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November 30, 2023

By Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Federal Deposit Insurance Commission
550 17th Street NW
Washington, DC 20429

Re: Notice of Proposed Guidance, Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers; Federal Reserve Docket No. OP–1817 and FDIC RIN 3064–ZA38

The Institute of International Bankers (the "IIB") appreciates the opportunity to comment on the notice of proposed guidance issued by Board of Governors of the Federal Reserve System ("Federal Reserve") and the Federal Deposit Insurance Corporation ("FDIC") regarding *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers.*[1]

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States ("international banks").

We are commenting on the International Bank Guidance Proposal because international banks are a critical part of the United States financial system, and the Proposal is one of several recent regulatory proposals (the "Capital and Resolution-Related Proposals")[2] that

[1] Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers*, 88 Fed. Reg. 64641 (proposed Sept. 19, 2023) (the "International Bank Guidance Proposal" or the "Proposal"). Together, the Federal Reserve and FDIC are the "Agencies."

[2] Federal Reserve, FDIC and Office of the Comptroller of the Currency ("OCC"), *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg 64028 (proposed Sept. 18, 2023) (the "Capital Proposal"); Federal Reserve, *Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y–15)*, 88 Fed. Reg 60385 (proposed Sept. 1, 2023) (the "GSIB Surcharge Proposal"); Federal Reserve, FDIC and OCC, *Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions*, 88 Fed.

would, when considered together holistically, disproportionately affect international banks and discourage international bank participation in U.S. banking and financial services markets to the detriment of U.S. financial stability. IIB members in general are important to the competitive landscape of the U.S. financial system, injecting billions of dollars each year into state and local economies across the country though direct employment, capital expenditures and other investments. IIB members hold more than $4 trillion in assets across the United States and employ approximately 200,000 people in the United States. IIB members represent more than half of U.S. primary dealers (55%) and make more than 40 percent of all commercial and industrial loans in the United States. Federal Reserve Chairman Powell has noted the contributions of international banks to U.S. lending and capital markets and the resulting economic gains in the United States.[3]

This letter proceeds in two main parts. First, in Sections I through VIII, we propose ways in which the International Bank Guidance Proposal should be better designed for the unique characteristics of the U.S. operations of international banks. Second, in Section IX, we discuss how the International Bank Guidance Proposal contains flaws that are common across the Capital and Resolution-Related Proposals. Overall, the application of the proposed guidance is not sufficiently connected to the risk of banking organizations, and the proposed revisions to the current *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies* (the "Current International Bank Guidance")[4] are not informed by sufficient analysis, particularly given that they represent a reversal of recent policy decisions made by the Agencies. While we have suggested modifications to address these issues, commenters should have access to a clear analysis of the interactions of all the Capital and Resolution-Related Proposals (and, at minimum, more time to consider the complex interactions of the various

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Reg. 64524 (proposed Sept. 19, 2023) (the "LTD Proposal"); FDIC, *Resolution Plans Required for Insured Depository Institutions With $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least $50 Billion But Less Than $100 Billion in Total Assets*, 88 Fed. Reg. 64579 (proposed Sept. 19, 2023) (the "IDI Plan Proposal").

3 *See* Jerome H. Powell, Chairman, Federal Reserve, Opening Statements on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks (Apr. 8, 2019) ("Foreign banks play an important role in our economy. They facilitate commerce, and provide credit and needed investment."). See also Federal Reserve, Financial Stability Report at 55 (May 2021), https://www.federalreserve.gov/publications/files/financial-stability-report-20210506.pdf ("FBOs serve as important conduits of dollar funding to and from U.S. and foreign businesses, governments, households, and [non-bank financial institutions]. Foreign banks, primarily FBOs, supply $15 trillion of dollar-denominated credit (equivalent to more than 17 percent of world GDP), which is about half of the total global dollar credit outstanding of banks. FBOs are the principal dollar lenders to non-U.S. residents and also supply more than one-third of dollar bank credit outstanding to U.S. residents." (footnotes omitted)); Federal Reserve, Financial Stability Report at 64 (May 2023), https://www.federalreserve.gov/publications/files/financial-stability-report-20230508.pdf ("Foreign banks supply around one-third of total bank credit to U.S. residents…Foreign banks are also important counterparties in U.S. dollar-denominated FX swaps [which provide other global market actors with the] . . . ability to invest in U.S. markets and to lend to U.S. households and businesses[, and without which those actors] could be forced to liquidate U.S. assets").

4 Federal Reserve and FDIC, Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 83557 (Dec. 22, 2020).

proposals),[5] including in relation this Proposal, which, unlike the Capital-Related Proposals, did not to receive an extension to its comment period.

Our specific recommendations are as follows:

- The Agencies should take into account the fact that the U.S. operations of international banks operate as part of larger global institutions that are already subject to robust home-country resolution-related requirements;

- The U.S. operations of international banks are a fraction of the size of U.S. GSIBs, and guidance and expectations applicable to these U.S. operations should be much different from and much more flexible than guidance applicable to the U.S. GSIBs;

- Even if our recommended substantive changes are incorporated, the International Bank Guidance Proposal should apply only to Category II and III international banks with an IHC;

- Expectations around resolution capital adequacy and positioning ("RCAP"), resolution liquidity adequacy and positioning ("RLAP"), separability, and governance mechanisms should not be reimposed;

- The International Bank Guidance Proposal should not require that an international bank detail whether the U.S. resolution plan relies on different "assumptions, strategies and capabilities" from the global resolution strategy;

- The Agencies should clarify the concept of "material entity" as applied to foreign affiliates outside of the consolidated combined U.S. operations or IHC;

- The 165(d) Resolution Plan deadlines should be extended; and

- The Agencies should consider the interplay between resolution plan requirements, expectations and deadlines under the International Bank Guidance Proposal, the 165(d) Resolution Plan Rule and the IDI Plan Proposal, and adjust for that interplay.

The IIB supports the Agencies' proposal to provide guidance for both SPOE and MPOE resolution strategies as well as the Agencies' proposed removal of expectations around derivatives and trading activities for the U.S. operations of international banks.

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5 *See* Letter from IIB, Bank Policy Institute, Financial Services Forum, American Bankers Association, Securities Industry and Financial Markets Association to Federal Reserve, FDIC and Office of the Comptroller of the Currency (Oct. 6, 2023), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2023comms/20231006Resolution-Related_P.pdf (Request for Extension of Comment Period for Resolution-Related Notices of Proposed Rulemaking).

## I. U.S. Resolution Planning Requirements Should Take Into Account the Unique Characteristics of the Operations of International Banks in the United States.

### A. The Agencies should take into account the fact that the U.S. operations of international banks operate as part of larger global institutions that are already subject to robust home-country resolution-related requirements.

International banks are already subject to robust home-country resolution-related requirements and enhanced prudential standards applied on a global consolidated basis. Since the global financial crisis, international banks have developed single-point-of-entry ("SPOE") and multiple-point-of-entry ("MPOE") home-country resolution plans, including with respect to their U.S. operations, guided by international and home- and host-country standards to facilitate effective resolution of the banking organization as a whole. In recent years, international banks have engaged in intensive resolution planning for both their global and their U.S. operations, significantly enhancing their ability to monitor and provide resources to their key operations, to withstand losses and to ensure resolvability. These steps include (1) significantly increasing capitalization levels and liquidity resources, (2) simplifying organizational structures, (3) streamlining business mixes, (4) developing playbooks to facilitate the provision of financial support and any preparatory actions for an orderly resolution and (5) enhancing affiliate and third-party service arrangements to ensure continued operations in stress and resolution scenarios (e.g., resolution-resilient service level agreements). Simultaneously, and similar to the United States, the home countries of international banks have undertaken significant reforms in capital, liquidity, bail-in-able resources, corporate structures, and resolution frameworks and strategies to implement both domestic and international standards such as those adopted by the Financial Stability Board. As a result of these developments, international banks have reduced their potential to pose risk to the U.S. financial system and are in a better position to facilitate the resolution of their U.S. operations, should the need arise.

Home-country resolution of an international bank, rather than resolution at the level of the U.S. operations, is the preferred approach of institutions proposed to be subject to the International Bank Guidance Proposal.[6] The Agencies have recognized that this requires cooperation between home- and host-country authorities.[7] In addition, the importance of cooperation between international regulatory authorities and how such coordination improves resolvability was a consistent theme in reports related to the March 2023 banking stress.[8]

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6 Current International Bank Guidance at 83558 (the "preferred resolution outcome for many [international banks] is a successful home country resolution using a [SPOE] resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution."); International Bank Guidance Proposal at 64644 ("The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy that does not involve the placement of any U.S. material entities into resolution.").

7 International Bank Guidance Proposal at 64642 ("The agencies' experience with CS illustrates the complexities that can arise in the case of acute stress involving large cross-border firms and the importance of resolution planning and coordination with home country authorities.").

8 Reports by the Financial Stability Board ("FSB"), Basel Committee on Banking Supervision ("BCBS") and International Swaps and Derivatives Association ("ISDA") all noted that cross-border information sharing facilitated timely and efficient resolution during the 2023 bank failures. BCBS found that cross-border

However, many of the Proposal's changes appear to run counter to this view by re-applying more prescriptive expectations to the U.S. operations of international banks.[9] Rather than reduce flexibility and apply burdensome and duplicative expectations to the sub-consolidated U.S. operations, the Agencies should focus on cooperation with home country authorities, including as recommended in Section VI below, who would be the resolution authorities for the global resolution strategies of the international banks proposed to be subject to the International Bank Guidance Proposal.

