Memorandum

Federal Reserve Finalizes Control Rules

February 3, 2020

On January 30, 2020, the Federal Reserve adopted a rulemaking that would clarify and, in some respects, revise its existing framework for determining whether a company has the ability to exercise a "controlling influence" over another company for purposes of the Bank Holding Company Act ("BHC Act") and the Home Owners' Loan Act ("HOLA"). The final rule, which is largely similar to the Federal Reserve's proposed rulemaking issued in May 2019, includes a tiered framework of major factors and thresholds generally structured so that, as an investor's ownership percentage in a target company increases, the investor's additional relationships and other controlling influence factors with the target company must decrease in order to avoid a presumption of control. Consistent with the proposal, the final rule also includes several other presumptions of control, new rules for how a company can terminate an existing control relationship, and additional provisions to clarify how the presumptions would apply in particular circumstances.

As a whole, the final rule generally codifies a significant portion of the Federal Reserve's current practice with respect to "controlling influence" determinations. However, the final rule also includes some liberalizing changes to the current "controlling influence" framework, including adjustments to (i) the scope and type of relationships an investor with less than a 15% voting interest in a target company could have with such target company without triggering a presumption of control (which is particularly important for investments by banking organizations in fintech companies and other start-ups), (ii) the number of director representatives at a target company that an investor would be permitted to have without triggering a presumption of control (previously limited to one) and the ability of those director representatives to serve on the audit, compensation, and executive committees, or serve as chair of the board or any committees, (iii) the terms on which a parent company or other controlling stockholder may divest control of a subsidiary, and (iv) the amount of total equity an investor with more than a 15% voting interest in a target company could have in a target company without triggering a presumption of control. In addition, the final rule provides more flexibility for significant stockholders to engage in proxy contexts or other kinds of stockholder activism without triggering a control presumption.

The Federal Reserve also indicated that it will no longer obtain, in the ordinary course, so-called "passivity commitments," under which an investor makes a series of commitments to the Federal Reserve designed to ensure that it does not attempt to exercise a controlling influence over a banking organization. In addition, the Federal Reserve indicated that it does not intend to revisit existing structures to assess the existence of a controlling influence that were previously reviewed by the Federal Reserve System and have not changed materially.

Following is a high-level summary of certain key features of the final rule.

Background

Control is a core concept under the BHC Act and related statutes. Most importantly, the concept of "control" is used to determine whether the BHC Act applies to a particular investor, since any company that directly or indirectly controls a bank is a bank holding company subject to the BHC Act's activity restrictions and the Federal Reserve's supervisory oversight. The BHC Act's concept of "control" is also a key determinant in the applicability of the Volcker Rule, the ability of a bank holding company to engage in nonbanking activities, and other restrictions on a banking organization's affiliations.

For purposes of the BHC Act, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of the second company; (ii) controls in any manner the election of a majority of the directors of the second company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the second company.[1] In addition, the BHC Act provides that a company controlling less than 5% of any class of voting securities of another company is presumed *not* to control the second company.

While the first two prongs of the BHC Act's control analysis involve relatively straightforward rules, the third "controlling influence" prong involves a fact-based determination by the Federal Reserve that has historically involved the assessment of a variety of factors, including:

- the size and structure of the first company's voting and total equity investment in the second company;
- the first company's rights to director representation, the first company's director representative's service on committees or as chairman of the board, and any common management, employees, or directors between the two companies;
- any covenants or other agreements that allow the first company to influence or restrict management decisions of the other company; and
- the nature and scope of the business relationships between the two companies.

While the Federal Reserve has issued various public policy statements to provide guidance regarding the "controlling influence" prong (most recently in 2008), the Federal Reserve's general framework for determining whether a company is able to exercise a controlling influence over another company has not previously been consolidated to a single source and many of the specific standards have not been issued publicly. This lack of

[1] The definition of control for purposes of HOLA is substantially similar. Although this memorandum discusses control in the context of the BHC Act, the control concepts and the proposed rules would generally apply equally to savings and loan holding companies ("SLHC") under HOLA, with the exception that "control" under HOLA includes an additional prong of control for an investor that has contributed 25% or more of the capital of a target company. The Federal Reserve indicated that generally it will measure an investor's contributed capital in the same manner that it calculates total equity, as discussed herein.

transparency regarding the Federal Reserve's control framework has historically caused significant frustration among investors and financial institutions seeking to engage in capital raising or strategic transactions.

