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Proposed Rules for Incentive-Based Compensation at Financial Institutions

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OVERVIEW

The proposed new executive compensation rule, and the Dodd-Frank Act section that mandated it, stemmed almost entirely from the financial crisis of 2008, and the perceived causes of it. The 111th Congress that passed Dodd-Frank in 2010, the Financial Crisis Inquiry Commission, and perhaps most important of all, a majority of Americans, put much of the blame for the crisis on the major banks, and section 956 of Dodd-Frank was meant to address the public outcry. The theory behind Section 956 was that excessive risk-taking, driven by compensation systems at major banks that rewarded and encouraged it, led to the financial crisis. Section 956, and the proposed rules that we now have from the Federal regulators, is designed to take excessive risk-taking out of the industry.

The theory behind the proposed rules is to deny compensation for short-term actions that produce longer-term bad consequences—like putting loans on the bank's books that are beyond the bank's risk profile and will eventually sour—and to reward "balanced" risk and rewards assessments by bankers. At the same time, the proposed rule also rewards things that were perceived as not being rewarded in the industry prior to 2008, such as enhanced compliance and risk management practices. By bringing such mandatory compensation practices down to mid-size community banks with only $1 billion in assets, the Federal regulators (including the Federal Reserve) intend to achieve a sweeping impact on virtually the entire banking industry, not just Wall Street.

But the proposed rule may create a significant risk of its own: by potentially discouraging lending to customers that are less creditworthy, like most real estate developers, small, mid-size and early-stage businesses, and most individual consumers and homeowners, the new rule could limit the access to credit by parties that need bank credit the most. At a time of historically subpar economic growth, the rule could have a direct dampening effect on economic expansion generally. Banking has long been an industry where risk management contemplated that a portion of loans would default and would be prudently dealt with by adequate reserves, capital and a strong credit culture. It is generally understood that a bank whose loan portfolio suffers no defaults is probably not lending to many creditworthy borrowers, because only by erring in favor of declinations can a portfolio be entirely default-free.

The challenge for banks will be to devise compensation policies that comply with the proposed rule as finally enacted, while at the same time not punishing responsible lending that is so important to the bank, its officers, and the broader economy and community. We stand ready to advise clients on all aspects of this challenge.

INTRODUCTION

Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires financial institution regulatory agencies to jointly prescribe regulations regarding incentive-based compensation practices at certain financial institutions. Specifically, the agencies are to prohibit incentive-based compensation arrangements that encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss. The standards proposed are similar to the standards previously established under section 39 of the Federal Deposit Insurance Act. For five of the Agencies, the proposed rule would be enforced under section 505 of the Gramm-Leach-Bliley Act, as specified in section 956 of Dodd-Frank. For FHFA, the proposed rule would be enforced under subtitle C of the Safety and Soundness Act.

In April 2011, the "Agencies" (the OCC, Federal Reserve Board, FDIC, FHFA, NCUA, and SEC) published a joint notice of proposed rulemaking to implement Section 956 of Dodd-Frank. The Agencies claim that since the original notice, incentive-based compensation practices have changed and the Agencies have gained experience from other compensation-related regulations and by foreign jurisdictions. The Agencies have also reviewed the incentive-based compensation practices within the financial services industry. In light of this and the numerous comments received from the 2011 proposed rule, the Agencies published a proposed rule in April 2016 (the "proposed rule"). Though the proposed rule is intended to be joint and similarly enforced by the Agencies, there are some small differences within each Agency's version of the rule due to the nature of certain covered institutions.[1] This client memorandum will focus largely on the general broad consistencies of the proposed rule across all Agencies.