In addition, as part of larger organizations subject to global, enterprise-wide capital and liquidity planning, the U.S. operations of international banks benefit from the existence of their parent as a source of strength. International banks may manage and allocate capital and liquidity between their U.S. operations and other non-U.S. subsidiaries in a way that increases the strength of the group overall and reduces group fragility. By contrast, distributions to public shareholders of domestic banking organizations leave the organization and do not promote group stability. In addition, strong home country resources can provide parent support that is not available to a standalone domestic banking organization. Unlike domestic banking organizations, the U.S. operations of international banks can receive support from parent organizations at a moment's notice without dependency on the capital markets. A parent bank's capacity to provide support in stress has only been increased by the prudential standards and resolution-related requirements already implemented internationally over the last decade.

As one example, the Federal Reserve applies IHC-level total loss absorbing capacity ("TLAC") requirements to the vast majority of international banks (whether following a U.S. SPOE or MPOE strategy) in scope for the International Bank Guidance Proposal. These requirements already materially address the Agencies' stated concerns with respect to a scenario in which the U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide sufficient financial support for the U.S. operations. For those institutions, the ability of the Federal Reserve to recapitalize the U.S. IHC operations and impose losses on the international parent are designed to achieve resolution of the U.S. operations in a

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cooperation was crucial in responding to the turmoil caused by the distress of SVB and Credit Suisse through open communication between central banks and supervisory authorities. BCBS, *Report on the 2023 Banking Turmoil* at 22 (Oct. 2023) ("[t]imely and effective cross-border supervisory cooperation was therefore a key element in responding to the turmoil and mitigating risks to global financial stability"). In both the SVB and the CS situations, the BCBS was instrumental in facilitating these discussions, though BCBS noted that authorities outside of the U.S. and Europe had expressed a lack of information about the resolution of Credit Suisse and Silicon Valley Bank. BCBS recommended that, in light of this feedback, further enhancements to cross-border supervisory cooperation is warranted. *Id.* The FSB's report stated that ex ante work among regulators on contingency planning and exercises aided cooperation during the 2023 bank failures. FSB, *2023 Bank Failures: Preliminary Lessons Learnt for Resolution* at 12 (Oct. 10, 2023). In addition, the FSB report stated that it is "important that all the main jurisdictions where even indirect effects may materialise are kept informed, as necessary and appropriate, when preparing for crisis execution measures." *Id.* at 16. ISDA's report suggested that legal entity identifiers and related data fields to track derivative exposures of all counterparties to a trade and the implementation of memoranda of understanding can be used to facilitate sharing across jurisdictions, methods which have been successfully used by financial regulators for decades in the oversight of derivatives. ISDA, *Hidden in Plain Sight? Derivatives Exposures, Regulatory Transparency and Trade Repositories* at 10 (Oct. 2023). This facilitation of communication and cooperation before (and during) failures is crucial to maintaining global market stability in the face of turmoil.

9 *See* Section III.

manner that dramatically minimizes, or virtually eliminates, material risk to the U.S. financial system (and could allow the U.S. operations of international banks to avoid bankruptcy or resolution proceedings in the United States altogether). As the Federal Reserve has stated, the imposition of TLAC and IHC requirements has "increase[d] the likelihood that a failed foreign bank with significant U.S. operations could be successfully resolved without the failure of the U.S. subsidiaries or, failing that, that the U.S. operations could be separately resolved in an orderly manner."[10] In addition, the Federal Reserve noted that given the additional resources for recapitalization provided through TLAC, the IHC of an international bank with an SPOE strategy should be able to "avoid entering resolution and would continue as a going concern" without entering bankruptcy or resolution proceedings at all.[11] For those international banks that do not have IHCs and, therefore are not subject to TLAC requirements, the U.S. operations of such international banks that would be resolved through the U.S. Bankruptcy Code (or other ordinary U.S. resolution regime such as the Federal Deposit Insurance Act) have not risen to a materiality threshold that justifies the imposition of enhanced resolution planning expectations.[12]

Lastly, the Agencies should more generally exercise caution when considering whether to apply additional U.S. host-country requirements or expectations to the U.S. operations of international banks and be aware of unintended consequences of these decisions at the international level. Disproportionate requirements in the United States can lead to similar demands by other host-country supervisors. This could, in turn, lead to increased fragmentation and less orderly approaches to the resolution of internationally active banking organizations, making such organizations less resilient on an enterprise-wide basis and increasing financial stability risks in both home and host jurisdictions.[13]

Generally, more flexibility, fewer mandatory requirements and greater reliance on cooperation among international regulators than are present in the Proposal are needed to promote resiliency of the U.S. portion of international banks' global operations, when these international banks are subject to mandatory requirements on a consolidated basis by their home

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[10] Federal Reserve, Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8266 at 8268 (Jan. 24, 2017) ("TLAC Rule").

[11] TLAC Rule at 8291 ("Most foreign GSIBs are expected to be resolved by their home jurisdiction resolution authorities through an SPOE resolution and are therefore expected to be non-resolution entities under the proposal. Were such an SPOE resolution to succeed, the covered IHC would avoid entering resolution and would continue as a going concern, with its eligible internal TLAC and eligible internal LTD used to transmit the covered IHC's going-concern losses to the parent foreign GSIB, to the extent necessary.").

[12] *See* Section II.

[13] *See* Wilson Ervin, *Understanding 'ring-fencing' and how it could make banking riskier*, Brookings Center on Regulation and Markets (Feb. 7, 2018) (finding that for a hypothetical bank with four equally sized subsidiaries, the risk of group failure could increase by 5x or more if extensive ring-fencing were required). For example, the EU intermediate parent undertaking structure was implemented after the United States introduced the IHC requirements. *See* Council of the European Union, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures* (Feb. 14, 2019), https://data.consilium.europa.eu/doc/document/ST-6289-2019-INIT/en/pdf.

country that are consistent with international norms. Therefore, in addition to our more specific comments throughout this letter, we urge the Agencies to reduce the scale and mandatory nature of the Proposal.

B. <u>The U.S. operations of international banks are significantly smaller and better capitalized than the U.S. GSIBs, and guidance and expectations applicable to these U.S. operations should be much different from and much more flexible than guidance applicable to the U.S. GSIBs.</u>

In addition to the beneficial effects of U.S. operations' status as members of global banking organizations that are already subject to robust, home-country resolution-related requirements and enhanced prudential standards, international bank operations in the United States are much smaller, and better capitalized, than U.S. GSIBs.[14] However, the International Bank Guidance Proposal subjects Category II and III institutions to requirements that are not sufficiently differentiated from those applicable to U.S. GSIBs.

Chair Gruenberg stated that the organizations covered by the International Bank Guidance Proposal are "*just below* the U.S. global systemically important banking organizations in terms of their size, complexity and the potential impact of their failure on U.S. financial stability."[15]

This is not true. Category II and III banking organizations, particularly the IHCs and the U.S operations of international banks in such categories,[16] are not remotely commensurate with U.S. GSIBs. As of the end of the second quarter of 2023, IHCs of Triennial Full Filers had, on average, approximately $196 billion in total consolidated assets; the combined U.S. operations of Triennial Full Filer international banks had an average $323 billion in total

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[14] Because this Proposal would apply to the combined U.S. operations of international banks and, in effect, to their IHCs, comparing the combined U.S. operations of international banks/their IHCs to domestic BHCs (i.e., U.S. GSIBs) is the most suitable type of comparison for evaluating the relative attributes of these entities. While the global operations of a given international bank are of course much larger in size than its combined U.S. operations or IHC are, this is not a relevant data point because these consolidated global operations are not subject to the Proposal (or to consolidated U.S. supervision and regulation in general). Indeed, this is among the reasons why 12 U.S.C. § 5365(b)(2) states that, when applying prudential standards to any "foreign-based bank holding company," the Federal Reserve "shall . . . take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States."

[15] Martin J. Gruenberg, Chairman, FDIC, Statement by Martin J. Gruenberg, Chairman, FDIC, On Proposed Dodd-Frank Act Title I Resolution Plan Guidance (Aug. 29, 2023) (emphasis added), https://www.fdic.gov/news/speeches/2023/spaug2923c.html.

[16] The Federal Reserve staff memo as of the date of the Proposal specifies which firms it expects to be subject to the proposed resolution planning guidance. The data that is taken from FR Y-9C and FR Y-15 filings in this letter corresponds to those banking organizations that the staff memo specifically named. Per the staff memo, the anticipated international bank Triennial Full Filers are as follows: Bank of Montreal; Barclays PLC; BNP Paribas; Deutsche Bank AG; Mitsubishi UFJ Financial Group, Inc.; Mizuho Financial Group, Inc.; Royal Bank of Canada; Sumitomo Mitsui Financial Group, Inc.; The Toronto-Dominion Bank; and UBS Group AG. *See* Federal Reserve Staff, *Joint Board-FDIC proposed guidance for Category II and III banking organizations regarding future resolution plans* (Aug. 15, 2023), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230829b4.pdf.

assets; and U.S. GSIBs had, on average, approximately $1.8 trillion in total consolidated assets.[17] This is a five to ten-fold difference, and cannot be described as "just below" the GSIBs. As of the end of the second quarter of 2023, the levels of other risk-based indicators were as follows:[18]

- IHCs of Triennial Full Filers had, on average, approximately $87.2 billion in total nonbank assets; the combined U.S. operations of Triennial Full Filer international banks had an average $83.4 billion in total nonbank assets; and U.S. GSIBs had, on average, seven times those figures (approximately $607.4 billion in total nonbank assets);

- IHCs of Triennial Full Filers had, on average, approximately $45.4 billion in total short-term wholesale funding; the combined U.S. operations of Triennial Full Filer international banks had an average $97.1 billion in total short-term wholesale funding; and U.S. GSIBs had, on average, three to six times those figures (approximately $325.6 billion in total short-term wholesale funding);

- IHCs of Triennial Full Filers had, on average, approximately $34.3 billion in cross-jurisdictional activity; the combined U.S. operations of Triennial Full Filer international banks had an average $80.6 billion in cross-jurisdictional activity; and U.S. GSIBs had, on average, 12 to 30 times those figures (approximately $1 trillion in cross-jurisdictional activity); and

- IHCs of Triennial Full Filers had, on average, approximately $33.9 billion in off-balance sheet exposures; the combined U.S. operations of Triennial Full Filer international banks had an average $104.9 billion in off-balance sheet exposures; and U.S. GSIBs had, on average, three to ten times those figures (approximately $353.6 billion in off-balance sheet exposures).

