CREDIT SUISSE

September 14, 2018

Via Electronic Mail

Ms. Ann E. Misback, Esq.
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. OP-1614

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington D.C. 20429

Re: Proposed Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations

Ladies and Gentlemen:

Credit Suisse appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System ("the Federal Reserve") and the Federal Deposit Insurance Corporation's ("the FDIC" and, together, "the Agencies") on their proposed guidance for the 2019 and subsequent resolution plan submissions by the eight largest, complex U.S. banking organizations ("the Proposed Guidance").[1] While the Proposed Guidance does not directly apply to Credit Suisse at this time, we would note that the 2017 Guidance[2] for the eight largest, complex U.S. banking organizations (hereafter "the 2017 GSIB Guidance") was extended in form and substance to four additional "First Wave" Foreign Banking Organization ("FBO") filers for the 2018 cycle, including our own

[1] 83 Fed. Reg. 32856 (July 16, 2018).

[2] FDIC and Federal Reserve, Guidance for 2017 §165(d) Annual Resolution Plan Submissions By Domestic Covered Companies that Submitted Resolution Plans in July 2015.

institution ("the 2018 FBO Guidance").[3] As such, we believe it is an appropriate time now to provide feedback to the Agencies on ways that future FBO guidance ought to be tailored to more appropriately reflect the very different risks to U.S. financial stability, as well as the divergent structures and business models, of these institutions relative to the U.S. GSIBs.

We broadly endorse the comments submitted by the Bank Policy Institute ("BPI") and the Securities Industry and Financial Markets Association ("SIFMA"; hereafter the "Joint Trades' Letter") made in connection with the Proposed Guidance. However, we wish to emphasize a number of specific points in this submission.

I. The First Wave FBOs should be treated as "Second Wave" Filers

The resolution planning requirements designed for the eight U.S. GSIBs are inappropriate for the four FBOs included in the First Wave of filers. Like the 2017 GSIB Guidance, the 2018 FBO Guidance imposed highly prescriptive modelling requirements for capital, liquidity, and the wind-down of derivatives portfolios; it required the development of detailed governance playbooks, triggers and management information systems; and created a requirement to identify, and maintain data rooms for, discrete objects of sale (separability). For the FBOs that received individualized guidance for their 2018 resolution plans, many of these requirements either do not apply (e.g., separability, RLAP, RLEN), or apply in a way that affords firms more latitude to take into account their structure, business model and resolution strategy.

The disparate treatment of these four FBOs does not make sense. The Combined U.S. Operations ("CUSO") of each of these FBOs is approximately one-fifth the size of an average U.S. GSIB, while their Intermediate Holding Companies ("IHCs") are all approximately one-tenth the size of a U.S. GSIB. The threat to U.S. financial stability from the resolution of any of one of the four FBOs' U.S. operations is relatively modest, and does not justify the enhanced requirements designed for the U.S. GSIBs. It is particularly unclear why institutions that are supported by a strong parent firm from a cooperative jurisdiction (such as Switzerland) employing a Single-Point-of-Entry ("SPOE") strategy ought to be subject to the significant financial and operational burden of these enhanced requirements.

[3] FDIC and Federal Reserve Board, Guidance for 2018 §165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015 ("2018 FBO Guidance"). The other FBOs are Barclays PLC; Deutsche Bank AG; and UBS AG.

Moreover, several of these FBOs now fall below the Agencies' threshold for inclusion in the First Wave of filers, which was set at $250 billion in U.S. non-banking assets[4] (a threshold that, notably, diverges from the $250 billion in *global* non-banking assets threshold for inclusion of U.S. firms in the First Wave). Inclusion in the First Wave also appears odd given that there are other FBOs with larger U.S. operations and higher systemic risk scores[5] that are subject to tailored, institution-specific guidance associated with "Second Wave" filers.[6]

Given these reasons, we strongly urge the Agencies to issue a statement saying that they will a) issue institution-specific guidance to the four FBOs currently included in the First Wave of filers and b) indicate that such guidance will be generally comparable to the requirements applicable to the current FBO Second Wave filers.