The Agencies state that global coordination in this area of regulation is key to ensure that international financial institutions are faced with consistent regulations, especially as the global financial system continues to become more intertwined. The discussion section of the proposed rule points out regulations in other jurisdictions that are more rigorous than the proposed rule, suggesting that the Agencies view the current iteration of the proposed rule to be more lenient than their counterpart regulations overseas. For instance, the UK's Prudential Regulation Authority and Financial Conduct Authority is extending deferral periods for incentive-based compensation to seven years for senior executives, while the greatest deferral period under the proposed rule for senior executives at covered Level 1 institutions is four years. In other instances, the proposed rule mirrors regulations from other foreign jurisdictions, but is purportedly more permissive. International standards published by the Basel Committee on Banking Supervision, for example, also distinguish institutions by total consolidated assets of $250 billion or more.

Both the April 2011 proposed rule and the currently proposed rule apply to covered institutions with average total consolidated assets of $1 billion or greater, which is very low by American standards. The current proposed rule includes new definitions that were not included in the 2011 proposed rule, including "significant risk-taker," expanding the applicability of the rule beyond senior executive officers. More significantly, the current proposed rule adds another layer of requirements for institutions with $250 billion or more in average total consolidated assets (Level 1 institutions, discussed below), and includes clawback provisions.

The proposed rule requires covered institutions to comply as of the first calendar quarter beginning at least 540 days after the publication of the final rules in the *Federal Register*. For example, if the final rule is published in the *Federal Register* on November 1, 2016, then the compliance date would be July 1, 2018.

COVERED INSTITUTIONS

Dodd-Frank defines "covered financial institution" to include the following categories of institutions that have $1 billion or more in assets: depository institutions or depository institution holding companies; broker-dealers registered under section 15 of the Securities Exchange Act of 1934; credit unions, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; investment advisers, as defined in section 202(a)(11) of the Investment Advisers Act of 1940; Fannie Mae and Freddie Mac; and any other financial institutions that regulators determine should be deemed covered financial institutions for these purposes.

[1] For example, while most Agencies will impose the same requirements on subsidiaries as on parent holding companies, the SEC will not take this approach because the products of broker-dealers and investment advisers are not usually provided through subsidiaries.

The proposed rule distinguishes between institutions with assets of $250 billion or more (Level 1), $50 billion or more and less than $250 billion (Level 2), and $1 billion or more and less than $50 billion (Level 3). Each level prescribes additional requirements from the base Level 3. Specific requirements are delineated across the level of the institution and specific "covered persons," discussed in the following section.

Subsidiaries of covered institutions will be considered in compliance if the parent complies with the requirements in a manner that causes the subsidiary to also comply. Subsidiaries that meet the minimum requirements to be qualified as Level 3 institutions ($1 billion or more in assets) can still be qualified as Level 1 or 2 institutions if the subsidiary's parent holding company also qualifies as Level 1 or 2. Thus, the controlling factor of regulation level lies with the parent institutions. The Agencies justify this because risks can easily spread through an entire consolidated organization. Moreover, the Agencies have noted in their review of industry practices that most financial institutions apply one standard throughout the consolidated organization for incentive-based compensation because employees may be dual-hatted and work for more than one subsidiary across the organization. Nevertheless, this may be a burdensome requirement for institutions which presently do not have uniform consolidated standards. The SEC will not take this consolidated approach, as discussed in footnote 1, because the products of broker-dealers and investment advisers are not usually provided through subsidiaries. However, the SEC will apply a consolidated approach where appropriate on a case-by-case basis.

COVERED PERSONS

The proposed rule defines a "covered person" as any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution. "Executive officer" includes individuals who are senior executive officers, as defined in the proposed rule, as well as other individuals designated as executive officers by the covered institution.

"Senior executive officers" and "significant risk takers" are specifically defined covered persons upon which additional requirements are imposed, due to their ability to expose an institution to significant risk.

Senior Executive Officers. A senior executive officer is a covered person who holds the title or performs the function (regardless of title) of one or more of the following positions at a covered institution for any period of time in the relevant performance period: president, chief executive officer (CEO), executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

Significant Risk Takers. There are two tests for determining whether a covered person is a significant risk taker, the ***relative compensation test***, and the ***exposure test***, both of which apply only to Level 1 and Level 2 institutions, and both of which apply to covered persons who receive incentive-based compensation equal to at least one-third of their combined annual base salary and incentive-based compensation. Either test may be satisfied to determine whether a covered person is a significant risk taker.