In addition, IHCs are better capitalized than U.S. GSIBs. As of the second quarter of 2023, while IHCs of Triennial Full Filers had an average CET 1 ratio of 15.92%, U.S. GSIBs had an average CET 1 ratio of 12.62%.[19] Similarly, while IHCs of Triennial Full Filers had an average Tier 1 capital ratio of 17.45%, U.S. GSIBs had an average Tier 1 ratio of 14.30%.[20]

The U.S. operations of international banks, therefore, should be treated much more flexibly and be subject to less stringent requirements than those applicable to the U.S. GSIBs. However, the Proposal does not reflect consideration of these significant differences, and unfortunately reflects a stringency that equates to the expectations applicable to U.S. GSIBs.

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[17] FR Y-9C and FR Y-15 data.

[18] FR Y-15 data.

[19] Weighted averages based on data from Form FR Y-9C.

[20] Weighted averages based on data from Form FR Y-9C.

## II. The International Bank Guidance Proposal Should Apply Only to Category II and III International Banks With an IHC.

In addition to the modifications we recommend throughout this letter that are intended to increase flexibility and more appropriately tier the Proposal's mandatory requirements to the much smaller and better capitalized U.S. operations of international banks, we note that the scope of application of the Proposal is much too wide. We suggest that any final guidance based on the International Bank Guidance Proposal apply only to Category II and III international banks with an IHC. This change in scope is warranted by the unique position of the U.S. operations of international banks as compared to domestic banking organizations (as described above) and because the IHC threshold represents an important materiality standard both for understanding the materiality of the U.S. operations and for resolution planning, as the Agencies have recognized. As the Agencies noted in the Current International Bank Guidance, "an IHC formed pursuant to the Board's Regulation YY indicates the materiality of the FBO's U.S. operations that would go through bankruptcy under the Bankruptcy Code or other ordinary U.S. resolution regime."[21] In contrast, U.S. branch operations of international banks would generally be resolved as part of the home country resolution of the bank (subject, of course, to possible ring-fencing in the United States under the International Banking Act or applicable state law). The Agencies do not provide a sufficient rationale for applying *the same* enhanced guidance to international bank Triennial Full Filers with an IHC and those without. Indeed, as noted throughout this letter, the Agencies do not provide a sufficient rationale for applying *almost the same* enhanced guidance to all Triennial Full Filers (both domestic and international) as applicable to U.S. GSIBs.

Of course, the Agencies could choose to separately propose guidance for international bank Triennial Full Filers without an IHC, and the IIB generally supports the Agencies providing guidance to such filers, as our members have consistently welcomed forward-looking guidance in resolution planning. However, any such guidance should be appropriately tailored to the risk and structural characteristics of those institutions, should be less prescriptive and more flexible than that provided to international banks in higher Categories or with IHCs, and should not be substantially similar to the guidance provided to domestic Triennial Full Filers and U.S. GSIBs.

## III. The IIB Supports the Agencies Allowing Each International Bank the Flexibility to Choose the Resolution Strategy That Is, in the View of Such International Bank, Most Effective to Resolve Its U.S. Operations. Therefore, the IIB Supports the Agencies' Proposal to Provide Guidance for Both SPOE and MPOE Resolution Strategies.

The Agencies state that they "do not prescribe a specific resolution strategy for any covered company, nor do [they] identify a preferred strategy."[22] In addition, the Agencies note that the "proposed guidance is not intended to favor one strategy or another" and filers "may continue to submit resolution plans using the resolution strategies they believe would be most

[21] Current International Bank Guidance at 83561 n.24.

[22] International Bank Guidance Proposal at 64643.

effective in achieving an orderly resolution of their firms."[23] Category II and III international banks have developed MPOE or SPOE strategies both at a global level, and with respect to their U.S. operations, based on their specific structures.[24] For example, an MPOE resolution strategy for the U.S. operations might be more appropriate for international banks without an IHC; without a top-tier U.S. BHC; with a large relative concentration of assets in an insured depository institution ("IDI") subsidiary; or with less complex material entity structures in the United States.

We note that FDIC Vice Chairman Travis Hill and Federal Reserve Governor Michelle Bowman each expressed concerns about how the proposed guidance and other resolution-related proposals may lead to a preference for particular resolution strategies in the United States.[25] To the extent that the Agencies have an unstated preference for a particular resolution strategy in the United States, this would be inconsistent with their stated position and the benefits of allowing flexibility in resolution strategies described above. If the Agencies were to consider prescribing a particular resolution strategy, it would be an important topic for public input that should be effectuated through a formal rulemaking process and in consultation with foreign banking authorities, not through implicit policy judgments that push institutions to adopt one strategy over another.

In keeping with the ability of a Triennial Full Filer to choose an SPOE or MPOE strategy based on what is appropriate for its particular characteristics and situation, the Agencies should specify in the final guidance that they would not expect to issue any shortcoming or deficiency in connection with a filer's switch from one strategy to another (if the filer deems it appropriate to make this switch), with regard to a filer's next resolution plan in the cycle. In

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23 International Bank Guidance Proposal at 64643.

24 *See* FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, Key Attribute 11.3 at 16 (Oct. 15, 2014), https://www.fsb.org/wp-content/uploads/r_141015.pdf ("The [recovery and resolution plan] should be informed by resolvability assessments. . . and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.").

25 Travis Hill, Vice Chairman, FDIC, Statement by Vice Chairman Travis Hill on the Proposed Guidance for Title I Resolution Plans (Aug. 29, 2023), https://www.fdic.gov/news/speeches/2023/spaug2923i.html#:~:text=Given%20the%20agencies'%20highly%20ambitious,of%20a%20successful%2C%20orderly%20resolution ("In addition, while the proposals explicitly state that the agencies do not favor single point of entry (SPOE) over MPOE, most of the provisions are focused on SPOE firms. At the same time, we are also proposing a rule that would require long-term debt to be issued from the holding company at each of these firms. . . . [I]t would be natural to wonder if the agencies intend to push Category II and III firms to an SPOE strategy. . . . [W]hat the agencies should not do is spend more than a decade approving an MPOE strategy for each of these firms, put out guidance that expressly states the agencies do not have a preferred strategy, and then without warning find the plans not credible because of doubts about the MPOE strategy" (footnotes omitted)); Michelle Bowman, Statement by Governor Michelle W. Bowman on the Proposed Long-term Debt Requirements and Proposed Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers (Aug. 39, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm#:~:text=Resolution%20Plan%20Guidance&text=For%20example%2C%20the%20guidance%20contemplates,plan%20would%20satisfy%20this%20test%3F ("Although the guidance suggests that it is not intended to favor either the 'single point of entry' or 'multiple point of entry' resolution strategy, ongoing regulatory reform efforts could effectively eliminate this optionality. If the agencies expect firms to adopt a particular resolution strategy, it would be preferable to make that clear in the guidance.").

particular, the guidance for international banks with SPOE strategies is more expansive, and a filer will need a transition period to incorporate this significantly different guidance. Just as other filers have developed SPOE strategies over time as part of an iterative feedback process with the Agencies,[26] a new SPOE filer implementing the final guidance should be able to benefit from a similarly iterative process in order to take into account any feedback from the Agencies in subsequent filings.

## IV. The Addition of Certain Expectations into the Proposal That the Agencies Previously Eliminated or Previously Considered but Determined Not to Adopt Is Inappropriate and Not Supported in the Record of the Proposal.

### A. The Agencies recently considered and appropriately recognized the lower risk profile and unique structure of the U.S. operations of international banks when calibrating the application to international banks of resolution planning expectations applicable to the U.S. GSIBs.

The Agencies do not sufficiently justify why certain expectations that were removed from Triennial Full Filers subject to the Current International Bank Guidance[27] should be added back now, let alone why such expectations should be newly proposed to apply to an even broader set of international banks. The Current International Bank Guidance was finalized less than three years ago, and the in-scope international banks have filed only one resolution plan in that time. The Proposal does not sufficiently describe what has changed from a systemic risk perspective related to the U.S. operations of international banks in the past three years to warrant a reversal of the Agencies' recent policy determinations. The Agencies should meet a higher standard if they propose to significantly modify policies within such a short period of time.[28] The Proposal also does not sufficiently describe how re-applying such guidance would address

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26 *See*, *e.g.*, Federal Reserve and FDIC, *Final Guidance*, 84 Fed. Reg. 1438 at 1439 ("The guidance describes an iterative process aimed at strengthening the resolution planning capabilities of each financial institution").

27 Among other changes to what had been proposed, the Current International Bank Guidance subtracted expectations that had previously applied to the affected filers. We note that the Current International Bank Guidance removed the RCAP and RLAP expectations (*id.* at 83563); separability expectations (*id.* at 83567); and certain governance-related expectations (e.g., expectations regarding triggers / escalation protocols in respect of an IHC's financial condition and the required "analysis of the potential challenges to the planned foreign parent support to U.S. non-branch material entities") (*id.* at 83564). As we discuss in Section IV.B below, the International Bank Guidance Proposal would inappropriately reimpose these expectations without sufficient substantiation.