In this context, the final rule is intended to bring transparency and consistency to issues of control and clarify when common situations may give rise to control concerns.

Tiered Framework for Presumptions of Control

In general, the final rule creates a tiered series of presumptions of control keyed off of three threshold levels of voting ownership by one company in a second company: 5%, 10%, and 15%. For each level of voting ownership, the final rule specifies the degree to which the two companies could have other specified relationships without triggering a presumption of control.

A. LESS THAN 5% VOTING SECURITIES

As noted above, the BHC Act provides a statutory presumption that a company that controls less than 5% of any class of voting securities of another company is presumed not to control the second company.

While a company controlling less than 5% of any class of voting securities of another company could, under historical Federal Reserve practice, be found to exercise a "controlling influence" over the second company based on other factors, the final rule clarifies that such a company would generally only control the second company if it controls a majority of the board of directors of the second company (and thereby meets the second prong of the BHC Act's "control" definition) or controls more than one-third of the second company's total equity (or 25% or more of the total equity of the second company when the investment involves an SLHC).[2] Thus, a shareholder with less than 5% voting interest and less than one-third total equity would not be restricted in its ability to have business relationships (including with respect to the size and nature of the business relationships as well as whether the business relationships are on market terms) and management or employee interlocks with the target company. Further, the final rule imposes no restrictions on the ability of such a shareholder to have its representatives serve as chair of the second company's board of directors or on committees of the second company's board, or initiate proxy contexts regarding the election of directors of the second company.

However, the final rule presumes that a company with a less-than-5%-voting interest in another company controls the second company if the first company has a management agreement under which it can direct or exercise significant influence over the management or operations of the second company, as discussed further below.

B. 5% TO 9.99% VOTING SECURITIES

For a company that controls between 5% and 9.99% of any class of voting securities of a second company, the proposal would presume that the first company controls the second company if:

[2] *Id.*

- *Total Equity*: The first company holds one-third or more of the total equity of the second company (or 25% or more of the total equity of a second company when the investment involves an SLHC);[3]
- *Director Representation*: The first company controls one-quarter or more of the second company's board of directors, or if the first company's director representatives are able to make or block the making of major operational or policy decisions of the second company (e.g., through supermajority voting requirements, individual veto rights, or any similar provisions that would allow a minority of the board to control major operational or policy decisions of the second company);
- *Business Relationships*: The first company has business relationships with the second company that generate 10% or more of the total annual revenues or expenses of the second company;
- *Management Interlocks*: More than one employee or director of the first company serves as a senior management official of the second company, or if any employee or director of the first company serves as the chief executive officer (or an equivalent role) of the second company; or
- *Contractual Powers*: The first company has any contractual right that significantly restricts the discretion of the second company over major operational or policy decisions (a "limiting contractual right"). The proposal includes a non-exclusive list of such limiting contractual rights (which list is generally consistent contractual rights that the Federal Reserve views as limiting under current practice, although the proposed list appears to loosen a company's ability to contract for informational access without being deemed to control the second company).[4] As discussed below, the Federal Reserve noted that many of these contractual restrictions are permissible in loan agreements, but would not be permissible if the creditor is also a 5% or larger voting shareholder.

In contrast to the proposed rule, which measured business relationships relative to the total annual revenues and expenses of the first and second company, the final rule measures business relationships solely against the second company's total annual revenues and expenses.

C. 10% TO 14.99% VOTING SECURITIES

For a company that controls between 10% and 14.99% of any class of voting securities of a second company, the proposal would presume that the first company controls the second company if:

- *Total Equity*: The first company holds one-third or more of the total equity of the second company (or 25% or more of the total equity of the second company when the investment involves an SLHC);

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[3] *Id.*

[4] The Federal Reserve indicated that a limiting contractual right includes a covenant restricting the second company from engaging in activities that are impermissible under the BHC Act or HOLA. However, the Federal Reserve noted that a contractual provision that provides a reasonable and non-punitive mechanism for an investing company to reduce its investment to comply with the activities restrictions of the BHC Act or HOLA generally would not be a limiting contractual right.

