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SUBMITTED ELECTRONICALLY

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W
Washington, DC 20551

Executive Secretary, Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Proposed Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies; Docket No. OP-1699 (FRB); RIN 3064-ZA15 (FDIC)

Ladies and Gentlemen:

The American Bankers Association[1] (ABA) appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation ("the Agencies") responsible for issuing the proposed guidance (Guidance) for the 2021 and subsequent resolution plan submissions by certain foreign banking organizations ("Covered FBOs").[2] The Agencies are soliciting public comment on the Guidance that is intended to assist these firms in the development of their required resolution plans for submittal per Section 165(d) of the Dodd-Frank Act. The Guidance includes an application scope for FBOs, which are triennial full filers and whose intermediate holding companies (U.S. IHCs) have a score of 250 or more under the second methodology (Method 2) of the global systemically important bank (GSIB) surcharge framework.[3] ABA believes the Agencies are utilizing the Method 2 framework to unduly impose requirements to the FBOs that are comparable to the U.S. GSIBs. ABA urges the Agencies to reconsider these overly burdensome regulatory expectations, particularly with regards to the scope of applicability and align the Guidance to the principles of tailoring to the Specified FBOs.[4]

ABA's comment letter will address the reasons why the Guidance is misaligned for the Covered FBOs[5]:

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[1] The American Bankers Association is the voice of the nation's $18.6 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $14.5 trillion in deposits, and extend more than $10.5 trillion in loans. Learn more at www.aba.com.
[2] Board and FDIC, "Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies," 85 Fed. Reg. 15499 (March 18, 2020).
[3] See Proposed Guidance, at 15452.
[4] See Proposed Guidance, at 15452 (footnote 21).
[5] See the Proposed Guidance at 15452.

- The 2018 FBO Guidance should tailor expectations based on the current risk posed by the U.S. operations of the Covered FBOs;
- Covered FBO resolution plans should be consistent with the supervisory requirements of the agencies and Resolution Plan Final Rule that applies to the resolution of domestic entities under the U.S. bankruptcy code; and,
- The Agencies should not create an expectation that the Covered FBOs identify trading activities that are booked into non-U.S. affiliates due to the fact that this leads to extensive duplication and extraterritoriality, which the Agencies should defer to the resolution protocols of the home country jurisdiction of the FBO.
- The Agencies should recognize U.S. resolution plan requirements should be specific to where the U.S. Material Entity has a direct relationship, including non-U.S. affiliates.

I. Background

According to Section 165(d) of the Dodd-Frank Act[6], firms are required to adequately demonstrate an assessment and mitigation plan related to the challenges their business activities and structure pose to an orderly resolution. The rule requires that FBOs focus their resolution planning on their U.S. operations and subsidiaries. The Proposed Guidance, however, revises the resolution plan guidance previously provided to the largest international bank filers per the 2018 FBO Guidance and imposes new requirements, which are substantially similar to the guidance applicable to the U.S. GSIBS according to the 2019 Domestic Guidance. These new requirements seemingly ignore that the FBOs have global resolution plans which are required by home country regulators.[7] ABA respectfully believes that the targeted focus of the Agencies should be centered on the current risk posed by the U.S. operations of the Covered FBOs. We further believe the Agencies have ignored the reduced risks associated with FBO U.S. operations by misapplying the scope of Method 2 with the approach taken by the Agencies in the Enhanced Prudential Standards Tailoring Rule.[8]

II. The Proposal

The following details ABA's comments on behalf of our members to the various changes within the Guidance. ABA also suggests additional refinements and improvements that would better support the requirements of the Covered FBO resolution plan functionality for the Agencies' consideration.

A. The Proposed Guidance Should Align with the Principles of Tailoring

The 2018 FBO Guidance should tailor requirements based on the current risk posed by the U.S. operations of the Covered FBOs. Guidance should establish a clear delineation in the expectations required of the Category I and Category II/III institutions.

[6] 12 U.S.C. 5365(d).
[7] Germany (Federal Financial Supervisory Authority); United Kingdom (Prudential Regulatory Authority); and, Switzerland (Swiss Financial Market Supervisory Authority).
[8] Board of Governors of the Federal Reserve System, Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, Foreign Banking Organizations (Oct. 10, 2019).

Imposing new requirements equivalent to those for U.S. GSIBs is contrary to the approach employed by the Agencies in the final tailoring rule for enhanced prudential standards as well as the November 2019 U.S. Resolution Plan Final Rule. The new requirements are effectively treating the FBOs as if they were the most systemically important institutions (Category I U.S. GSIBs) when in fact Vice Chair for Supervision Randy Quarles mentioned in a recent speech that the Covered FBOs have reduced and simplified their U.S. operations.