28 *See, e.g.*, *Watt v. Alaska*, 451 U.S. 259, 272-73 (1981) (finding that the Department of Interior's 1975 interpretation that 1964 statutory amendments required changes to a revenue distribution formula was not entitled to deference partly because, in 1964, the Department had determined the amendments did not require such a revision); *Udall v. Tallman*, 380 U.S. 1, 16 (1964) (noting that deference is particularly due "when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new'"); *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 142 (1976) (superseded on other grounds by statute) (finding that an EEOC guideline promulgated eight years after the passage of Title VII was not entitled to deference).

*See also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (when an agency is changing position, "the agency must show that there are good reasons for the new policy"; an agency must sometimes provide "a more detailed justification than what would suffice for a new policy created on a blank slate").

any particular concerns. Instead, the Agencies have, without specific justification, proposed to apply U.S. GSIB-style guidance to an even broader number of international banks' U.S. operations, which is inappropriate given their clearly lower risk.

While the International Bank Guidance Proposal states that it generally reflects the Agencies' experience with respect to UBS's acquisition of Credit Suisse, the relevance of this to the U.S. operations of international banks is not sufficiently explained, nor is it discussed with respect to particular changes to the guidance. In addition, we note that in this case there was a home-country solution. The FSB noted that, while the Swiss authorities took action outside of resolution that "supported financial stability and the global operations of Credit Suisse," they were "in a position to conduct [an SPOE] resolution, if desired."[29] The action that was undertaken did not require, and an SPOE resolution at the Swiss level would not have required, separate resolution of Credit Suisse's U.S. operations. If the Agencies are going to apply specific elements of the guidance just three years after deciding those elements were unnecessary and use Credit Suisse and the March 2023 banking stress as their justification, they must be more specific about how those elements would have improved the resolution of Credit Suisse. Vague references do not justify the Agencies' about-face.

We understand that the Agencies have considered applying guidance to all Triennial Full Filers since last year, and viewed some resolution plans of Triennial Full Filers as having "optimistic assumptions" and "significant inconsistencies in the amount and nature of information they provided."[30] These findings explain why the Agencies believed that Triennial Full Filers would benefit from additional guidance as a general matter. As noted above, we generally support the Agencies providing guidance to resolution plan filers, as our members have consistently welcomed forward-looking guidance in resolution planning. However, these findings do not explain the lack of tiering in the proposed guidance to account for the differences in risk profile and structure across banks. The proposed guidance is essentially the same for all Triennial Full Filers, and does not take into account the differences in risks posed by domestic versus international banks or the characteristics of international banks with IHCs versus international banks without IHCs. Most troublingly, the proposed guidance is substantially the same as that applicable to the U.S. GSIBs. This ignores the demonstrably lower risk profile of Triennial Full Filers as compared to the U.S. GSIBs and ignores statutory requirements to take that lower risk profile into account. The Agencies' discussion of "optimistic assumptions" and "inconsistencies" in recent resolution plans does not sufficiently justify this one-size-fits-all treatment.

B. <u>Expectations around RCAP, RLAP, separability and governance mechanisms should not be reimposed.</u>

In each case, the Agencies have not sufficiently described (or, in some cases, have provided no description at all with regard to) what has changed with respect to the U.S.

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29 FSB, *2023 Bank Failures: Preliminary lessons learnt for resolution* at 1-2 (Oct. 10, 2023) https://www.fsb.org/wp-content/uploads/P101023.pdf.

30 International Bank Guidance Proposal at 64642.

operations of international banks to warrant re-applying these expectations and applying them to an even broader set of institutions, only a few years after removing them.

1. *RCAP.*

The Proposal would apply the recently-removed RCAP requirements to firms with a U.S. SPOE strategy.[31] Consistent with the IIB's comments on the 2020 Proposed International Bank Guidance,[32] TLAC requirements already require the vast majority of IHCs proposed to be subject to the International Bank Guidance Proposal to hold significant local bail-in-able resources for the recapitalization of the international bank's U.S. operations. It does not make sense to impose another requirement related to local bail-in-able resources. When the Agencies adopted the Current International Bank Guidance, the Agencies acknowledged this fact, stating that RCAP was unnecessary because of the "business and risk profiles of the Specified FBOs' U.S. operations" and because "of the overlap between [RCAP, RLAP, and certain liquidity capabilities] and certain other regulatory provisions."[33] Specifically, the Agencies explained that "existing TLAC requirements applicable to the U.S. IHC provide a backstop of resources that is appropriate to the size and complexity of the Specified FBOs" without needing to impose RCAP allocation requirements.[34] This rationale remains true today and, in fact, if the LTD Proposal were finalized as proposed, LTD requirements would apply to an even broader set of institutions.

In addition, in the LTD Proposal, the Agencies cite RCAP as one of the reasons why IDI-level LTD requirements are not necessary for the IDI subsidiaries of U.S. GSIBs.[35] While we remain of the view that the risk characteristics of IHCs do not justify application of *any* prescriptive pre-positioning requirements with respect to subsidiaries of an IHC, the Agencies should, *at a minimum*, not apply both IDI-level LTD requirements and RCAP to the U.S. operations of international banks that use an SPOE U.S. resolution strategy.[36]

The Agencies provide no specific rationale in the Proposal for the reversal of their prior views on RCAP, instead only generally referring to "opportunities for improvements to . . . liquidity- and capital-related resolution capabilities necessary to . . . U.S. resolution strategies" and that capital and liquidity pre-positioning expectations "better support U.S. SPOE strategies."[37] The Agencies explicitly removed RCAP expectations from the Current International Bank Guidance even when the Agencies were fully aware of the resolution strategies and SPOE strategies of international banks. Each of the international banks subject to

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31 Proposal at 64650.

32 Federal Reserve and FDIC, *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*, 85 Fed. Reg. 15449 (proposed Mar. 18, 2020) (the "2020 Proposed International Bank Guidance").

33 Current International Bank Guidance at 83562.

34 Current International Bank Guidance at 83563.

35 LTD Proposal at 64526 n.2.

36 We also discuss the need for a holistic review of the interaction among the Capital and Resolution-Related Proposals in Section IX below.

37 International Bank Guidance Proposal at 64642.

the Current International Bank Guidance has an SPOE strategy for its U.S. operations, and had an SPOE strategy when the Agencies removed the RCAP expectations in 2020. This has not changed. Therefore, any "opportunities for improvements" in the resolution plans of institutions subject to such guidance should not have been due to the lack of RCAP, a requirement that the Agencies themselves removed. It would be unreasonable for the Agencies to tell institutions they did not need to include RCAP in their plans and then penalize the lack of RCAP.

The Agencies also ask about whether capital-related expectations should be applied to a firm that uses a U.S. MPOE resolution strategy.[38] Additional capital expectations are not warranted for MPOE firms—as the Agencies note, "a U.S. MPOE strategy assumes most material entities do not continue as going concerns upon entry into resolution,"[39] so capital expectations for various subsidiary entities would serve no purpose and would be beyond the jurisdiction of the Agencies.

2. *RLAP.*

The Proposal would apply the recently-removed RLAP requirements to firms with a U.S. SPOE strategy.[40] As the IIB commented with respect to the 2020 Proposed International Bank Guidance, RLAP requirements are generally duplicative of internal liquidity stress testing requirements. The liquidity requirements already set forth in applicable regulations, and not RLAP, should set the binding constraints for IHC and subsidiary liquidity, particularly for entities in size/risk categories below the GSIBs. In the Current International Bank Guidance, the Agencies stated that RLAP was unnecessary for the U.S. operations of international banks due to "the Specified FBOs' relatively simple U.S. legal entity structures and reduced risk profiles."[41] The Agencies provide no specific rationale in the Proposal for the reversal of their prior views on RLAP.[42]

As noted above with respect to RCAP, the Agencies explicitly removed RLAP expectations from the Current International Bank Guidance. Therefore, any "opportunities for improvements" in the resolution plans of institutions subject to such guidance should not have

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38 International Bank Guidance Proposal at 64644.

39 International Bank Guidance Proposal at 64644.

40 International Bank Guidance Proposal at 64650-64651.

41 Current International Bank Guidance at 83563.

42 The FDIC staff memo, but not the Proposal itself, states that "[s]taff has concluded that expectations concerning RLAP are appropriate for these FBOs because the ability to raise funding within or transfer resources to the United States when the firm is under stress may present challenges that are difficult or impossible to overcome." However, the Agencies do not indicate what has changed to support the (apparently new) view that the ability for an international bank to transfer resources to the United States may present challenges that are "difficult or impossible to overcome." In addition, the Agencies do not describe why current requirements under the TLAC Rule are not sufficient to address this concern.

Indeed, the data refutes the staff memo's assertions. U.S. operations of international banks have operated continuously in a net due to position (receiving funding from overseas) since mid-2011, with significant peaks of funding from overseas around March 2020 and early 2023 – very specific times of stress. *See Net Due to Related Foreign Offices, Foreign-Related Institutions*, Federal Reserve Economic Data, https://fred.stlouisfed.org/series/NDFFRIM027SBOG (last visited Nov. 15, 2023).

been due to the lack of RLAP, a requirement that the Agencies themselves removed. It would be unreasonable for the Agencies to tell institutions they did not need to include RLAP in their plans and then penalize the lack of RLAP. In addition, each of the international banks subject to the Current International Bank Guidance has an SPOE strategy for its U.S. operations and had an SPOE strategy when the Agencies removed the RLAP expectations in 2020. This has not changed.

