

To: Board of Governors

Date: December 1, 2020

From: Staff¹

Subject: Proposed Joint Board-FDIC final guidance for certain FBOs regarding future resolution plans

ACTION REQUESTED: Staff seeks approval of the attached final guidance (the “final guidance”) and accompanying *Federal Register* notice for certain large, complex foreign banking organizations (“FBOs”) regarding their future resolution plan submissions.² The final guidance would be jointly issued by the Board and the FDIC (together, the “agencies”). Staff also requests approval to make technical and minor changes (e.g., wording and formatting) to the attached materials.

EXECUTIVE SUMMARY:

Staff is seeking to finalize resolution planning guidance that is intended to provide transparent expectations for the FBOs with the largest and most complex U.S. operations.³ The final guidance would apply to Category II FBOs that are required to form intermediate holding companies (“IHCs”). To more closely align the guidance with the specified FBOs’ current risk profiles, recognize more explicitly that the preferred resolution strategy for the specified FBOs is a

¹ Legal Division (Mr. Van Der Weide, Ms. Schaffer, Messrs. Schwarz and Bowne, and Ms. Podrygala); Division of Supervision and Regulation (Mr. Gibson, Ms. Elliot); and LISCC Recovery and Resolution Program (Mss. Dobbeck and Malcarney).

² The FBOs that would be covered by the final guidance as of the date of this memorandum are Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG, and Mitsubishi UFJ Financial Group (the “specified FBOs”).

³ The guidance was proposed for comment in March 2020. Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 15449 (March 18, 2020) (the “proposal”).

successful home country resolution, and address public comments, the final guidance would revise certain resolution planning expectations relating to capital; liquidity; payment, clearing, and settlement (“PCS”) services; derivatives and trading activities; and governance mechanisms. In addition, the final guidance would consolidate and supersede all prior resolution planning guidance for the firms.

DISCUSSION:

FBOs with more than \$250 billion in total global assets are required to periodically submit resolution plans pursuant to section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act⁴ and the jointly-issued implementing regulation.⁵ In March 2017, the agencies issued guidance to Barclays, Credit Suisse, Deutsche Bank, and UBS setting forth expectations for the firms’ 2018 resolution plans (the “2018 FBO guidance”).⁶ The agencies developed the proposal in light of developments in resolution planning since the 2018 FBO guidance was issued, including the agencies’ review of the firms’ most recent plan submissions and the November 2019 revisions to the resolution planning rule.⁷

The final guidance would reflect several changes from the proposal in response to public comments and more closely align resolution planning expectations with the business and risk profiles of the specified FBOs. In particular, the specified FBOs have shrunk their U.S. footprint in recent years, reducing the aggregate size of their IHCs by around 25 percent (from \$750 billion

⁴ Pub. L. No. 111-203, 124 Stat. 1376, 1426-1427; 12 U.S.C. § 5365(d)(1).

⁵ 12 CFR pt. 243 (Board); 12 CFR pt. 381 (FDIC) (together, the “resolution planning rule”).

⁶ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20170324a.htm>.

⁷ Resolution Plans Required, 84 FR 59194 (November 1, 2019).

to \$550 billion) and reducing their aggregate broker-dealer assets by around 40 percent (from \$490 billion to \$290 billion) between 2016 and 2019. To reflect these changes, the final guidance would streamline the agencies' expectations in several areas, as described below.

Scope of the Guidance. The proposal would have applied to category II and III FBOs with U.S. intermediate holding companies ("IHCs") that have a method 2 GSIB score of 250 or more.⁸ Commenters were critical of the proposed scoping methodology, asserting that it was inconsistent with the Board's tailoring rule⁹ and that the method 2 GSIB score was inappropriate for the purposes of scoping the guidance because of how the method 2 GSIB framework assesses short-term wholesale funding. The final guidance would apply to category II FBOs, according to their combined U.S. operations, that are required to form IHCs. Staff believes this approach will provide consistency with the Board's tailoring rule, capture an appropriate set of FBOs, and address the concerns raised by commenters about reliance on the method 2 GSIB score.