> "Since 2010, these four banks have significantly shrunk their U.S. footprint, and their U.S. operations **are much less risky** than they used to be. Since 2008, the size of the LISCC FBOs' combined U.S. assets has **shrunk by about 50 percent**, and they have **reduced the assets** at their broker-dealers from a peak of $1.9 trillion in 2008 to $340 billion today, a **reduction of over 80%**. Also, the estimated systemic impact of the LISCC FBOs today is **much smaller** than the U.S. GSIBs. The common method 1 GSIB score of the combined U.S. operations of the LISCC FBOs is less than a quarter of the average GSIB score of the six non-processing U.S. GSIBs."[9]

Accordingly, the FBOs should not have to adhere to the most stringent U.S. Resolution Requirements as is required of Category I institutions.

In line with the principles of tailoring, the Agencies should tailor several expectations in the 2018 FBO Guidance, given the reduction in risk posed by the U.S. operations of the Covered FBOs and the enhanced capital and liquidity support now available. The Agencies should remove from the specifications resolution liquidity adequacy and positioning (RLAP) and resolution capital adequacy and positioning (RCAP) as they are redundant given other regulatory requirements (e.g. internal liquidity stress testing and Total Loss Absorbing Capacity (TLAC), respectively). Standardized liquidity requirements set forth in rulemakings, and not RLAP, should set the binding constraint. Additionally, RCAP is duplicative to TLAC and should be removed because TLAC separately requires significant local bail-inable resources for the recapitalization of the Specified FBOs' U.S. operations. Clearly articulating unique constraints for these entities will enable a more efficient process in evaluating and managing their businesses.

B. The Proposed Guidance Should Remove All Extraterritorial Requirements

ABA recommends that the Guidance should not include the identification, assessment, or reporting on an indirect relationship through non-U.S. affiliates or risk transfer arrangements with non-U.S. affiliates. The resolution of non-U.S. entities and activities are subject to jurisdictional specific resolution requirements and regimes through the applicable home country regulatory authorities and should be removed from the Proposed Guidance.

The Proposed Guidance would add new expected processes and capabilities concerning Payment Clearing and Settlement (PCS) services and Derivatives and Trading activities that are similar to those imposed on the U.S. GSIBs. ABA believes the FBO U.S. resolution plans should focus on demonstrating a successful resolution of the operations of their U.S. material entities and

[9] Vice-Chair for Supervision Randal K. Quarles, "Spontaneity and Order: Transparency, Accountability, and Fairness in Bank Supervision" (Jan. 17, 2020).

branches. This would be consistent with the Supervisory purview of the U.S. regulators and Resolution Plan Final Rule that applies to the resolution of U.S. domiciled entities under the U.S. Bankruptcy Code, in addition to home country resolution authorities have similar requirements related to Financial Market Utilities (FMU) providers.[10] The Agencies should request any information related to indirect FMU access through coordination with the home country resolution authority.

i. Derivatives and Trading

The Agencies have created expanded definitions in ways that are inconsistent and go beyond the scope of the 2019 Resolution Plan Rule in the Derivatives and Trading, and Prime Brokerage sections of the Proposed Guidance. More specifically, the Agencies have created newly defined terms for U.S. activities to include activities "booked directly into a non-U.S. affiliate"[11] and activities "originated" from U.S. entities and those activities transacted or arranged by or behalf of those U.S. entities and their clients and counterparties, including any such activity for which a U.S. entity is compensated "directly or indirectly" by a non-U.S. affiliate.[12] The Proposed Guidance contains expectations that certain FBOs identify and mitigate risks for trading activities, which are booked into non-U.S. affiliates, including the operational unwind of Prime Brokerage activities booked into non-U.S. affiliates. The activities booked into non-U.S. affiliates are under the jurisdiction of the resolution planning laws and regulations of their home country supervisor.