3. *Separability.*

The Proposal would apply the recently-removed separability expectations to Triennial Full Filers.[43] In the Current International Bank Guidance, the Agencies stated that, with respect to the international banks subject to such guidance, "the separability options within the United States are few and that their inclusion in resolution plans has yielded limited new insights" and that the Agencies "expect that such information is obtainable through international collaboration with home country regulators."[44] The Agencies provide no specific rationale in the Proposal for the reversal of their prior views on the separability options for international banks beyond stating the evident, that "[s]eparability provides additional optionality to firms' U.S. SPOE strategies."[45] There is no explanation for why the Agencies believe that requiring separability analysis would now provide material new insights after only one additional filed resolution plan, or why their previously proposed approach of obtaining such insights through international collaboration with home country regulators was not successful. This runs counter to the general lesson, as discussed in Section I.A, from the March 2023 bank stress that more, rather than less, international cooperation and collaboration between international authorities is appropriate. In fact, as previously noted, in the International Bank Guidance Proposal itself, the Agencies state that one lesson from the Agencies' experience with Credit Suisse was "the importance of…coordination with home country authorities."[46]

4. *Governance.*

In the Current International Bank Guidance, the Agencies stated that "…recognizing that the preferred resolution outcome for the Specified FBOs is a successful home country resolution, the final guidance does not include expectations regarding triggers or escalation protocols based on the U.S. IHC's financial condition." The Current International Bank Guidance went on to remove expectations to analyze potential challenges to the provision of capital and liquidity prior to a bankruptcy filing, stating that "[t]his approach gives due consideration to the arguments put forth by commenters that the Specified FBOs should have flexibility to determine the particular form and structure of the framework developed to support its particular resolution strategy and needs, that the preferred resolution outcome for the Specified FBOs is a successful home country resolution, and that internal TLAC resources are available for conversion to support IHC recapitalization outside of bankruptcy."[47] The

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43 International Bank Guidance Proposal at 64656-57.

44 Current International Bank Guidance at 83567.

45 International Bank Guidance Proposal at 64643.

46 International Bank Guidance Proposal at 64642.

47 Current International Bank Guidance at 83563-64.

International Bank Guidance Proposal reverses these removals for Triennial Full Filers that use a U.S. SPOE strategy in a way that is not justified.[48] The preferred resolution outcome for the international banks proposed to be subject to the International Bank Guidance Proposal remains a successful home country resolution. Moreover, the internal TLAC resources at the many IHCs subject to the TLAC Rule are still available for conversion to support the IHC recapitalization outside of bankruptcy. Rather than referencing the vague general benefits of governance mechanisms, the Agencies must provide a specific rationale for the reversal of their prior views on triggers and escalation protocols related to the U.S. IHC's financial condition.[49]

In addition, the proposed governance mechanisms are quite prescriptive, and do not provide flexibility in relation to an international bank's specific situation. For example, as a business-as-usual ("BAU") matter, many SPOE institutions already manage the capital and liquidity of various IHC subsidiaries and employ monitoring and controls to determine the appropriate amount of locally allocated capital and liquidity well before stress occurs. In addition, TLAC resources of an IHC may also be allocated, on a BAU basis, to appropriate subsidiaries before stress occurs. In other words, support in these situations is not a cash reserve waiting to be deployed. Therefore, if such BAU monitoring and allocation mechanisms are present and working, then a number of the governance mechanisms (such as for triggering the "provision of financial support") would not be necessary. In addition, the section entitled "Support Within the United States" in the U.S. SPOE governance mechanisms section of the Proposal[50] requires an international bank to provide analyses under bankruptcy and other legal regimes with regard to, e.g., the IHC providing support to its subsidiaries triggered by governance mechanisms. However, these burdensome analyses would be unnecessary if, as a BAU matter, the IHC has already placed support at subsidiaries, because resolution would not involve waiting for financial support until the organization is in stress (and until those legal regimes may limit the ability to transfer resources). Therefore, in general, the governance mechanisms are too prescriptive and do not allow the flexibility to describe how an international bank actually may monitor and control capital and liquidity.

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48 Current International Bank Guidance at 64645.

49 *See, generally, FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (when an agency is changing position, "the agency must show that there are good reasons for the new policy"; "the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books"; an agency must sometimes provide "a more detailed justification than what would suffice for a new policy created on a blank slate," such as when an agency's "prior policy has engendered serious reliance interests that must be taken into account").

50 International Bank Guidance Proposal at 64652.

## V. The IIB Supports Removing Expectations Around Derivatives and Trading Activities for the U.S. Operations of International Banks.

### A. The U.S. operations of the international banks proposed to be subject to the International Bank Guidance Proposal have limited derivatives and trading activities as compared to the U.S. GSIBs and do not warrant specific derivatives and trading expectations.

The Agencies have requested comment on whether guidance on derivatives and trading activities should be provided for Triennial Full Filers that use a U.S. SPOE strategy.[51] The IIB supports removing expectations around derivatives and trading activities for these filers. As the Agencies note, "most of the specified firms have limited derivatives and trading operations compared to the U.S. GSIBs."[52] As of the second quarter of 2023, Triennial Full Filer IHCs' average total combined trading assets and liabilities were $21.3 billion.[53] By contrast, the average total combined trading assets and liabilities of U.S. GSIBs were $398 billion.[54] Triennial Full Filer IHCs' average derivatives exposure was $15.7 billion and the average derivatives exposure of the combined U.S. operations of international bank Triennial Full Filers was $29.3 billion.[55] By contrast, the average derivatives exposure of U.S. GSIBs was $180.3 billion.[56] Therefore, the Agencies should not apply derivatives and trading expectations for the Triennial Full Filers.

In addition, the Agencies note that, to the extent they were to adopt guidance on derivatives and trading activities, they would likely adopt aspects of the 2020 Proposed International Bank Guidance, rather than the Current International Bank Guidance as finalized.[57] Were the Agencies to apply derivatives and trading expectations in the final guidance, such expectations should be based on the Current International Bank Guidance and *not* on the 2020 Proposed International Bank Guidance. The adjustments made by the Agencies between the proposed and final Current International Bank Guidance (for example, to remove the application of the guidance to securities financing transactions) were important improvements that the Agencies should not reverse without explanation.

### B. If the Agencies were to include derivatives and trading expectations in the final guidance, notwithstanding our comments, such expectations should apply only to trades booked in the United States.

The IIB supports removing expectations around derivatives and trading activities for the U.S. operations of international banks. The Agencies nevertheless ask about how, and

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51 International Bank Guidance Proposal at 64647.

52 *Id.*

53 FR Y-9C data.

54 *Id.*

55 FR Y-15 data.

56 *Id.*

57 International Bank Guidance Proposal at 64647.

whether, expectations should apply to transactions that originate in the United States but are booked outside of the United States.[58] As the IIB commented with respect to the 2020 Proposed International Bank Guidance, any proposed derivatives and trading expectations should apply only to transactions booked in U.S. material entities and resolved under a U.S. insolvency or resolution regime,[59] as is the case in the Current International Bank Guidance.[60]

Any transactions booked to non-U.S. entities represent minimal risk to the U.S. entity and operations. For example, the resolution of a U.S. broker-dealer would not require that the international bank unwind transactions that the U.S. broker-dealer assisted in booking into a non-U.S. affiliate, even if such transactions originated in the United States, are with U.S. counterparties or involved the broker or sales services of a U.S. employee. Rather, they would instead be subject to the foreign jurisdiction's bankruptcy or resolution regime. The risk of this activity is generally borne by those non-U.S. entities. The limitations on U.S. regulatory jurisdiction in such contexts are also recognized in other regulatory requirements, such as the so-called "TOTUS" exemption under the Volcker Rule, which creates an exemption from the Volcker Rule's regulatory requirements when the principal risk of a transaction is booked outside of the United States, even if the trade is executed with U.S. counterparties and U.S. personnel arrange, negotiate or provide other services with respect to the transaction, so long as the decision making personnel are based outside of the United States.[61]

Strategies regarding the activities of non-U.S. affiliates and non-U.S. transactions are more appropriately addressed in home country resolution plans or by home-country supervisors. The Agencies themselves adopted this position in the Current International Bank Guidance, noting that they "expect to coordinate with home country authorities to collect information about derivatives booking activities that occur across jurisdictions in order to understand any related risks to the execution of the firm's U.S. resolution strategy."[62] This is yet another example where the Agencies should move towards more, rather than less, coordination with home country authorities. Furthermore, if the Agencies were to decide to apply guidance with regard to transactions booked in non-U.S. entities it would be incumbent upon the Agencies to describe why their planned coordination with home country authorities, as signaled in 2020, was not undertaken or was not effective.

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58 *See* International Bank Guidance Proposal at 64647.

59 *See generally* Letter from Briget Polichene, Chief Executive Officer, IIB, to the Agencies (June 4, 2020), https://cdn.ymaws.com/www.iib.org/resource/resmgr/2020_commentletters/20200604FINALIIBFBOResolutio.pdf (commenting on the 2020 Proposed International Bank Guidance).

60 *See* Current International Bank Guidance at 83567.

61 See 12 C.F.R. § 248.6(e).

62 Current International Bank Guidance at 83567.

## VI. The Agencies Should Make the Following Additional Changes to the International Bank Guidance Proposal.

A. The International Bank Guidance Proposal should not require that an international bank detail whether the U.S. resolution plan relies on different "assumptions, strategies and capabilities" than the global resolution strategy.

The IIB supports developing U.S. resolution strategies (and related requirements and guidance) that are complementary to a home country global resolution strategy for international banks, and in the past, we have suggested modifications to both the 165(d) resolution plan rule (the "165(d) Resolution Plan Rule")[63] and to applicable guidance in order to more effectively align U.S. resolution plans with well-developed and implementable home country strategies.

