandate to promote financial stability," place the organization on stronger institutional ground, and grow its international membership.[875] Currently based in Basel, Switzerland, the FSB works closely with the World Bank, International Monetary Fund, European Central Bank, G20 countries, and other international financial organizations to maintain global economic stability.[876]

Although not legally binding on any country, the FSB's TLAC standard was proposed in November of 2014 and officially issued on November 9, 2015.[877] The standard was designed to minimize risks to the stability of the world economy arising from distress to or failures of any of the large interconnected financial institutions.[878] It imposes a TLAC floor of 16 percent of the resolution group's risk-weighted assets as of January 1, 2019, and at least 18 percent as of January 1, 2022.[879] Additionally, the Rule requires that the minimum TLAC be at least 6 percent of the Basel III leverage ratio denominator as of January 1, 2019, and at least 6.75 percent as of January 1, 2022.[880]

Section 165 of the Dodd-Frank Act authorizes the Board to impose enhanced prudential standards on bank holding companies

---

cial Crisis of 2008, SANFORD J. PUB. POL'Y (Oct. 27, 2013), https://sites.duke.edu/sjpp/2013/global-financial-reform-in-the-wake-of-the-financial-crisis-of-2008/ [https://perma.cc/95BK-G9WG].

[872] *See id*.

[873] *See id*.

[874] *See Our History,* FIN. STABILITY BD., http://www.fsb.org/about/history/ [https://perma.cc/YX7P-RSTQ].

[875] *See id*.

[876] *FSB Members*, FIN. STABILITY BD., http://www.fsb.org/about/fsb-members/#member [https://perma.cc/FS62-SA2J].

[877] *See* Press Release, Fin. Stability Bd., FSB issues final Total-Loss Absorbing Capacity standard for global systemically important banks (Nov. 9, 2015), http://www.fsb.org/wp-content/uploads/20151106-TLAC-Press-Release.pdf [https://perma.cc/98NF-SFJC].

[878] *See id*. at 1.

[879] *Id*.

[880] *Id*.

with total consolidated assets of $50 billion or more.[881] Borrowing largely from the FSB standard, the Board proposed its own bailout prevention rule in accordance with Section 165 in October 2015.[882] After a notice-and-comment period and minor modifications, the official Board Rule was adopted on December 15, 2016 with a 5-0 vote.[883]

B. The Rule Applied to Covered BHCs

1. Affected Parties

Covered BHCs under the Rule are defined as the same entities subject to the Federal Reserve's G-SIB surcharge rule.[884] The G-SIB surcharge rule employs a "multifactor methodology established under the Board's regulatory capital rules."[885] This methodology assesses the bank holding company's systemic importance by considering five factors: (1) size, (2) interconnectedness, (3) cross-jurisdictional activity, (4) substitutability, and (5) complexity.[886] Presently, eight U.S. banks are subject to the Rule.[887]

2. TLAC Requirement

The Rule requires a covered BHC to maintain a TLAC of at least 18 percent of its risk-weighted assets and 7.5 percent of its leverage exposure.[888] Total risk-weighted assets are calculated

---

[881] Dodd-Frank Wall Street Reform and Consumer Protection Act § 165(a)(1), 12 U.S.C. § 5365(a)(1) (2012).

[882] *See* CLEARY GOTTLIEB, COMPARING THE FEDERAL RESERVE'S TLAC PROPOSAL TO THE FSB TLAC FINAL STANDARDS 1 (2015), https://www.clearygottlieb.com/~/media/cgsh/files/publication-pdfs/comparison-of-fsb-tlac-standards-to-federal-reserve-tlac-proposal.pdf [https://perma.cc/8PZQ-EKJX] ("While broadly consistent with the framework of the FSB Standards, the Federal Reserve Proposal is much more restrictive than, and deviates from, the FSB Standards in several meaningful ways . . . .").

[883] *See* Weinberger, *supra* note 2.

[884] Bailout Rule, *supra* note 1, at 8269.

[885] *Id*. at 8272.

[886] *Id*.

[887] These covered BHCs are "Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo &Company." *See id.* at 8272 n.35.