II. Permit FBOs to tailor their own plans to better reflect their structure and business models

Permit Alignment of U.S. Plan with Global Plan

FBOs should be permitted to tailor their resolution plans to the firm's structure and operations. Regulators should give greater weight to the crediblity of support where the parent firm is well-capitalized and from a jurisdiction with a history of ongoing cooperation with U.S. regulators. In particular, where a firm's U.S. operations are supported by a well-considered global SPOE strategy, U.S. resolution planning requirements should reflect that the U.S. operations of such firms pose a smaller risk to U.S. financial stability.

Recognition of a firm's global strategy would be consistent with the Dodd-Frank Act's requirement that regulators give "due regard to the principle of national treatment and equality of competitive opportunity."[7] Moreover, it would make the resolution planning process more realistic and useful. In a resolution scenario, the U.S. subsidiary would almost certainly receive support from its parent, a fact that should be taken into account in the U.S. plan.

[4] 12 U.S. Code of Federal Regulations § 243.3(a)(1)(i).

[5] Deloitte Center of Regulatory Strategy Americas, "Public Regulatory Disclosures Reveal Noteworthy Trends Across the Industry," June 2018, p. 73 (data based on Q1 2018 FR Y-9C financial information and FR Y-15 systemic risk data).

[6] 12 U.S. Code of Federal Regulations § 243.3(a)(1)(ii).

[7] 12 U.S.C. § 5365(b)(2).

Permit Alternative Strategies for Resolution of Non-Banking Operations

While many requirements in the Proposed Guidance make sense when considering the resolution of a banking organization, they do not necessarily do so when the firm's underlying assets are non-bank assets. For example, the identification of discrete objects of sale that could be sold or transferred in resolution does not provide meaningful flexibility to the resolution strategy of a wholesale broker-dealer with a balance sheet comprised of liquid trading assets. Similarly, where a firm's strategy is to wind-down all (or materially all) of its operations, the firm should not need to respond to requirements that contemplate its survival (e.g., the stabilization requirement for derivatives included in the 2018 FBO Guidance).

Instead of prescriptive, one-size-fits-all approaches to resolution, we recommend that the Agencies' permit firms to tailor their own plans around their individual structure and operations. In evaluating those plans, the Agencies should focus on an holistic evaluation of whether a firm's strategy can be accomplished in a manner that substantially mitigates the risk the firm's failure would have serious adverse effects on U.S. financial stability, rather than whether the firm's resolution plan addresses discrete requirements that do not make sense for that particular firm.

Permit Use of Support Agreements to Meet Pre-Placement Requirements

The Agencies should also consider permitting support agreements or similar mechanisms between the parent firm and the IHC to satisfy a portion of the pre-positioning capital and liquidity requirements in FBO resolution plans. As recent work on the subject has shown, excessive ring-fencing of subsidiaries within a global bank can lead to a misallocation of resources, exacerbating the risk of failure of one or more subsidiaries rather than enhancing safety.[8] While some pre-positioned resources are required to provide certainty that losses can be absorbed immediately, permitting firms to hold more centralized resources would increase the firm's ability to direct capital and liquidity to areas where they are most needed in the event of stress.

Support agreements obligate the support provider (e.g., the top-tier parent) to provide material support to its subsidiaries during periods of stress. While there is a long history of parent firms providing this support during periods of stress and a strong business rationale for doing so, support agreements nonetheless can provide the "host" regulator

[8] D. Wilson Ervin, "The Risky Business of Ring-Fencing," December 12, 2017. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3085649. Two additional versions of this article were published; See the Brookings Institution "Understanding 'Ring-Fencing' and How It Could Make Banking Riskier," February 7, 2018. Available at: https://www.brookings.edu/research/understanding-ring-fencing-and-how-it-could-make-banking-riskier/. See also article in The Clearing House and the Bank Policy Institute's forthcoming *Banking Perspectives*, Q3, 2018.

additional comfort that resources will be provided during periods of pre-specified financial distress. At the same time, support agreements provide some additional flexibility to the parent firm to direct resources to areas of the firm most under stress, thereby mitigating the potential collapse of major subsidiary and potential shocks to the broader system.