However, the International Bank Guidance Proposal should not require that an international bank detail whether and how the U.S. resolution plan relies on different "assumptions, strategies, and capabilities" than the global resolution strategy. For many international banks proposed to be subject to the International Bank Guidance Proposal, the global resolution strategy and plan is written, not by the bank, but by the home country authority. This presents several challenges to providing information about the assumptions, strategies, capabilities and scenarios relied upon in crafting the home country plan.

- First, if the framework under home country rules requires that the home country regulator, rather than the bank, develop and maintain the resolution plan, then the institution does not have sufficient visibility into the granular assumptions, strategies and capabilities that went into formulating the global resolution strategy. This is the case in the European Union and in the United Kingdom. Often some information is provided by home country regulators to banks in these jurisdictions; that information may be in relation to the regulator's view of certain impediments or vulnerabilities that may challenge the regulator's plan and, relatedly, the regulator's expectations for remediation or removal of these impediments. But the information does not rise to the level of a granular understanding of the assumptions and strategies to be used by the regulator in their resolution playbook.

- Second, in some countries, such as Japan, the resolution plan is not shared with the institution beyond very general terms (such as an understanding that the regulator considers an institution subject to an SPOE or MPOE strategy, and a textbook-like, high-level description of the meaning of SPOE or MPOE strategies). The resolution plan in these countries is maintained as a proprietary playbook for the regulator itself to put into action when necessary.

- Third, the home country regulator also may consider this information to be confidential supervisory information, which could make it more complex, if not impossible, for an international bank to share this information with the Agencies.

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63 Federal Reserve and FDIC, *Resolution Plans Required*, 84 Fed. Reg. 59194 (Nov. 1, 2019) (the "165(d) Resolution Plan Rule").

This is the case, for example, in the EU where approval to share the resolution planning information is required from the Single Resolution Board.

Therefore, international banks should not be required to provide any information beyond general information produced internally (that is not otherwise subject to confidential supervisory information bars) for their own consolidated scenario playbooks.

Even for institutions whose home country authority does not write the global resolution plan, there are still limits on the access these institutions have to the regulators' intentions and scenario planning which would create challenges to meeting the Agencies' proposed expectation. Additionally, if a home country regulator has developed various scenarios, and actual decisions and timing by the home country authority in a resolution affect which scenarios and assumptions actually play out, then it is difficult for an international bank's group-wide and U.S. resolution efforts to "be as complementary as practicable," as expected in the Proposal. Here, too, the home country regulator also may consider this information to be confidential supervisory information, which could make it more complex, if not impossible, for the international bank to share this information with the Agencies. We note also that the International Bank Guidance Proposal does not provide an explanation of the type of information or granularity of information that may satisfy this expectation. Therefore, even if an international bank could provide some information, the guidance is ambiguous as to what type of information may suffice.

International banks are simply not in a position to provide the background, home country black-box assumptions and scenario analysis expected to be provided under the Proposal. If the Agencies need detailed information about the assumptions and reasoning supporting global resolution plans, the Agencies should coordinate with home country authorities to receive that information. The Federal Reserve and the FDIC have participated for a number of years in international supervisory colleges, as well as international crisis management groups, with regard to the international banks that operate in the United States. These fora should serve to facilitate further understanding of international banks' U.S. resolution planning in comparison to their home country frameworks.[64] Indeed, the crisis management groups are specifically designed for international regulators to obtain information about large, international bank resolution from other regulators.[65] In the Current International Bank Guidance, the Agencies

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64 *See, e.g.,* Federal Reserve, *The Fed Explained: What the Central Bank Does* § 5 "Supervising and Regulating Financial Institutions and Activities," at 75 (11th ed. Aug. 2021), https://www.federalreserve.gov/aboutthefed/files/the-fed-explained.pdf#page=79 (noting that supervisory colleges are "formed to promote effective, ongoing consolidated supervision of the overall operations of an international banking group" and that "[t]he purpose of crisis management groups is to enhance preparedness for, and facilitate the management and resolution of, a financial crisis affecting a large global banking group."); U.S. Dep't of the Treasury, *Self-Assessment of Compliance with the Key Attributes of Effective Resolution Regimes for Financial Institutions* (2015), https://home.treasury.gov/system/files/206/2015-FSAP-KA-Self-Assessment-Response-FINAL.pdf; Systemic Resolution Advisory Committee, FDIC, *International Engagement* (Apr. 14, 2016), https://www.fdic.gov/about/advisory-committees/systemic-resolutions/pdfs/2016-04-16-presentation-international-engage.pdf.

65 We also note that the banking institutions are excluded from these crisis management groups, and therefore do not receive any additional insights about their home country regulator's views on resolution from these fora.

recognized their own ability to "supplement their understanding of the impact on U.S. operations of executing a firm's group resolution plan through international collaboration with home country regulators" and that, therefore, expectations with respect to the group resolution plan were "unnecessary" to supplement the information that is already required to be provided with respect to the group resolution plan under the 165(d) Resolution Plan Rule.[66] If the Agencies' views on the ability to collaborate with home country authorities have changed, they should state so explicitly and explain why.

B. The Agencies should clarify the concept of "material entity" as applied to foreign affiliates outside of the consolidated combined U.S. operations or IHC.

Given that the definition of "covered company" under the 165(d) Resolution Plan Rule is inclusive of the home country parent for international banks, it would improve the alignment of U.S. resolution planning with home country strategies to clarify the concept of "material entity" as applied to "foreign offices."

Notwithstanding that the 165(d) Resolution Plan Rule requires some additional information about non-U.S. material entities, it is clear that the resolution plan of an international bank filer need only provide the required informational content with respect to "subsidiaries, branches and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States."[67] Therefore, for example, when 12 C.F.R. § 243.5(c)(1)(ii) and (iii) state that international banks should indicate the "[r]ange of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company [and] *its material entities*" and the "[f]unding, liquidity and capital needs of, and resources available to, the covered company and *its material entities*," this is not meant to require that the international bank provide a plan for resolution or a full liquidity analysis of a non-U.S. affiliate that may be a material entity.

While the expectations in the International Bank Guidance Proposal are generally limited to U.S. material entities (other than a few expectations with respect to, for example, shared and outsourced services and financial statements and projections), paragraph 7 of the sub-section on "Material Entities" implies that significant additional information is required about non-U.S. material entities that are not consolidated with the combined U.S. operations or IHC of an international bank (as non-U.S. affiliates or offices of a domestic institution would be). This apparently includes describing a material entity's resolution and actions of foreign regulators during that entity's resolution.[68] Similar to our comment in Section VI.A above, the U.S. operations of international banks often do not have information about, or insights into, the actions that a resolution authority would take in a resolution of its non-consolidated, non-U.S. affiliate. In addition, as noted above, the information called for in paragraph 7 is explicitly not required by the 165(d) Resolution Plan Rule. Therefore, the "Material Entities" section and its

66 Current International Bank Guidance at 83566-67.

67 *See* 12 C.F.R. § 243.5(a)(2)(i) and 12 C.F.R. § 381.5(a)(2)(i).

68 International Bank Guidance Proposal at 64658 ("For each material entity . . . the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution.")

paragraph 7 should be revised to be consistent with the 165(d) Resolution Plan Rule, about which the Agencies have stated, "[the required informational content] of the final rule appropriately distinguishes between informational content requirements for domestic firms and foreign firms by focusing foreign firms' resolution plans on information related to their U.S. operations, consistent with the 2011 rule."[69]

## VII. 165(d) Resolution Plan Deadlines Should Be Extended.

### A. Institutions should have at least 12 months to implement any newly finalized guidance.

In the International Bank Guidance Proposal, the Agencies suggest that there might be a "short," unspecified extension of the 165(d) resolution plan filing dates for 2024, but do not commit to a specific, new deadline.[70] International banks require guidance on the timing of the next filing date as soon as possible, and not at the time of promulgation of a final rule. Planning and budgeting has already begun and, as discussed in the next paragraph, it is neither an efficient use of resources nor consistent with the concept of a notice-and-comment process for international banks to be required to plan as if the Proposal were promulgated unchanged. Therefore, we respectfully request a public announcement before the end of 2023 with regard to the extended timeframe for the next 165(d) resolution plan filing date.

Based on the Agencies' timetables related to prior rules or guidance, the Agencies should not require filers to submit resolution plans less than one year after the guidance is finalized.[71] One year is a reasonable amount of time to implement what are, in many instances, material new expectations that will require significant internal resources (e.g., governance playbooks, escalation triggers and possible support agreements, etc.). Commencing work on resolution plans now *assuming* that the proposed guidance is finalized exactly as proposed would be an inefficient use of resources and any contrary expectations would be inconsistent with the required process for adopting regulations. Even if institutions were to commence work under the assumption that the International Bank Guidance Proposal would be finalized as proposed, it is already less than one year until the next resolution plan deadline. Currently, the next resolution plans for Triennial Full Filers are due July 1, 2024, in approximately seven months.

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69 165(d) Resolution Plan Rule at 59205.

70 International Bank Guidance Proposal at 64644 ("In light of the timing of this proposal, the agencies are considering providing a short extension of the next resolution plan submission date for the specified firms, with the expectation that these plan submissions would be due sooner than one year after the proposed guidance is published in final form.").

71 165(d) Resolution Plan Rule at 59204 (Nov. 1, 2019) ("The agencies will strive to provide final general guidance at least a year before the next resolution plan submission date of firms to which the general guidance is directed."). As Vice Chairman Hill states, "the proposals note that the next round of plans is expected to be due sooner than one year after the guidance is finalized. In the 2019 resolution planning rule, the agencies indicated that any future guidance would be finalized more than a year before plans were due. It is continually embarrassing that the agencies demand that banks complete their work in a timely manner yet are repeatedly unable to do so themselves." Travis Hill, Vice Chairman, FDIC, Statement on the Proposed Guidance for Title I Resolution Plans (Aug. 29, 2023), https://www.fdic.gov/news/speeches/2023/spaug2923i.html.