[888] *Id*. at 8272–73.

pursuant to the formulas set forth in Regulation Q,[889] and total leverage exposure is derived using the same standards issued in the Board's Supplemental Leverage Ratio Rule.[890] The external TLAC standard is defined as "the sum of (a) the tier 1 regulatory capital (common equity tier 1 capital and additional tier 1 capital) issued directly by the covered BHC (excluding any tier 1 minority interests), and (b) the covered BHC's eligible external LTD."[891] Certain Tier 2 capital "that meets the definition of eligible external LTD would continue to count toward the external LTD and TLAC requirements."[892] Unlike the Basel III framework, minority interests in consolidated subsidiaries are not counted toward TLAC capital requirements.[893]

The Rule also imposes buffers on the percentage of risk-weighted assets component and on the total leverage exposure component of the general external TLAC requirements.[894] These buffers are composed solely of common equity tier 1 capital and operate in addition to the capital conservation buffers of Regulation

---

[889] *See* 12 C.F.R. §§ 217.30–217.53 (2016) (describing the standardized approach to calculating risk-weighted assets); §§ 217.100-217.162 (describing the internal ratings-based and advanced measurement approaches to calculating risk-weighted assets).

[890] *See* 12 CFR § 217.10(c)(4); Bailout Rule, *supra* note 1, at 8303; OFFICE OF THE COMPTROLLER OF THE CURRENCY, OCC BULL. NO. 2014-47, DESCRIPTION: FINAL RULE (Sept. 26, 2014), https://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-47.html [https://perma.cc/4TWU-FKGM] (stating that the Supplementary Leverage Ratio Rule "adjusts the measure of total leverage exposure by[:] adding the amount of cash collateral received or posted for derivatives contracts, except for cash variation margin that meets certain conditions[;] adding the effective notional amount, subject to certain reductions, of each written credit derivative . . . or other similar instrument to the extent that the exposure is not offset by purchased credit protection that meets certain conditions; adding the gross value of receivables of any repo-style transactions that do not meet certain conditions[;] adding the counterparty credit risk associated with repo-style transactions[;] revising the treatment of other off-balance-sheet exposures; rather than including the full notional amount of each exposure, the revised measure of total leverage exposure would use the credit conversion factors set forth in the standardized approach in the 2013 revised capital rule, provided that no credit conversion factor can be less than 10 percent.").

[891] Bailout Rule, *supra* note 1, at 8270.

[892] *Id*.

[893] *See id*. at 8276.

[894] *Id*. at 8271.

Q.[895] The further the covered BHC dips into their TLAC buffers, the more stringent the limitations on capital distributions and bonus payments become.[896] For the percentage of leverage exposure requirement, there is an additional 2 percent buffer on top of the base 7.5 percent external TLAC requirement.[897] The risk-weighted assets component buffer is 2.5 percent in addition to the requirements of the countercyclical buffer and G-SIB surcharge rule.[898] Thus, a covered BHC subject to both the Rule's buffer and Regulation Q would have up to a 9 percent buffer requirement to meet in addition to the external TLAC requirement.

The following tables illustrate the Rule's new TLAC demands on covered BHCs and corresponding payout ratio if the covered BHC dips into the required buffers.[899]

External TLAC required as a percentage of risk-weighted assets	External TLAC required as a percentage of total leverage exposure
18% plus 2.5% buffer (plus any applicable countercyclical capital buffer under 12 CFR § 217.11(b) and the G-SIB surcharge)	7.5% plus 2% buffer

[895] *Id*. at 8266 ("Banking organizations subject to the Board's regulatory capital rules (Regulation Q) must maintain a minimum amount of regulatory capital and maintain a capital buffer above the minimum capital requirements in order to avoid restrictions on capital distributions and discretionary bonus payments."); *id*. at 8266 n.4 (citing 12 C.F.R. § 217.11(a)).

[896] *Id*. at 8269.

[897] *Id*. at 8270.

[898] *Id*. at 8275.

[899] *See id*. at 8277.