Capital and Liquidity. The proposal would not have significantly changed the capital and liquidity expectations set forth in the 2018 FBO guidance. Commenters asserted that certain provisions of the proposal—resolution capital

⁸ Method 2 of the GSIB surcharge framework is designed to provide a single, comprehensive, integrated assessment of a large bank holding company's systemic footprint. Specifically, the method 2 score assesses a financial institution's asset size, interconnectedness, complexity (including over-the-counter derivatives), cross-jurisdictional activity, and reliance on short-term wholesale funding.

⁹ Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (November 1, 2019).

adequacy and positioning (“RCAP”)¹⁰ and resolution liquidity adequacy and positioning (“RLAP”)¹¹—were unnecessary because of the reduced systemic risk of the FBOs that would have been covered by the proposal and because they were redundant with other regulatory provisions. The final guidance would eliminate RCAP, RLAP, and liquidity capabilities expectations, while retaining other expectations relating to resolution capital and liquidity. Staff believes that these changes would more closely align guidance expectations with the business and risk profiles of the specified FBOs’ U.S. operations and appropriately reflect the overlap between these concepts and certain other regulatory provisions.¹²

Operational Capabilities – Payment, Clearing, and Settlement Activities.

The proposal would have set forth expectations with respect to a firm’s capabilities to maintain continued access to PCS services, including establishing expectations related to key clients, key financial market utilities, and key agent banks. In a change from the 2018 FBO guidance, the proposal would have applied these expectations to a firm’s indirect PCS relationships through non-U.S. branches and affiliates. Commenters generally opposed the expanded expectations, arguing that the proposal would subject the specified FBOs to expectations greater than those applicable to U.S. G-SIBs, be duplicative of

¹⁰ RCAP is the minimum amount of total loss-absorbing capital and long-term debt that would ensure that a firm has adequate capacity to operate its material entities at a consolidated level.

¹¹ RLAP measures the stand-alone liquidity position of each material entity—i.e., the high-quality liquid assets at the material entity less net outflows to third parties and affiliates—and ensures that liquidity is readily available to meet any deficits.

¹² In particular, staff believes that RCAP expectations overlap with existing total loss absorbing capacity requirements applicable to the Specified FBOs’ U.S. IHCs and RLAP expectations overlap with the Net Stable Funding Ratio and internal liquidity stress testing requirements.

information provided by the specified FBOs to home country regulators, and be potentially extraterritorial in its coverage. The final guidance would not include expectations that firms provide information regarding indirect access to key FMUs and agent banks. Instead, the agencies expect to coordinate with home country authorities to obtain this information. The final guidance would otherwise adopt the PCS expectations as proposed.

Derivatives and Trading Activities. The proposal would have included new expectations regarding firms' derivatives and trading activities that are originated in the United States and booked to non-U.S. affiliates. Commenters were critical of this aspect of the proposal and suggested that it would subject the specified FBOs to more stringent expectations than U.S. G-SIBs, be duplicative of information provided to home country regulators, and be potentially extraterritorial in its coverage of non-U.S. branches and affiliates. The final guidance would not include elements from the proposal related to derivatives and trading activities originated in the United States and booked directly to non-U.S. affiliates. Instead, the agencies expect to coordinate with home country authorities to obtain appropriate information, as necessary. The final guidance would otherwise adopt the derivatives and trading activities expectations as proposed.

Additional Changes. The final guidance also would reduce the agencies' expectations relative to the 2018 FBO guidance in the areas of governance mechanisms, operational capabilities, group resolution plans, and separability. In some cases, these expectations are unnecessary because the subject areas are adequately covered by the resolution planning rule's requirements. In other cases, staff believes that the reduced expectations are appropriate in light of changes in the specified FBOs' business activities and risk profiles.

CONCLUSION: Staff recommends that the Board approve the final guidance and accompanying *Federal Register* notice. Staff also recommends that the Board

delegate authority to staff to make technical and minor changes (e.g., wording and formatting) to the attached materials and to prepare the final guidance for publication in the *Federal Register*.

Attachments