Appropriately, and as required under the 165(d) Resolution Plan Rule,[72] resolution plans undergo a significant amount of internal review and governance processes prior to filing; in practice, this shortens considerably the timeframe for a bank to complete a resolution plan as it must be complete before undergoing these internal approval processes. The currently proposed accelerated timeline would jeopardize the ability of international banks to properly deliver not only on the International Bank Guidance Proposal's material new expectations but also on their current scope of work under the current resolution planning expectations.

In addition, providing less than one year for implementation of material new guidance is inconsistent with prior Agency practice. For example, the Current International Bank Guidance includes a transition period for any international bank that becomes subject to such guidance, stating that it would apply to the institution's next resolution plan submission with a submission date that is at least 12 months after the time that the institution becomes subject to the guidance.[73] In addition to the unwarranted acceleration of the next resolution plan, this transition period for future filers appears to have been removed from the Proposed International Bank Guidance without any comment or explanation.[74] With respect to the international banks that originally became subject to enhanced guidance for their 2018 U.S. 165(d) resolution plans, such guidance was finalized in March 2017, and institutions had until July 2018 – almost 15 months – to implement the guidance in their resolution plans, including as a result of a one-year extension that the Agencies provided.[75] Therefore, international banks should have, at minimum, 12 months to implement any newly finalized guidance.

B. If any institution becomes a "Triennial Full Filer" and becomes newly subject to the enhanced expectations under the International Bank Guidance Proposal by virtue of changes proposed under new regulations (including the Capital Proposal or the GSIB Surcharge Proposal), the institution should be given the longer of (i) the next resolution plan deadline or (ii) two years to implement the newly applicable requirements.

We note that under the GSIB Surcharge Proposal, the Federal Reserve projected that some international banks would move into a higher tiering category. To the extent that changes stemming from that proposal or any other regulatory changes cause any international banks to newly come into scope for filing a full resolution plan, then such institutions should be given an appropriate transition period for both their first filing of a full resolution plan and for

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[72] The 165(d) Resolution Plan Rule requires that the board of directors (or delegee in the case of an international bank) approve each resolution plan. 12 C.F.R. §§ 243.4(f), 381.4(f).

[73] Current International Bank Guidance at 83571.

[74] *See* International Bank Guidance Proposal.

[75] Federal Reserve and FDIC, Guidance for 2018 §165(d) Annual Resolution Plan Submissions by Foreign-based Covered Companies that Submitted Resolution Plan in July 2015 (Mar. 24, 2017), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf. *See also* Federal Reserve and FDIC, Agencies complete resolution plan evaluation of 16 domestic firms; provide resolution plan guidance to four foreign banking organizations (Mar. 24, 2017), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20170324a.htm ("Consistent with the time provided to the largest domestic filers in April 2016, the agencies are also providing a one-year extension to these foreign firms; their next resolution plans are now due on July 1, 2018.").

applying the expectations under the International Bank Guidance Proposal. The move from a reduced resolution plan filing to a full plan filing is an extremely significant lift for any organization, and the International Bank Guidance Proposal only adds to that burden. For example, the 165(d) Resolution Plan Rule estimated the total hours per filing for a reduced resolution plan to be *20 hours* as compared to an estimated *13,135 hours* with respect to international bank filers that were subject to the Current International Bank Guidance at the time.[76] Based on actual industry experience, these estimates dramatically understate the work required, but the contrast in the Agencies' own estimates is meaningful and illuminating.

Under the 165(d) Resolution Plan Rule, an international bank that is a Triennial Reduced Filer and triggers thresholds to be a Triennial Full Filer would have to comply within a timeframe that depends on the next due dates for the resolution plans of both sets of filers. In no event would this due date be less than 12 months (if a plan were due within 12 months, the filer could continue to file a reduced resolution plan on that date). After 12 months, the new Triennial Full Filer would be required to submit a full plan on the next filing date (even if other Triennial Full Filers were submitting targeted plans). However, unlike for a category transition based on incremental growth or a planned acquisition, any international bank that is recategorized based on a change to existing regulations would not have been able to begin preparing for the attendant increased regulatory requirements. Therefore, it would be more appropriate, and commensurate with the substantial amount of work necessary to develop a full resolution plan, for any institution that becomes a Triennial Full Filer due to changes to regulations that cause a re-tiering to have at least two years to prepare a full resolution plan.

## VIII. The Agencies Should Consider the Interplay Between Resolution Plan Requirements, Expectations and Deadlines Under the International Bank Guidance Proposal, the 165(d) Resolution Plan Rule and the IDI Plan Proposal.

Under the International Bank Guidance Proposal, the Agencies include detailed expectations with respect to the resolution of an IDI under the Federal Deposit Insurance Act for an institution with an MPOE resolution strategy. It is unclear why the International Bank Guidance Proposal seeks to add to and make more burdensome expectations that are better discussed in the context of the FDIC's IDI Plan Proposal, such as demonstrating that a resolution is consistent with a least-cost scenario,[77] thus requiring filers to have substantial knowledge of how the FDIC would conduct such an analysis (including how the FDIC would pay out deposits, account for losses to the Deposit Insurance Fund and analyze liquidity needs of an IDI or bridge bank in resolution).[78] The requirements related to the least-cost analysis in the International

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76 165(d) Resolution Plan Rule at 59215.

77 *See* International Bank Guidance Proposal at 64657.

*Compare* International Bank Guidance Proposal at 64657 (". . . by presenting an analysis comparing the cost of the proposed strategy to the cost of payout liquidation and demonstrating: [t]he incremental estimated cost to the DIF . . .; [and] [t]he loss to the DIF under the proposed strategy") *with* IDI Plan Proposal at 64595 ("There would be no requirement to compare that valuation estimate to liquidation or other possible resolution strategies.").

78 As Governor Bowman stated, "Is there sufficient information available to financial institutions to effectively evaluate whether a proposed resolution plan would satisfy this test? If the agencies expect firms to demonstrate compliance with opaque concepts like the least-cost test, more information about the test and

Bank Guidance Proposal are more detailed, and require significantly more comparative analysis, than those in the FDIC's IDI Plan Proposal. Indeed, the IDI Plan Proposal specifically indicates that an analysis of the type included in the International Bank Guidance Proposal is not helpful to the FDIC and that the FDIC, not the IDI, is to produce the least-cost analysis with certain valuation information from the IDI about its own assets.[79]

This is an illogical outcome, and to prevent such inconsistencies and differing burdens between the two proposals the International Bank Guidance Proposal should be brought into line with the IDI Plan Proposal. While we recognize that the 165(d) Resolution Plan Rule does not allow incorporation by reference of information included in an IDI resolution plan submitted to the FDIC, the Agencies should seek to align and make consistent any such IDI-specific enhanced expectations with the newly proposed IDI Plan Proposal, so that an institution with an MPOE resolution strategy can leverage its IDI resolution plan with respect to the 165(d) resolution strategy for any material IDI entity to reduce duplication and increase consistency.

More generally, we continue to urge the Agencies, as we have in the past, to align with the IDI Plan Proposal the content requirements and core concepts under the 165(d) Plan Rule and International Bank Guidance Proposal that apply to IDIs. This would provide the Agencies with consistent data and analyses for both the IDI's and the international bank's operations, as well as reduce the compliance burden on filers.

Finally, the Agencies should consider the combined compliance burden of the 165(d) plan and IDI plan on filers that are required to submit plans under both rules, particularly those that are proposed to be newly subject to the International Bank Guidance Proposal. Under the combined IDI Plan Proposal, and the 165(d) Resolution Plan Rule as to be supplemented by the International Bank Guidance Proposal, the Agencies have laid out an extremely ambitious schedule of resolution plan filings, interim supplements, staff engagement and capabilities testing that is likely to strain the resources of both filers and the Agencies themselves.[80] While we recognize the desire to enhance certain resolution planning capabilities in response to the

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how the FDIC applies this test should be available to firms subject to the guidance." Michelle W. Bowman, Governor, Federal Reserve, Statement on the Proposed Long-term Debt Requirements and Proposed Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers (Aug. 29, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm.

[79] *See* IDI Plan Proposal at 64595 ("The FDIC . . . concluded that the current rule's requirement resulted in submissions that provided limited utility to the FDIC relative to the burden of producing the relevant information and analysis. . . . Thus, rather than requiring CIDIs to demonstrate, on an *ex ante* basis, that the least-cost test can be met under a hypothetical scenario for an identified strategy, the FDIC proposes to require each group A CIDI to provide analysis that can serve as building blocks for conducting valuations that will result in a usable valuation roadmap that the FDIC may apply in an actual failure scenario. . . . The proposed rule would ensure that the burden of performing the least-cost analysis remains with the FDIC.")

[80] As FDIC Vice Chairman Hill stated, "In addition to intensifying plan submissions, the proposal would also shorten the plan cycle from three years to two, with additional submissions every year a plan is not due. Historically, the FDIC has repeatedly struggled to provide firms meaningful, timely feedback on IDI resolution plans. Moving the submission cycle from three years to two virtually guarantees the FDIC will not be able to engage with, and provide meaningful feedback to, every firm each cycle, and also means the FDIC staff will devote more time to reviewing plans, and less time to firm engagement." Travis Hill, Vice Chairman, FDIC, Statement on the Proposed Amendments to the IDI Resolution Planning Rule (Aug. 29, 2023), https://www.fdic.gov/news/speeches/2023/spaug2923k.html.