Ratio of External TLAC Risk-Weighted Buffer Level to Rule Requirements	Maximum External TLAC risk-weighted payout ratio (as % of eligible retained income)
> 100%	No payout ratio limitation applies
> 75% and ≤ 100%	60%
> 50% and ≤ 75%	40%
> 25% and ≤ 50%	20%
≤ 25%	0% (no capital distributions or discretionary bonuses are permitted)

Ratio of External TLAC Leverage Buffer Level to Rule Requirements	Maximum External TLAC risk-weighted payout ratio (as % of eligible retained income)
> 2%	No payout ratio limitation applies
> 1.5% and ≤ 2%	60%
> 1% and ≤ 1.5%	40%
> .5% and ≤ 1%	20%
≤ .5%	0% (no capital distributions or discretionary bonuses are permitted)

Finally, if there were to be a conflict between the buffers as to which payout ratio is to be utilized, the more restrictive ratio applies.[900]

3. Long-Term Debt Requirement

In addition to adhering to the TLAC standard, covered G-SIBs are also required to issue a minimum amount of long-term debt.[901] The covered G-SIBs must maintain outstanding eligible external LTD in a minimum amount based on the greater of 6 percent of total risk-weighted assets (plus the G-SIB surcharge rule expressed as a percentage) and 4.5 percent of total leverage exposure.[902]

[900] *Id.* at 8277.
[901] *Id.* at 8266.
[902] *Id.* at 8273.

Under the Rule, eligible external LTD must be unsecured, "plain vanilla," and governed by U.S. law.[903] An unsecured debt is a debt without a collateral obligation assumed by the covered G-SIB or any of its subsidiaries.[904] The debt also cannot be subject to an arrangement that would legally or economically enhance the seniority of the debt, such as a credit enhancement.[905] The "plain vanilla" requirement ensures the LTD instrument is as basic and unsophisticated as possible so its value may be easily ascertained in the event of the G-SIBs resolution.[906] While there is no definitive account of "plain vanilla" debt, it is generally a debt instrument with a simple expiration debt or fixed price such as ordinary stock options, bonds, swaps, or futures.[907] The Rule refuses to count any "exotic" debt instruments towards the LTD requirement such as "structured notes," debt with "credit-sensitive" features, debt containing a "contractual provision for conversion into or exchange for equity in the covered BHC," or debt containing a "provision that gives the holder a contractual right to accelerate payment" on command.[908] However, the Board will grandfather in eligible external LTD issued on or before December 31, 2016, even if the debt has certain contractual clauses prohibited by the Rule.[909]

The Board, however, retains the authority to order a covered G-SIB to exclude certain eligible debt securities "with features that would significantly impair the ability of such debt securities to take losses."[910] Moreover, "eligible external LTD that is due to be paid between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement," while eligible LTD to be paid within one year will not count at all.[911] Finally, a G-SIB is forbidden from redeeming or repurchasing external LTD prior to

---

903 *Id*. at 8269.

904 Bret A. Maidman, *What is an Unsecured Debt?*, NOLO, http://www.nolo.com/legal-encyclopedia/what-unsecured-debt.html [https://perma.cc/GW5Q-GWUH].

905 Bailout Rule, *supra* note 1, at 8299.

906 *Id*. at 8300.

907 *Id*. at 8268 n.21.

908 *Id*. at 8280.

909 *Id*. at 8278.

910 *Id*. at 8308.

911 *Id*. at 8271.

its maturation without the Board's approval if the transaction would cause the covered G-SIB to fall below the LTD requirement.[912]

4. Clean Holding Company Requirements

The Rule also establishes a clean holding framework for covered U.S. G-SIB bank holding companies.[913] These covered G-SIBs are limited "from directly entering into certain financial arrangements that could impede an entity's orderly resolution."[914] Specifically, "covered IHC[s] are prohibited from issuing short-term debt" and entering into certain financial contracts with third parties.[915] They are also prohibited from issuing certain guarantees of its subsidiaries' liability if the liability provides default rights in the event of the covered BHC or IHC's resolution, and from possessing liabilities guaranteed by the institution's subsidiary or "subject to contractual offset rights for its subsidiaries' creditors."[916]

Covered BHCs are also subject to a cap on the aggregate amount of certain "third party liabilities (other than those related to eligible external TLAC and eligible external LTD) that can be *pari passu* with or junior to its eligible external LTD at 5% of the value of its eligible external TLAC."[917] However, covered G-SIBs may contractually subordinate their eligible LTD to that of their other third-party liabilities to avoid the 5 percent cap.[918] Finally, the clean holding company standards impose additional disclosure obligations. Under the Rule, covered G-SIBs must publicly disclose "a description of the financial consequences to unsecured debtholders of the covered BHC's entry into a resolution proceeding in which the covered BHC is the only entity that would enter resolution."[919]

---

[912] *Id*. at 8273.
[913] *Id*. at 8269.
[914] *Id*. at 8272.
[915] *Id*.
[916] *Id*.
[917] *Id*. at 8268.
[918] *Id*. at 8301 n.108.
[919] *Id*. at 8303.

