January 23, 2022

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

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF86
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Advance Notice of Proposed Rulemaking and Request for Comment Regarding Resolution-Related Resource Requirements for Large Banking Organizations (Docket No. R-1786; 87 Fed. Reg. 64,170)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to provide comments on the above-captioned advance notice of proposed rulemaking ("Release")[2] from the Board of Governors of the Federal Reserve ("Federal Reserve") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "the Agencies") regarding resolution related resource requirements for large banking organizations and their bank holding companies ("BHCs"). As noted in the Release, the suggested requirements put forth by the Agencies would be applicable to very large banking organizations ("LBOs") that are not classified as global systemically important banks ("GSIBs"). The potential failure of such banking organizations presents substantial risks to the U.S. financial system, which is why they were initially made subject to the resolution planning process by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA"). Although a formal classification has not been made by the Fed, banking organizations with assets of $250-700 billion (so called "category

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] Advance Notice of Proposed Rulemaking and Request for Comment Regarding Resolution-Related Resource Requirements for Large Banking Organizations 87 Fed. Reg. 64,170 (October 24, 2022).

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II and III banks"), should be thought of as domestic systemically important banks "(DSIBs"), due to the harm their distress could cause to the U.S. financial system, economy, and the American people.

A key objective of the DFA, which was to end too-big-to-fail ("TBTF") and eliminate the potential need for future taxpayer-funded bailouts, has not been achieved, as noted in various Better Markets reports.[3] Specific to the resolution process, the orderly resolution of a giant bank is untested and likely could not or would not be implemented -- either through bankruptcy or by the resolution authority -- in a way that achieves the intended DFA goals of eliminating contagion and the disruption of the financial system. It is unlikely to be attempted at all given the uncertain outcome and potential for disaster, which would be particularly high when it would be most likely to be needed, during a period of broader stress when more than one large bank may be at risk of collapse. **For this reason, the Agencies' primary focus should be on strengthening the financial resilience of these giant banks before they fail so they don't fail. For example, by implementing higher capital requirements, including through strengthening the Federal Reserve's stress testing program.**

The clear challenges facing any attempt at a non-disruptive resolution of a large bank notwithstanding, Better Markets supports putting in place requirements for LBOs that could make their non-disruptive resolution less problematic and reduce the market contagion, widespread financial instability and losses to the FDIC's deposit insurance fund ("DIF") that likely would result from their failure. However, Better Markets has never supported requirements for minimum amounts of so-called total loss-absorbing capacity in the form of long-term debt ("TLAC Debt") to achieve those goals, either for GSIBs[4] or as put forth in the Release for LBOs. TLAC Debt requirements are problematic for multiple reasons, including:

(1) They implicitly acknowledge that minimum capital requirements are not high enough to adequately protect against the potential consequences of severe stress on a banking organization's solvency. But rather than addressing this directly, which would be more expensive for banks and also far more effective at crisis prevention, they accept that

[3] *See* Better Markets (January 2016), "Ending Too-Big-to-Fail by Breathing Life into 'Living Wills'," https://bettermarkets.org/wp-content/uploads/2021/07/Breathing-Life-Into-Living-Wills_0.pdf; also see Better Markets press release in response to the November 2022 publication of supervisory feedback letters related to the most recent resolution plans of the Global Systemically Important Banks (November 22, 2022), https://bettermarkets.org/newsroom/banking-regulators-pre-thanksgiving-announcement-passing-living-wills-for-the-largest-banks-shows-some-progress-but-falls-well-short-of-addressing-too-big-to-fail/; and Better Markets (September 16, 2019), "The Too Big to Fail Problem Is Alive, Well and Getting Worse," presentation to a Financial Stability Board, https://www.bettermarkets.org/sites/default/files/documents/Better_Markets_Too-Big-To-Fail_FSB_Conference-9-16-2019.pdf.

[4] *See* Better Markets comment letter to the Federal Deposit Insurance Corporation, Board of Governors of the Federal System, and Office of the Comptroller of the Currency in response to the agencies request for comment on requirements for advanced approaches banking organizations to satisfy TLAC Debt rules (June7, 2019), https://www.bettermarkets.org/sites/default/files/Better%20Markets%20CL%20Fed%20Etc%20TLAC%20Debt%206-7-2019.pdf

this is the case and, rather than simply increasing capital requirements, place unearned faith in the possibility of a smooth resolution of a failing large banking organization.

(2) Contagion can result both from uncertainty about, and actual losses on, TLAC Debt issued by a failing bank or multiple banks, the latter of which is more likely in a severely stressed situation when a large bank can be most expected to face failure, especially if the TLAC Debt is held by large and interconnected financial institutions.