The agencies inaccurately assume that there are significant dependencies on non-U.S. affiliates to resolve U.S. activities in the areas of client relationships, transaction settlement, management of risk limits, and maintenance of access to U.S. financial market utilities (FMUs). In fact, activities that are booked into non-U.S. affiliates and contractual relationships between a non-U.S. affiliate and third-party are beyond the scope of Title 1 of the Dodd-Frank Act.

ii. Payments Clearing and Settlement (PCS)

The Guidance was written for those firms that access the services of an FMU or key agent bank indirectly through the membership of a non-U.S. affiliate to provide a playbook for that FMU or key agent bank. ABA urges the Agencies to recognize that a U.S. Material Entity that does not have a membership agreement directly with an FMU would not have the authority to make decisions on contingency actions, or any other arrangement with that FMU.[13]

U.S. entities have agreements with their non-U.S. affiliates whom they leverage for indirect access to FMUs. U.S. resolution plan requirements should be specific to where the U.S. Material

[10] The Bank of England's Approach to Assessing Resolvability, Statement of Policy on Continuity of Access to Financial Market Infrastructure (FMIs). Available at https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/bank-of-england-continuity-of-access-to-fmis-sop.pdf?la=en&hash=73CF901BE1B4E9CDF4B5A49A72368893CD81A272.
[11] See Proposed Guidance at 15454.
[12] See Proposed Guidance at 15457 (footnote 36).
[13] U.S. Material Entities would also not be able to interact with indirect FMU's on behalf of clients or counterparties. The Agencies should also recognize that margin posted from the U.S. Material Entity to a non-U.S. affiliate is typically subject to netting by the non-U.S. affiliate before being posted to an FMU.

Entity has a direct relationship, including non-U.S. affiliates. Information related to indirect FMUs is overseen through the home country resolution authority and should be accessed through coordination, with the home country supervisory authorities.

C. Method 2 Scope of Applicability

The Proposed Guidance includes a scope of application for FBOs that are triennial full filers and whose intermediate holding companies (U.S. IHCs) have a score of 250 or more under the second methodology (Method 2) of the GSIB surcharge framework. The Agencies decided against using the U.S. GSIB capital surcharge framework for determining the scoping of the non-Category I firms under the EPS Tailoring Rule.

The Agencies believe that the high scores under Method 2 have "largely been driven by a reliance on short term wholesale funding (STWF)".[14] However, the covered FBOs have established conservative funding profiles and have not shown an undue reliance on STWF. This can be shown by the relatively low absolute STWF levels as compared to the non-processing US GSIBs and that the publicly available LCR's for the covered FBOs are well in excess of the required thresholds. The "comparably high method 2 scores"[15] identified by the Agencies are driven by shortcomings in the Method 2 metric. For example, Method 2 will divide the STWF by the IHCs risk weighted assets which will result in spurious results for firms with relatively low RWAs. Thus, the use of the Method 2 metric is leading to an inaccurate conclusion and is an inappropriate metric to be used to identify the covered firms.

In addition, in the preamble to the Proposed Guidance, the Agencies explain that the "STWF factor indicates the potential for significant liquidity outflows and large-scale funding runs associated with STWF in times of stress." However, the wSTWF metric focuses on liabilities and does not adequately consider the tenor, liquidity and other characteristics of the assets funded by those liabilities. Liquidity risk is fundamentally about the appropriate matching of assets and liabilities. Funding short dated assets like HQLA or supply chain finance with STWF is often a lower risk strategy than funding them with a mismatched tenor. This type of net position does not pose significant risk even in the case of a "run": a bank under stress could easily meet claims that are invested in HQLA. These activities do not pose significant overall liquidity concerns, and are common in the business models of the Covered FBOs.

Further, the Method 2 scores were designed for the U.S. GSIBs and Method 2, in particular, was deemed an inappropriate measure by previous commenters given the denominators are fixed, rather than being updated on an annual basis. Method 2 scores, therefore, may be affected by economic growth unrelated to an increase in systemic risk.[16] More specifically, FBO IHC considerations are not reflected in the Method 2 calculation. The original intent of Method 2 was for the express purpose of being used to calculate the U.S. GSIB capital surcharge, not an application for FBOs as a scoping methodology for resolution planning guidance.

[14] See Proposed Guidance at 15452.
[15] See Proposed Guidance at 15452.
[16] Method 2 was not designed to measure resolution-related risks and inaccurately inflates an IHC's systemic risk profile by overweighting short term wholesale funding (STWF).

STWF is not eliminated in consolidation as it is for the U.S. GSIBs. The FBO calculation is consolidated at the top-tier U.S. holding company (IHC) as compared to the U.S. GSIBs, where consolidation is done at the top-tier banking organizations.

Thank you for your consideration of our views and recommendations. If you have any questions or require any additional information, please do not hesitate to contact the undersigned at 202-663-5273 (junderwood@aba.com).

Sincerely,

Justin M. Underwood
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American Bankers Association