C. The Rule Applies to Covered IHCs

1. Who's Affected

The TLAC, LTD, and clean holding company requirements only apply to covered BHCs.[920] However, the Rule levies slightly different requirements to covered IHCs.[921] These covered IHCs include HSBC, BNP, Mitsubishi, Deutsche, Barclays, RBS, Mizuho, SocGen, Santander, UBS, and Credit Suisse.[922] The clean holding company requirements generally apply with equal force to covered BHCs and covered IHCs, while due to jurisdictional conflicts, the TLAC and LTD requirements depend on a covered IHCs resolution strategy.[923]

A covered IHC is likely to enter resolution through either a multiple-point-of-entry (MPOE) strategy or single-point-of-entry (SPOE) strategy.[924] "[In] an SPOE resolution, only the top-tier holding company would enter a resolution proceeding," thereby eliminating the need for proceedings spanning multiple jurisdictions.[925] Conversely, the "MPOE resolution involves separate resolutions of different legal entities within a financial firm and could potentially be executed by multiple resolution authorities across multiple jurisdictions."[926] A covered IHC's TLAC and LTD requirement depends on whether it will enter an MPOE resolution or SPOE resolution.[927] An MPOE resolution, since it would be subject to U.S. resolution proceedings, is a "resolution covered IHC."[928] Alternatively, the SPOE strategy would subject the covered IHC to proceedings solely in its top-tier company's location, thereby transforming it into a "non-resolution covered IHC."[929]

---

[920] *See id.* at 8266.
[921] *See id.*
[922] FIN. STABILITY BD., 2016 LIST OF GLOBAL SYSTEMICALLY IMPORTANT BANKS (G-SIBs) (2016), http://www.fsb.org/wp-content/uploads/2016-list-of-global-systemically-important-banks-G-SIBs.pdf [https://perma.cc/Q8SV-2Z8H].
[923] Bailout Rule, *supra* note 1, at 8270.
[924] *Id*. at 8270 n.29.
[925] *Id*.
[926] *Id*.
[927] *Id*.
[928] *Id*.
[929] *Id*.

2. TLAC Requirements

Similar to the covered BHC's TLAC requirements, the covered IHCs TLAC standard is composed of common equity tier 1 capital, additional tier 1 capital, external LTD, or internal LTD, depending on the resolution strategy.[930] A non-resolution covered IHC must maintain outstanding TLAC of at least 16 percent of risk-weighted assets, 6 percent of total leverage exposure, and 8 percent of average total consolidated assets.[931] Moreover, resolution covered IHCs are required to maintain outstanding eligible TLAC of 18 percent of its risk-weighted assets, 6.75 percent of total leverage exposure, and 9 percent of average total consolidated assets.[932] Similar to the covered BHCs' capital conservation buffer, covered IHCs would also be subject to a risk-weighted assets TLAC buffer of 2.5 percent.[933]

3. Long-Term Debt Requirement

While resolution covered IHCs may issue external LTD to third parties in a similar manner as covered BHCs, non-resolution covered IHCs must issue internal LTD to its foreign G-SIB holding company or a foreign wholly-owned subsidiary of the foreign G-SIB holding company.[934] Internal eligible LTD must meet the same requirements as external eligible LTD, but also "must include a contractual trigger pursuant to which the Board could require the covered IHC to convert or exchange the LTD into common equity tier 1 capital without the covered IHC's entry into a resolution proceeding in certain circumstances."[935] This additional requirement ensures that "non-resolution covered IHC[s] upstream any losses" to the foreign banking organization outside of the United States.[936] Ultimately, covered IHCs are required to maintain LTD of at least "the greater of (a) 6% of total risk-weighted assets; (b) 2.5% of total leverage exposure (if applicable); and (c) 3.5% of average total consolidated assets . . . ."[937]

---

930 *Id*.
931 *Id*. at 8271.
932 *Id*.
933 *Id*. at 8293.
934 *Id*. at 8270.
935 *Id*. at 8296.
936 *Id*. at 8270.
937 *Id*. at 8271.