The ***relative compensation test*** defines a significant risk taker as an individual, within a Level 1 institution, who is among the top 5 percent of all covered persons in annual base salary and incentive-based compensation. At Level 2 institutions, the significant risk taker is defined as an individual who is among the top 2 percent in annual base salary and incentive-based compensation. These categorizations are based on the compensation paid during the most recent calendar year that ended at least 180 days before the start of the performance period in which the significant risk taker is identified.

The ***exposure test***, the same for both Level 1 and Level 2 institutions, is based on whether the significant risk taker has authority to commit or expose 0.5 percent or more of the capital of the covered institution or, and, in the cases of the OCC, the Board, the FDIC, and the SEC, any affiliates (as used in Section 956 of Dodd-Frank) of the covered institution, whether or not the individual is employed by that specific legal entity. The exposure test relates to a covered person's authority to commit or expose significant amounts of an institution's capital, regardless of whether or not such exposures or commitments are realized. For instance, a significant risk taker authorized to lend $15 million per calendar year but one who actually lends $10 million will still be measured by $15 million to determine the 0.5 percent threshold. The exposure test also includes individuals who are voting members of a committee that has the decision-making authority to commit or expose 0.5 percent or more of the capital of a covered institution or of an affiliate of a covered institution.

NO INCENTIVES THAT ENCOURAGE INAPPROPRIATE RISK

All covered institutions (regardless of Level) are prohibited from developing or continuing incentive-based compensation arrangements that encourage inappropriate risk by providing a covered person with excessive compensation, benefits, or fees or by encouraging risks that could lead to material financial loss.

<u>Excessive Compensation</u>. Compensation is considered excessive when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into account various factors. Factors for determining whether an incentive-based compensation arrangement provides excessive compensation are comparable to the Federal Banking Agency Safety and Soundness Guidelines that implement the requirements of section 39 of the FDIA. The proposed factors include: (1) the combined value of all compensation, fees, or benefits provided to the covered person; (2) the compensation history of the covered person and other individuals with comparable expertise at the covered institution; (3) the financial condition of the covered institution; (4) compensation practices at comparable covered institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets; (5) for post-employment benefits, the projected total cost and benefit to the covered institution; and (6) any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

<u>Material Financial Loss</u>. Material financial loss is discussed in the proposed rule through examples of practices which may prevent material financial loss. Incentive-based compensation arrangements would not be considered to encourage inappropriate risk that could lead to material financial loss if these arrangements (1) appropriately balance risk and reward; (2) are compatible with effective risk management and controls; and (3) are supported by effective governance. These three factors, along with disclosure and recordkeeping and policies and procedures requirements, are discussed in the proposed rule and below.

Appropriately Balance Risk and Reward. Incentive-based compensation arrangements will be considered to appropriately balance risk and reward if the arrangement:

- Includes financial and non-financial measures of performance that are relevant to a covered person's role and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking. For example, a senior executive officer may have his or her performance evaluated based upon quantitative financial measures, such as return on equity, and on qualitative, non-financial measures, such as the extent to which the senior executive officer promoted sound risk management practices or provided strategic leadership.

- Is designed to allow non-financial measures of performance to override financial measures when appropriate, particularly in circumstances where quantitative measures may not be sufficient to fully assess risk.
- Provides for adjustments (downward adjustments, forfeitures, and clawback) to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance. According to the Agencies, if covered persons are awarded or paid substantially all of their potential incentive-based compensation even when they cause a covered institution to take a risk that is inappropriate given the institution's size, nature of operations, or risk profile, or cause the covered institution to fail to comply with legal or regulatory obligations, then covered persons will have less incentive to avoid activities with substantial risk of financial loss or non-compliance.