- *Director Representation*: The first company controls one-quarter or more of the second company's board of directors, or if the first company's director representatives are able to make or block the making of major operational or policy decisions of the second company (*e.g.*, through supermajority voting requirements, individual veto rights, or any similar provisions that would allow a minority of the board to control major operational or policy decisions of the second company);
- *Board Chair/Committees*: The first company's director representatives hold more than one-quarter of the positions on any board committee with power to bind the second company without the need for additional action by the full board of directors (*e.g.*, the audit committee, compensation committee, and executive committee);
- *Business Relationships*: The first company has business relationships with the second company that generate 5% or more of the total annual revenues or expenses of the second company, or that are not on market terms;
- *Management Interlocks*: More than one employee or director of the first company serves as a senior management official of the second company, or if any employee or director of the first company serves as the chief executive officer (or an equivalent role) of the second company;
- *Contractual Powers*: The first company has any limiting contractual rights; or
- *Proxy Contests*: The first company solicits proxies to appoint one-quarter or more of the total number of directors on the second company's board.

D. 15% TO 24.99% VOTING SECURITIES

For a company that controls between 15% and 24.99% of any class of voting securities of a second company, the proposal would presume that the first company controls the second company if:

- *Total Equity*: The first company holds one-third or more of the total equity of the second company (or 25% or more of the total equity of the second company when the investment involves an SLHC);
- *Director Representation*: The first company controls one-quarter or more of the second company's board of directors, or if the first company's director representatives are able to make or block the making of major operational or policy decisions of the second company (*e.g.*, through supermajority voting requirements, individual veto rights, or any similar provisions that would allow a minority of the board to control major operational or policy decisions of the second company);
- *Board Chair/Committees*: The first company's director representatives hold more than one-quarter of the positions on any board committee with power to bind the second company without the need for additional action by the full board of directors (*e.g.*, the audit committee, compensation committee, and executive committee), or if any director representative of the first company also serves as the chair of the board of directors of the second company;

- *Business Relationships*: The first company has business relationships with the second company that generate at least 2% of the total annual revenues or expenses of the second company, or that are not on market terms;
- *Management Interlocks*: Any employee or director of the first company serves as a senior management official of the second company;
- *Contractual Powers*: The first company has any limiting contractual rights; or
- *Proxy Contests*: The first company solicits proxies to appoint one-quarter or more of the total number of directors on the second company's board.

Notably, an investor's director representative serving as chair of the target company's board of directors would not trigger a presumption of control unless the investor has at least a 15% voting interest in the target company, and there would no longer be a restriction on a director representative of any investor chairing a committee.

In contrast to the proposed rule and the Federal Reserve's prior practices, an investor with between 15% and 24.9% voting interest in a target company could own up to one-third of the total equity in the target company without triggering a presumption of control.

A summary of these tiered presumptions of control is attached in the Appendix.

Exceptions and Other Presumptions

A. EXCEPTIONS TO CONTROL PRESUMPTIONS

The presumptions of control described above would also not apply to the extent that a company controls voting or nonvoting securities of a second company in a fiduciary capacity, except that if the second company is a depository institution or depository institution holding company, the securities must be held by the first company in a fiduciary capacity without sole discretionary authority to exercise the voting rights of the securities.

In contrast to the proposal, which included an exception from the presumptions of control for investments in registered investment companies that met certain thresholds, the final rule does not include an exception for investments in registered investment companies.

B. OTHER PRESUMPTIONS OF CONTROL

In addition to the tiered presumption framework described above, the final rule includes several additional presumptions of control that would apply regardless of a company's voting interest in another company.

First, the final rule presumes that a company controls another company if the first company has a management agreement under which the first company can direct or exercise significant influence over the management or operations of the second company. Management agreements that trigger a presumption of control (even for a

below-5% voting shareholder) would include any agreement for a company to serve as a managing member, trustee, or general partner of a second company, or exercise similar functions.

Second, the final rule presumes that a company controls an investment fund if the company serves as investment adviser to the fund and controls at least 5% of any class of the fund's voting securities or 25% of the fund's total equity. However, the final rule provides a twelve-month seeding period during which this presumption of control does not apply to funds organized and sponsored by the investment adviser.

Third, the final rule presumes that a company controls another company if the first company consolidates the second company under U.S. generally accepted accounting principles ("GAAP"). The final rule did not adopt a suggestion raised in the proposal that a presumption of control be triggered by an investment that is accounted for under the equity method.