1. Clean Holding Company Requirements

The clean holding company requirements are composed of similar restrictions as those imposed upon covered BHCs.[938] Like covered BHCs, covered IHCs are subject to a cap of third-party liabilities "that can be *pari passu* with or junior to its eligible external LTD" if the covered IHC chooses to structurally subordinate the LTD.[939] This cap operates slightly differently depending on the resolution strategy of the covered IHC.[940] For non-resolution covered IHCs, the Rule prescribes a 5 percent of TLAC cap on "the aggregate amount of unrelated liabilities that a non-resolution covered IHC owes to persons that are not affiliates of the covered IHC."[941] Resolution covered IHCs, however, have a 5 percent TLAC cap on the aggregate amount of unrelated liabilities that a resolution covered IHC may owe to any person other than a subsidiary of the covered IHC.[942]

The following table illustrates the Rule's requirements for covered IHCs:[943]

		Necessary Percentage of Risk-Weighted Assets	Necessary Percentage of Leverage Supplementary Rule	Necessary Percentage of Leverage Total Assets
Non-Resolution Covered IHC	Covered IHC TLAC Requirement	16% plus 2.5% buffer	6% (if applicable)	8%
	Covered IHC LTD Requirement	6%	2.5% (if applicable)	3.5%
Resolution Covered IHC	Covered IHC TLAC	18% plus 2.5% buffer	6.75% (if applicable)	9%
	Covered IHC LTD	6%	2.5% (if applicable)	3.5%

938 *Id.* at 8266.
939 *Id.* at 8272.
940 *Id.* at 8302.
941 *Id.*
942 *Id.*
943 *See id.* at 8293.

D. Conclusion

While some experts have hailed the Rule as effectively ending too big to fail, others have noted the financial toll this Rule could take on banks.[944] It is estimated that the largest U.S. banks will have to pay roughly $2 billion dollars annually to comply with the Rule.[945] Moreover, some even question whether the Rule will stand Donald Trump's presidency as the threat of deregulation looms.[946] The Rule, after all its time spent in the making, may be very short-lived and worth keeping an eye on as the country transitions into a new presidency and post-financial crisis economy.

Stephen Healy[947]

---

[944] *See* Patrick Rucker, *U.S. banks must pay up to $2 bln more per year to shield taxpayers - Fed*, REUTERS (Dec. 15, 2016), http://www.reuters.com/article/usa-fed-capital-idUSL1N1EA12C [https://perma.cc/232Q-Q6RV].

[945] *See id*. ("Half of the eight largest U.S. banks would need to issue roughly $50 billion in fresh debt to satisfy the new standard . . . .").

[946] Jason Lange & Lisa Lambert, *Top Federal Reserve official resigns as bank deregulation looms*, REUTERS (Feb. 10, 2017), http://www.reuters.com/article/us-usa-fed-tarullo-idUSKBN15P2CJ [https://perma.cc/2ZPR-L9WU] ("The Federal Reserve Board's top bank regulator said on Friday he would resign, giving a boost to President Donald Trump's plans to ease reforms put in place after the 2007-09 financial crisis."). President Trump currently has the ability to appoint three nominees to fill vacancies on the Federal Reserve Board of Governors. J. Huston McCulloch, *Filling the Federal Reserve Board Vacancies?*, INDEP. INST. (Feb. 11, 2017, 10:18 AM), http://blog.independent.org/2017/02/11/taylor-and-bair-for-federal-reserve-board/ [https://perma.cc/R6TN-Z4R3] ("Five of the most important appointments Donald Trump will make during his first year in office will be to fill three vacancies on the Federal Reserve Board . . . ."). This includes the capability to nominate two new board members in addition to replacing Janet Yellen as the Chair. *Id.*

[947] Student, Boston University School of Law (J.D. 2018).