Effective Risk Management and Controls. This requirement is applicable only to Level 1 and Level 2 institutions, which would have to implement risk management protocols that (1) are independent of any lines of business; (2) include an independent compliance program that provides internal controls, testing, monitoring, and training with written policies and procedures; and (3) be commensurate with the size and complexity of the covered institution's operations. Level 1 and Level 2 institutions must also provide individuals engaged in control functions the requisite authority to influence risk-taking of the business lines they monitor. Level 1 and Level 2 institutions must also provide for independent monitoring of (1) incentive-based compensation plans to identify whether those plans appropriately balance risk and reward; (2) events relating to forfeiture and downward adjustment reviews and decisions related thereto; and (3) compliance of the incentive-based compensation program with the covered institution's policies and procedures.

In addition, Level 1 and Level 2 institutions are prohibited from (a) awarding incentive-based compensation for the attainment of performance measures that substantially exceed target measures;[2] (b) using incentive-based compensation performance measures that are based solely on industry peer group comparisons; (c) providing incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance; and (d) purchasing hedging or similar instruments on behalf of a covered person to hedge or offset any decrease in the value of incentive-based compensation.

Effective Corporate Governance. For all covered institutions, the board of directors or an appropriately designated committee will be required to conduct oversight of the covered institution's incentive-based compensation program and to approve incentive-based compensation arrangements and material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

Level 1 and Level 2 institutions face additional corporate governance requirements. They must establish board level compensation committees composed of directors who are not senior executive officers. The compensation committees must also seek and obtain input from the board's risk and audit committees. The compensation committee must also receive a written assessment, at least annually, from management regarding the effectiveness of the incentive-based compensation arrangement and related compliance and control processes in properly balancing risk with reward; and a written assessment from internal audit or risk management functions of the institution, regarding the effectiveness of the incentive-based compensation program and related compliance and control processes in properly balancing risk with reward.

[2] 125 percent of the target amount for senior executive officers and 150 percent for significant risk-takers.

Disclosure and Recordkeeping. The proposed rule requires all covered institutions to annually create and then maintain for a period of at least seven years records that document the structure of all incentive-based compensation arrangements and demonstrate compliance with the proposed rule. At minimum, these records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls. Covered institutions will not be required to report the actual amount of compensation for any covered person.

Level 1 and Level 2 institutions will have additional recordkeeping requirements. These records must document: (1) the covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any downward adjustment, forfeiture, or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to the covered institution's incentive-based compensation arrangements and policies. Further, all records of Level 1 and Level 2 covered institutions, including their policies and procedures, must be maintained for seven years and in a manner that allows for independent audit.

Policies and Procedures.

The proposed rule requires all Level 1 and Level 2 institutions to have policies and procedures that, among other requirements:

- Are consistent with the requirements and prohibitions of the proposed rule;
- Specify the substantive and procedural criteria for forfeiture and clawback;
- Document final forfeiture, downward adjustment, and clawback decisions;
- Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person;
- Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;
- Describe how discretion is exercised to achieve balance;
- Require that the covered institution maintain documentation of its processes for the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements;
- Describe how incentive-based compensation arrangements will be monitored;
- Specify the substantive and procedural requirements of the independent compliance program; and
- Ensure appropriate roles for risk management, risk oversight, and other control personnel in the covered institution's processes for designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting and assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

Though the requirements are described in detail, this factors-based approach gives enforcement flexibility to the Agencies and yields some uncertainty for covered institutions. As the rule is implemented and enforced, it may be that enforcement actions by the Agencies will prove to be the only means of discerning the precise contours of these factors.

DEFERRALS, DOWNWARD ADJUSTMENTS AND FORFEITURES, AND CLAWBACK

Deferral, downward adjustments, forfeiture, and clawback provisions of the proposed rule are applicable only to Level 1 and Level 2 institutions. The proposed rule provides for the reduction of incentive-based compensation at every stage, from the initial determination of compensation and through and after the vesting, resulting in individual accountability for covered persons that may only be determinable after a long period of time.