In our view, the Agencies should permit credible support agreements to satisfy a portion of the capital (RCAP) and liquidity (RLAP) pre-positioning required for the U.S. resolution plans of FBOs. Such agreements ought to be considered credible where they provide home and host regulators with sufficient comfort that support will be provided as planned. The credibility of a support obligation will be enhanced where it has been endorsed (or not objected to) by the home country regulator, and where that regulator has a history of cooperation with U.S. regulators. Providing those conditions are met, there should be no distinction in how the Agencies view secured and unsecured agreements. While secured agreements may be advantageous from the point-of-view of the host jurisdiction, they could also entail a pre-allocation of capital or liquidity resources, meaning that they may not fully solve for the misallocation risks that occur with ring-fencing. Moreover, for that reason, they are less likely to be supported by the home country regulator. In our view then, enforceable unsecured agreements that are either endorsed (or not objected to) by a home country regulator with a history of cooperation with their U.S. counterparts may lead to more optimal outcomes, providing an appropriate level of comfort for both sets of jurisdictions.

Recalibrate Internal TLAC

Finally, although not directly a feature of resolution planning requirements, we recommend that the Agencies reconsider their calibration of "IHC TLAC."[9] The high effective IHC TLAC requirement for GSIB-controlled IHCs contributes to excessive ring-fencing of capital (along with other requirements, such as the Comprehensive Capital Analysis and Review or "CCAR"). Trapping capital at the level of the subsidiary exacerbates the misallocation risk discussed above and invariably leads to retaliatory requirements by other jurisdictions on U.S. firms. The end result is to make the failure of one or more major institutions more likely, which appears to run counter to the goals of promoting systemic safety and ensuring that firms are wound-down in an orderly fashion. A better approach would be to recalibrate the maximum IHC TLAC requirement, setting the maximum requirement at 75 percent of the External TLAC requirement, a change that would be in line with the original Financial Stability Board ("FSB") term sheet.[10]

[9] IHC TLAC in this context refers to "Internal TLAC" as defined under Subpart P of Regulation YY (12 U.S. Code of Federal Regulations § 252). This is done to avoid confusion with Internal TLAC requirements that may be required for resolution planning purposes below the level of the IHC.

[10] Financial Stability Board, "Principles on Loss-absorbing and Recapitalization Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet," November 9, 2015. Available at: http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf.

III. Streamline the Resolution Planning Process

We fully support the Agencies' stated intention of "streamlin[ing] the firms' submissions and to provide additional clarity."[11] We also support the recommendations in the Joint Trades' Letter on this subject. In particular, while we welcome the fact that the agencies have *de-facto* moved to a two-year submission and review cycle[12], we do think this should be formalized via a formal rulemaking. Doing so would lead to a more efficient allocation of limited resources by the Agencies and firms, and generally give firms more certainty so that they can better manage the process. We also agree with the Joint Trades' Letter that existing planning requirements should be consolidated into a single document that is subject to public notice-and-comment. Doing so would reduce confusion about requirements and promote greater transparency.

****

We thank the Agencies for their considerations of our comments. If you have any questions, please do not hesitate to contact the undersigned or Peter J. Ryan (202-626-3306; peter.ryan.3@credit-suisse.com).

Eric M. Varvel
CEO, Credit Suisse Holdings (USA), Inc.

[11] 83 Fed. Reg. at 32857.

[12] Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, "Agencies extend deadline for certain resolution plan submissions," August 30, 2018. Available at: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180830a.htm.