C. PRESUMPTION OF NON-CONTROL

Under the final rule, a company is presumed not to control a second company if the first company controls less than 10% of every class of voting securities of the second company and if the first company does not meet any of the proposed presumptions of control with respect to the second company.

Divestiture

The Federal Reserve historically has taken the position that a company that has controlled another company for a significant period of time may be able to exert a controlling influence over that company even after a substantial divestiture of the first company's equity interest in the second company. As a result, the Federal Reserve typically has applied a stricter standard for determining non-control in divestiture cases than in cases where a company seeks to establish a new non-controlling investment.

The final rule substantially revises the Federal Reserve's historical standards regarding divestiture of control to effectively provide that a company that previously controlled another company due to ownership of greater than 25% of any a class of voting securities of the second company or the ability to control the election of the majority of the board of the second company (i.e., the first two prongs of the BHC Act's "control" definition) would not be presumed to control the second company immediately upon divesting its equity interest to below 15% of any class of the former subsidiary's voting securities and no longer controlling the majority of the second company's board (as long as the company does not otherwise trigger one of the presumptions discussed above). Following the divestiture, the former controlling shareholder's voting ownership in the former subsidiary would have to remain below 15% of any class of voting securities for two years in order for the company to continue not to be deemed controlling. Alternatively, the final rule allows a company to divest its interest in a former subsidiary to between 15% and 24.99% of every class of the former subsidiary's voting securities and remain below 24.99% voting for a period of at least two years, at which point the company would be deemed not to control the former subsidiary. In both cases, the divesting company would also need to meet the other requirements for non-control applicable to its ownership level described above. The final rule eliminates the stricter divestiture standard in circumstances

where a company that was previously presumed to control another company (based on one of the presumptions discussed above) no longer falls within one of the control presumptions.

In addition, consistent with the proposal, the presumption of control in a divestiture does not apply if a majority of each class of voting securities of the company that is being sold is acquired by a single shareholder that is unaffiliated with the divesting company, or if a divesting company sells a subsidiary to a third company and receives stock of the third company as consideration for the sale.

Other Technical Changes

The final rule also includes certain technical clarifications regarding the calculation of voting and non-voting securities, and the number of securities that a person is deemed to control (including clarifications regarding the treatment of convertible securities, options and warrants, as well as securities held by senior management officials).

The final rule clarifies that the definition of "voting securities" does not include limited partnership interests or membership interests in limited liability companies with voting rights that are limited solely to voting for the removal of a general partner or managing member (or persons exercising similar functions at the company) for cause, to replace a general partner or managing member (or persons exercising similar functions at the company) due to incapacitation or following the removal of such person, or to continue or dissolve the company after removal of the general partner or managing member (or persons exercising similar functions at the company). To the extent that an investment fund limits the voting rights of limited partners to these types of defensive voting rights, a banking organization investor in such a fund may no longer require a separate partnership agreement provision to automatically reduce its voting interest to below 5%.

The final rule codifies the Federal Reserve's existing practice of deeming a person to control a security through control of an option or warrant to acquire the security or through control of a convertible instrument that may be converted into or exchanged for the security, whether or not currently exercisable. Under the final rule's "look-through" approach, a person would be deemed to control the maximum number of securities that the person could control upon exercise or conversion of the option, warrant or convertible instrument, even if there were an unsatisfied condition precedent to the exercise or conversion of the instrument or if the instrument was significantly out of the money. Moreover, the final rule includes assumptions that would cause the person to be considered to control the highest possible percentage of the class of securities that could ever be acquired under the terms of the instrument. In the case of a convertible instrument based on a floating rate or price, the proposal would assume that the convertible instrument is exercised or converted at a rate or price that would cause the person to control the highest possible percentage of the class of securities that could ever be acquired under the terms of the instrument. This assumption would not apply to anti-dilution provisions in instruments that allow an investor to acquire additional voting securities "only to maintain the investor's percentage of voting securities in the event the issuing company increases the number of its outstanding voting securities." It is not clear how

other customary anti-dilution provisions (such as upon the payment of non-ordinary course dividends) would be treated under the proposed rule.

Unlike in the proposal, the final rule includes an additional exception to the look-through approach: preferred securities that have no voting rights unless the issuer fails to pay dividends for six or more quarters are only considered to be voting securities if a sufficient number of dividends are missed and the voting rights are active. This new exception is consistent with long-standing Federal Reserve practices.