Deferral.

Level 1 institutions would be required to defer, for at least four years, at least 60 percent of a senior executive officer's "qualifying incentive-based compensation" (as defined in the proposed rule) and 50 percent of a significant risk-taker's qualifying incentive-based compensation. A Level 1 covered institution also would be required to defer for at least two years after the end of the related performance period at least 60 percent of a senior executive officer's incentive-based compensation and 50 percent of a significant risk-taker's incentive-based compensation awarded under a "long-term incentive plan" (as defined in the proposed rule[3]) .

Level 2 institutions would be required to defer, for at least three years, at least 50 percent of a senior executive officer's qualifying incentive-based compensation and 40 percent of a significant risk-taker's qualifying incentive-based compensation. Level 2 institutions are also required to defer for at least one year after the end of the related performance period at least 50 percent of a senior executive officer's incentive-based compensation and 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan.

Deferred compensation may vest no faster than on a pro rata annual basis, and, for covered institutions that issue equity or are subsidiaries of covered institutions that issue equity, the deferred amount would be required to consist of substantial amounts of both deferred cash and equity-like instruments throughout the deferral period. Additionally, if a senior executive officer or significant risk-taker receives incentive-based compensation for a performance period in the form of options, the amount of options used to meet the minimum required deferred compensation may not exceed 15 percent of the amount of total incentive-based compensation awarded for that performance period. Covered institutions are prohibited from accelerating the payment of a covered person's deferred incentive-based compensation, except in the case of death or disability of the covered person.

Downward Adjustments and Forfeitures.

Under the proposed rule, "forfeiture" means a reduction of the amount of deferred incentive-based compensation awarded to a person that has not vested. "Downward adjustment" means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period

[3] At least three years.

that has already begun. Level 1 and Level 2 institutions (1) must make subject to forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans; and (2) must make subject to downward adjustment all incentive-based compensation amounts not yet awarded to any senior executive officer or significant risk-taker for the current performance period, including amounts payable under long-term incentive plans.

Level 1 and Level 2 institutions must consider downward adjustments and forfeitures if any of the following adverse outcomes occur:

- Poor financial performance attributable to a significant deviation from the covered institution's risk parameters set forth in the covered institution's policies and procedures;
- Inappropriate risk-taking, regardless of the impact on financial performance;
- Material risk management or control failures;
- Non-compliance with statutory, regulatory, or supervisory standards resulting in enforcement or legal action brought by a federal or state regulator or agency, or a requirement that the covered institution report a restatement of a financial statement to correct a material error; and
- Other aspects of conduct or poor performance as defined by the covered institution.

Clawback.

"Clawback" refers to a mechanism by which a covered institution can recover vested incentive-based compensation from a senior executive officer or significant risk-taker if certain events occur. The proposed rule would require clawback provisions that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in misconduct that resulted in significant financial or reputational harm to the covered institution, fraud, or intentional misrepresentation of information used to determine the senior executive officer's or significant risk-taker's incentive-based compensation.

COMMENTS SUBMITTED FROM KEY ORGANIZATIONS

The April 2011 iteration of the proposed rule received over 10,000 comments. Financial institutions expressed concern about several portions of the proposed rule. For example, PNC Bank pointed out the increase in administrative cost the proposed rule would require for monitoring the compliance of covered persons on an individual basis, and suggested covered persons could be monitored in groups.[4] Many industry groups expressed concern about subsidiaries and affiliates who may be subject to different Agencies and overlapping rules applied to the consolidated organization as a whole. Nearly all industry groups opposed the mandatory deferral requirement. The Financial Services Roundtable expressed concerns that the Agencies have historically not regulated compensation in such a direct manner, and that the

[4] SIFMA, the Securities Industry and Financial Markets Association, cited a recent Supreme Court decision obliging agencies to evaluate the economic impact of rules and to "ensure cost-effectiveness." *Michigan v. EPA*, 135 S. Ct. 2699, 2711 (2015).

outcome may result in increased fixed compensation and base salaries. The Clearing House and others contended that the Agencies are exceeding their statutory authority, while consumer protection groups stated the proposed rule was not rigorous enough.