March 2023 banking stress, the Agencies should prioritize improving the most important aspects of resolution readiness in a thoughtful and considered way, rather than attempting to do everything at once without sufficient holistic review of how all of the resolution-related standards and timelines, and the Capital and Resolution-Related Proposals in particular, interact with each other.

## IX. The International Bank Guidance Proposal Shares Issues Common to the Capital and Resolution-Related Proposals, Namely Insufficient Tiering and Lack of Supporting Rationale.

Many of the fundamental problems common to the other Capital and Resolution-Related Proposals are also present in the International Bank Guidance Proposal. In particular, the International Bank Guidance Proposal represents a large step away from regulatory requirements that are appropriately tiered to the risk profile of an institution and does not provide appropriate justification for this change.

### A. The Agencies are required by statute to tier the application of prudential standards, and the elimination of tiering under the International Bank Guidance Proposal is inconsistent with this legal requirement.

As with the other Capital and Resolution-Related Proposals, the International Bank Guidance Proposal does not sufficiently differentiate between different categories of banking organizations, as required under both the Dodd-Frank Act and the Economic Growth, Regulatory Relief and Consumer Protection Act ("EGRRCPA").[81] As discussed above in Section II, the Proposal would apply the same requirements to international banks in Categories II and III with or without IHCs, despite significant differences in the risk profiles and structures of such institutions. Furthermore, the Proposal would subject Category II and III international banks to requirements that are not sufficiently differentiated from those applicable to domestic banking organizations in Categories II and III and U.S. GSIBs in Category I.

EGRRCPA requires the Federal Reserve to "differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate."[82] In addition to ignoring the lower risks posed by international banks as members of larger, supportive global banking organizations, the International Bank Guidance Proposal subjects Category II and III institutions to requirements that are not sufficiently differentiated from those applicable to U.S. GSIBs. The International Bank Guidance Proposal also ignores the reality that, unlike U.S. GSIBs and domestic banking organizations that are Triennial Full Filers, international banks that are Triennial Full Filers are already subject to robust home-country resolution-related requirements and enhanced prudential standards applied on a global consolidated basis. These

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[81] *See* Dodd Frank Act § 115(a)(1)(B) (recommendations of the FSOC regarding enhanced prudential standards are to "increase in stringency" based a number of factors described in §§ 113 and 115(b)(3)); § 165(a)(1)(B) (the Federal Reserve "shall . . . establish prudential standards . . . that . . . increase in stringency based on" a number of factors described in § 165(b)(3)); § 165(a)(2)(A) (as modified by EGRRCPA § 401(a)(1)(B)(i)).

[82] Dodd Frank Act § 165(a)(2)(A) (as modified by EGRRCPA § 401(a)(1)(B)(i)).

filers have developed SPOE and MPOE home-country resolution plans, including with respect to their U.S. operations, guided by international and home- and host-country standards to facilitate effective resolution of the banking organization as a whole. Moreover, Triennial Full Filers benefit from the existence of their parent organizations as a source of strength, and a parent bank's capacity to provide support in stress has only been increased by the prudential standards and resolution-related requirements implemented internationally over the last decade.[83] Guidance that does not take these factors into account ignores key realities that differentiate Triennial Full Filers from other organizations and is therefore inconsistent with statutory requirements.

There are also enormous quantitative differences between the Triennial Full Filers and U.S. GSIBs that are subject to the Federal Reserve's and the FDIC's jurisdiction and within the purview of the Proposal, as described further in Section I.B above. Consequently, the Proposal does not "differentiate among companies" in accordance with their various risk-based characteristics[84] (or reflect a risk-based approach to the development of prudential standards).[85] Also, as we discuss further below, the Proposal does not take into account the overlapping effects of the other Capital and Resolution-Related Proposals; this lack of holistic analysis makes it inherently difficult, if not impossible, to "differentiate among companies" in the way that EGRRCPA requires.

Our proposed changes throughout this letter, such as only applying the International Bank Guidance to Category II and III international banks with an IHC, and eliminating RCAP and RLAP requirements, would be important steps in revising this Proposal to be appropriately tiered to the risks of international banks.

B. <u>Similar to the other Capital and Resolution-Related Proposals, the Agencies have not provided sufficient analysis to support the International Bank Guidance Proposal's proposed requirements.</u>

As noted throughout this letter, the Agencies do not sufficiently justify the Proposal's imposition of increased expectations. This lack of sufficient analysis underpinning the reversal of recent policy decisions undermines the ability of the industry to effectively comment on the International Bank Guidance Proposal.

Challenges facing commenters are exacerbated by the multiple, interrelated Capital and Resolution-Related Proposals that are outstanding, which severely limit the ability of the Agencies to provide meaningful impact assessment and of the industry to effectively comment, on the International Bank Guidance Proposal. For example, the International Bank Guidance Proposal contemplates new capital-related expectations and would subject institutions following an SPOE strategy to recapitalize a bank subsidiary to a level that "meet(s) or exceed(s)

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83 *See* 12 U.S.C. § 5365(b)(2) (when applying prudential standards to any "foreign-based bank holding company," the Federal Reserve "shall . . . take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States").

84 *See* Dodd-Frank Act § 165(a)(2)(A) (as modified by EGRRCPA § 401(a)(1)(B)(i)).

85 *See* Dodd-Frank Act § 165(a)(1)(B).

all applicable regulatory capital requirements for 'well-capitalized' status."[86] In addition, the Proposal also states that "[t]he positioning of capital resources within the firm should be consistent with any applicable rules requiring prepositioned resources in IDIs in the form of long-term debt."[87] Assessing the feasibility and cost of these aspects of the Proposal therefore requires an understanding of both the applicable capital requirements and the long-term debt requirements that may apply. However, the Agencies provide little analysis about how the proposed changes under the LTD Proposal would affect the International Bank Guidance Proposal, primarily acknowledging that the two proposals could "interact" and requesting comment on whether the guidance will "align" with the LTD Proposal.[88] Moreover, the Agencies' proposed changes to the Capital Proposal and LTD Proposal are not supported by sufficient data and impact assessment. The Capital Proposal is also subject to an ongoing data collection, the submission deadline for which is the same as that for *comments* on the Capital Proposal.[89] The reality of multiple outstanding interrelated proposals – some of which are still being informed by an ongoing data collection that will not be resolved prior to the end of any comment period, and some of which received extended comment deadlines[90] – greatly complicates commenters' ability to understand the interaction between the Capital and Resolution-Related Proposals and to provide meaningful comments.

The Agencies should conduct a robust analysis that considers the full picture of all of these interrelated proposals. A true "holistic" review[91] requires the Agencies both to understand and explain the ultimate goals and effects of all of the proposals together, *before* the interrelated proposals are released for comment. While we believe that the modifications we have proposed in Sections I through VIII would be helpful in addressing some of the issues we have raised, commenters need access to a clear analysis of the interactions of all of these proposals from the outset (and, at minimum, more time to consider the complex interactions of

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86 International Bank Guidance Proposal at 64650.

87 International Bank Guidance Proposal at 64644.

88 *See* International Bank Guidance Proposal at 64643 ("The agencies expect that a final long-term debt rule could interact with how the specified firms plan for resolution under the Rule, and the agencies anticipate ensuring that the final resolution plan guidance for foreign triennial full filers is consistent with any final long-term debt rule. Accordingly, the agencies welcome comments that take the proposed long-term debt rulemaking into consideration"); *id.* at 64644 ("Do the capital-related resolution expectations in the proposed guidance align with the provisions of the [LTD Proposal]?").

89 *See* Federal Reserve, Federal Reserve Board launches data collection to gather more information from the banks affected by the large bank capital proposal it announced earlier this year (Oct. 20, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231020b.htm.

90 *See* Federal Reserve, FDIC and OCC, *Agencies extend comment period on proposed rule to require large banks to maintain long-term debt* (Nov. 22, 2023); Federal Reserve, FDIC and OCC, *Agencies extend comment period on proposed rules to strengthen large bank capital requirements* (Oct. 20, 2023).

91 *See* Michael S. Barr, Vice Chair for Supervision, Federal Reserve, *Why Bank Capital Matters* (Dec. 1, 2022) ("By 'holistic,' I mean not looking only at each of the individual parts of capital standards, but also at how those parts may interact with each other—as well as other regulatory requirements—and what their cumulative effect is on safety and soundness and risks to the financial system. This is not an easy task, because finance is a complex system. And to make the task even harder, we are looking not only at how capital standards are working today, but also how they may work in the future, when conditions are different."), https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm

the various proposals). This lack of holistic review is a fundamental flaw in the International Bank Guidance Proposal.

## X. Conclusion

Only Category II and III international banks with IHCs should be subject to the International Bank Guidance Proposal. In addition, the Agencies should not apply resolution planning requirements they previously determined were unnecessary, and should not require that an international bank detail whether the U.S. resolution plan relies on different "assumptions, strategies and capabilities" than the global resolution strategy. The Agencies also should clarify the concept of "material entity" as applied to foreign affiliates outside of the consolidated combined U.S. operations or IHC. Further, the Agencies should extend the deadlines for 165(d) Resolution Plans and remain cognizant of the practical burdens of these new requirements on filers. We welcome the Agencies' provision of guidance for both SPOE and MPOE resolution strategies, and support removing expectations around derivatives and trading activities for the U.S. operations of international banks. Ultimately, the Proposal's finalization should be contingent on a holistic review of the Capital and Resolution-Related Proposals.

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We appreciate your consideration of our comments on the Proposal. If we can answer any questions or provide any further information, please contact me (646-213-1149, swebster@iib.org) or Beth Zorc, Chief Executive Officer, (646-213-1147, bzorc@iib.org).

Very truly yours,

Stephanie Webster

Stephanie Webster

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