The final rule also clarifies that securities held by an underwriter for a very limited period of time for purposes of conducting a bona fide underwriting generally do not raise control concerns.

The final rule also provides a standard for calculating a company's total equity percentage in a second company that is a stock corporation that prepares financial statements according to GAAP. The calculation would be based on the first company's percentage ownership of each class of such stock of a second company multiplied by the value of shareholders' equity allocated to that particular class of stock under GAAP, all of which would be divided by the second company's total shareholders' equity. In a departure from the proposal, the final rule does not include the proposed provision that required a company to include a pro rata share of equity securities held by a non-subsidiary. The final rule provides that, in rare circumstances, debt could be deemed to be functionally equivalent to equity and, similarly, equity could be deemed to be functionally equivalent to debt, for purposes of the total equity calculation.

An investor would only be required to calculate its total equity percentage in another company when the investor acquires control over additional equity of a target company. The investor is not required to recalculate its total equity when it sells or otherwise disposes of equity of the second company or as a result of changes in the second company's shareholders' equity (e.g., due to earnings or losses).

Finally, the final rule codifies the Federal Reserve's position that customary rights of first refusal, tag-along and drag-along rights, do not reflect control by stockholders over the covered shares.

Material Changes From Historical Federal Reserve Practice

The substance of the final rule is generally consistent with the Federal Reserve's historical control framework, with a few targeted policy adjustments. While the most significant aspect of the final rule is a move by the Federal Reserve away from assessing "controlling influence" based on unpublished standards to a more transparent, rule-based framework, the final rule also has significant impacts in the following areas:

- *Investments in Non-Financial Companies under Section 4(c)(6) of the BHC Act*: Under section 4(c)(6) of the BHC Act, a banking organization may invest in a non-financial commercial company if the investment represents less than 5% of any class of voting shares of the company and the company is not otherwise controlled by the banking organization. Although the final rule does not directly expand this 4(c)(6)

authority, it clarifies that a banking organization making a 4(c)(6) investment would not be limited in the amount of business relationships, director representation and committee service (as long as the banking organization did not have more than a majority of the board of the target), officer or employee interlocks, or contractual rights (as long as such rights do not result in a "management agreement") it could have with respect to a target company. This liberalization is particularly important for banking organizations investing in start-up companies (including fintech companies), where the banking organization is both an investor and a large customer of the start-up company.

- *Board and Committee Representation*: Under prior Federal Reserve standards, a non-controlling investor was generally limited to one director representative on a target company's board (with two director representatives permitted under rare circumstances). In addition, prior Federal Reserve standards restricted a non-controlling investor's director representative from serving as the chairman of the target company's board or of any board committee, and from serving at all on certain committees (*e.g.*, the executive, audit, or compensation committee). The final rule significantly liberalizes the number of director representatives a non-controlling investor is permitted to have on a target's board of directors, as well as the ability of such representatives to serve on board committees or as board or committee chair.
- *Business Relationships*: While the final rule presumes an investor's control of another company based on somewhat conservative thresholds of annual revenue and expenses, the final rule notably does not incorporate the Federal Reserve's historical practice of measuring the significance of business relationships in the ordinary course based on quantitative metrics of certain business subcomponents (such as loans or deposits) and certain qualitative standards (such as the relevant agreement being terminable at will and nonexclusive). However, the Federal Reserve indicated that, while the presumptions of control in the final rule "are expected to cover most controlling influence concerns arising out of business relationships, the Board may raise controlling influence concerns under specific facts and circumstances consistent with historical precedent, such as relationships with special qualitative significance (for example, relationships that are difficult to replace and are necessary for core functions)."
- *Terminating Existing Control Relationships*: Under the Federal Reserve's prior practice of applying stricter standards for determining non-control in divestiture scenarios than new investment scenarios, the Federal Reserve has at times required a divesting company to reduce its ownership to a less-than-5% voting interest and terminate all but immaterial business relationships with the former subsidiary in order to terminate an existing control relationship. The final rule significantly relaxes this divestiture standard and more closely aligns it to the standard applicable to new non-controlling investments.
- *Equity and Debt Combinations*: The types of contractual rights that the final rule would deem to impermissibly control another company (and that would therefore trigger control if held by an investor with more than a 5% voting interest in the company) include those that are typically included as covenants in financing agreements. The final rule therefore restricts the ability of a banking organization to provide financing to a borrower in which the banking organization or an affiliate owns at least a 5% voting interest.