On June 1, 2016, the American Bankers Association, Financial Services Roundtable, Center for Executive Compensation, SIFMA, and the U.S. Chamber of Commerce submitted a request to extend the comment period at least 150 days. The organizations stated that each respective regulator proceeded at its own pace in adopting the notice of proposed rulemaking, yielding different comment periods. The first agency to act, the National Credit Union Administration, set the deadline for July 22, 2016, while other agencies adopted the notice later, but still maintained a July 22 deadline, resulting in comment periods of less than 90 days. The organizations contend the current period is too short for complete analysis and submission of comments, indicating that financial industry groups have concerns in addition to and distinct from comments submitted in 2011. Sections of the proposed rule likely to prompt additional comments include the additional requirements for Level 1 institutions, clawback provisions, and much more. Thus far, the Agencies have not specified whether the comment period will be extended.

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SUMMARY OF PROPOSED RULE AS APPLICABLE TO COVERED INSTITUTIONS

Level 1 Institutions: assets equal to or greater than $250 billion

- ***General restrictions:*** Prohibition on incentive based compensation arrangements that encourage inappropriate risks by excessive compensation, fees, or benefits, or by encouraging inappropriate risks that could lead to material financial losses—*Page 4*
- ***Prevention of material financial loss:***
  - Appropriately balance risk and reward—*Page 4*
  - Effective risk management and controls; additional restrictions—*Page 5*
  - Effective corporate governance and specific compensation committee requirements—*Page 5*
- ***Additional requirements:***
  - Disclosure and recordkeeping—*Page 6*
  - Specific policies and procedures—*Page 6*
- ***Deferrals:*** Senior executive officers defer 60 percent and significant risk takers defer 50 percent for 4 years, otherwise 2 years under a long term incentive plan—*Page 7*
- ***Forfeiture and downward adjustments:*** Incentive-based compensation subject to forfeiture and downward adjustment upon the occurrence of various adverse outcomes—*Page 7*
- ***Clawback:*** Incentive-based compensation subject to clawback for at least 7 years—*Page 8*

Level 2 Institutions: assets equal to or greater than $50 billion and less than $250 billion

- ***General restrictions:*** Prohibition on incentive based compensation arrangements that encourage inappropriate risks by excessive compensation, fees, or benefits, or by encouraging inappropriate risks that could lead to material financial losses—*Page 4*
- ***Prevention of material financial loss:***
  - Appropriately balance risk and reward—*Page 4*
  - Effective risk management and controls; additional restrictions—*Page 5*
  - Effective corporate governance and specific compensation committee requirements—*Page 5*
- ***Additional requirements:***
  - Disclosure and recordkeeping—*Page 6*
  - Specific policies and procedures—*Page 6*
- ***Deferrals:*** Senior executive officers defer 50 percent and significant risk takers defer 40 percent for 3 years, otherwise 1 year under a long term incentive plan—*Page 7*
- ***Forfeiture and downward adjustments:*** Incentive-based compensation subject to forfeiture and downward adjustment upon the occurrence of various adverse outcomes—*Page 7*
- ***Clawback:*** Incentive-based compensation subject to clawback for at least 7 years—*Page 8*

Level 3 Institutions: assets equal to or greater than $1 billion and less than $50 billion

- ***General restrictions:*** Prohibition on incentive based compensation arrangements that encourage inappropriate risks by excessive compensation, fees, or benefits, or by encouraging inappropriate risks that could lead to material financial losses—*Page 4*
- ***Prevention of material financial loss:***
  - Appropriately balance risk and reward—*Page 4*
  - Effective risk management and controls; general requirements only—*Page 5*
  - Effective corporate governance through board of directors—*Page 5*
- ***Additional requirements:*** Disclosure and recordkeeping—*Page 6*

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