Such a voting interest, together with any limiting contractual rights included in a standard credit agreement, could trigger a presumption of control over the borrower. This change limits the ability of banking organizations to provide financing to borrowers that contain both debt and equity components.

- *Proxy Fights, etc*: The Federal Reserve has historically required 10% or larger investors seeking non-control status to sign passivity commitments prohibiting them from commencing proxy solicitations in opposition to management on any matter, and from threatening to sell their shares if management does not take a requested action. The final rule significantly relaxes these restrictions: any 10% or larger investor may solicit proxies for up to 25% of the seats on a board, or solicit proxies from shareholders on any other issue, whether opposed by management or not. Investors holding less than 10% of a target company's voting shares are not subject to any restrictions on proxy solicitations (although a solicitation to replace a majority of the board could raise control issues under another prong of the statutory definition of control). The final rule also removes the restriction on an investor threatening to sell shares.
- *Passivity Commitments*: Under prior practice, the Federal Reserve required non-controlling investors with 10% or more (and occasionally 5% or more) of the voting interests in a banking organizations to provide so-called "passivity commitments" to the Federal Reserve under which the investor makes a series of commitments designed to ensure that it does not attempt to exercise a controlling influence over the banking organization. The Federal Reserve will typically only grant relief from such passivity commitments after the investor had largely exited from the investment. The Federal Reserve indicated in the final rule that it does not intend to obtain passivity commitments going forward in the ordinary course and that absent unusual circumstances, the Board expects to relieve existing passivity commitments upon request.
- *Application of Controlling Influence Standard to Other Requirements*: The Federal Reserve indicated that the final rule does not extend to the Change in Bank Control Act, Regulation O (relating to insider loans) or section 23A and 23B of the Federal Reserve Act, as implemented by Regulation W (relating to affiliate transactions). The implication that there may be different standards for assessing "controlling influence" across different regulatory frameworks introduces significant uncertainty regarding banking organizations ability to identify commonly controlled affiliates and comply with other regulatory requirements, including, for example, restrictions on affiliate transactions under sections 23A and 23B of the Federal Reserve Act.

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SUMMARY OF TIERED PRESUMPTIONS OF CONTROL

A company's interest in a second company will remain non-controlling if, for a given level of voting interest in the second company, the first company's relationships with the second company comply with each of the limits set forth in the table below:

	LESS THAN 5% VOTING	5%–9.99% VOTING	10%–14.99% VOTING	15%–24.99% VOTING
Director Representatives	Less than ½ of second company's board are first company representatives	Less than ¼ of second company's board are first company representatives	Less than ¼ of second company's board are first company representatives	Less than ¼ of second company's board are first company representatives
Director Representative Service as Board Chair	N/A	N/A	N/A	Chair of second company board is not a first company representative
Director Representative Service on Board Committees	N/A	N/A	No more than ¼ of second company board committee with power to bind are first company representatives	No more than ¼ of second company board committee with power to bind are first company representatives
Business Relationships	N/A	Business relationships generate less than 10% of revenues or expenses of the second company	Business relationships generate less than 5% of revenues or expenses of the second company	Business relationships generate less than 2% of revenues or expenses of the second company
Business Terms	N/A	N/A	Business relationships are on market terms	Business relationships are on market terms
Officer / Employee Interlocks	N/A	No more than 1 first company director/employee is a senior management official of second company; No first company director/employee is the CEO of second company	No more than 1 first company director/employee is a senior management official of second company; No first company director/employee is the CEO of second company	No first company director/employee is a senior management official of second company
Contractual Powers	No management agreement between the companies	No first company rights that significantly restrict discretion of second company	No first company rights that significantly restrict discretion of second company	No first company rights that significantly restrict discretion of second company
Proxy Contests (directors)	N/A	N/A	First company does not solicit proxies to replace more than permitted number of directors	First company does not solicit proxies to replace more than permitted number of directors
Total Equity	Less than 1/3 total equity of second company controlled by first company (or less than ¼ total equity if either company is an SLHC)	Less than 1/3 total equity of second company controlled by first company (or less than ¼ total equity if either company is an SLHC)	Less than 1/3 total equity of second company controlled by first company (or less than ¼ total equity if either company is an SLHC)	Less than 1/3 total equity of second company controlled by first company (or less than ¼ total equity if either company is an SLHC)