(3) TLAC holders that are not large, interconnected financial institutions may be individual retail investors (directly or indirectly through brokerage accounts, mutual funds, and pension funds). Rather than having their debt investments converted to potentially worthless equity as a bank fails, there would be intense political pressure to not saddle these investors with losses, increasing the chance the failing bank would be bailed out.

(4) Banks that had not already issued long-term debt ("LTD") in the quantity required by rule may have to issue additional LTD that they otherwise would not have, increasing outflows of debt-service payments to their debt holders, which could negatively impact their liquidity positions.

(5) While a greater reliance on LTD rather than short-term wholesale funding would provide liquidity benefits, all things equal simply issuing greater amounts of debt, if not accompanied by a commensurate increase in capital, by definition would make these banks more leveraged, increasing the likelihood of potential failure.

Given the continuing and tremendous uncertainty about the possibility of a successful non-disruptive resolution, the Agencies should ensure that for large banking organizations both the consolidated enterprise and its material subsidiaries are capitalized and have sufficient funding to withstand severe stress and continue to operate. Losses that TLAC Debt theoretically is supposed to absorb after failure of the holding company would be better absorbed through higher equity capital requirements, which would also create much greater confidence about these banks' resilience in times of stress.

In a bank failure scenario, the use of higher regulatory capital requirements upfront would help ensure losses are absorbed by shareholders without the significant complications and uncertainty that come from resolving a large bank and the associated conversion of TLAC Debt. Capital requirements for both GSIBs and LBOs should be adjusted upwards to better account for the potential losses that are intended to be covered by TLAC Debt, which would dramatically lower the likelihood they will need to be resolved in the first place.

If the primary goal of the proposed policies described in the Release is that large banks' material subsidiaries have sufficient capital and funding to sustain themselves, continue to function, and maintain the confidence of counterparties and funding markets in a stressed environment in which the parent holding company has failed, material subsidiaries should be required by rule to maintain sufficient capital and liquidity *ex ante.*

Currently, the resolution preparedness process for GSIBs is based largely on supervisory guidance regarding the amount of capital and liquidity needed and in place at, or earmarked for, material subsidiaries to support resolution. Supervisory guidance only defines expectations; it does not create enforceable requirements. Moreover, in 2021 the Agencies finalized a rule[5] that undermines the role of guidance in the supervisory process, weakening its often-times already limited effectiveness at driving desired outcomes. Given the critical importance of reducing the likelihood of a disruptive and disorderly resolution of these giant banks, important resolution-related expectations should be transformed into enforceable requirements written in resolution-related rules that apply to both GSIBs and LBOs, including specific requirements for the minimum levels of capital and liquidity needed to facilitate an orderly resolution of material subsidiaries.

Beyond the issue of the weaknesses of TLAC Debt requirements versus appropriately strong capital requirements, Better Markets supports the strengthening and application of other requirements currently in place for GSIBs[6] to LBOs to improve recovery and resolution preparedness and planning. Specifically, both GSIBs and LBOs should be required to:

(1) Submit full resolution plans every two years instead of the current requirement for a full plan only every six years for some LBOs;

(2) Follow "clean-holding company" requirements;

(3) Adopt resolution-related stay provisions in qualified financial contracts; and

(4) Prepare for the separability of material subsidiaries in the event of severe distress.

Finally, there simply has to be more public transparency into the resolution planning process.[7] Without transparency, shareholders and markets are left in the dark. Not only does this prevent market discipline, but it also likely results in mispricing assets, activities and risk.

Therefore, more information should be publicly disclosed about the purposes, methods, and criteria that underlie the assessment process and about some of the information contained in the resolution plans. Also, until such time as specific regulatory requirements can be defined and implemented publicly through rules, financial institutions should be required to disclose their own estimates of the amount of financing that would be needed to effectuate a reorganization under the U.S. Bankruptcy Code[8] and, broadly defined, the expected sources of that funding under various scenarios. Greater public disclosure of resolution planning information would not only strengthen market discipline but also improve the credibility of the process, by enabling the public to better assess the feasibility of these banks' resolution plans. Additionally, the Agencies

[5] 86 Fed. Reg. 12,079 (FDIC); 86 Fed. Reg. 18,173 (Federal Reserve)
[6] *See* 84 Fed. Reg. 59,194; *also see* 84 Fed. Reg. 1,438
[7] *See* Better Markets (January 2016), "Ending Too-Big-to-Fail by Breathing Life into 'Living Wills'," https://bettermarkets.org/wp-content/uploads/2021/07/Breathing-Life-Into-Living-Wills_0.pdf.
[8] 11 U.S.C.

should consider using the input of outside experts in the process for assessing required resolution plan submissions. This could include seeking the input of independent advisory committees consisting of bankruptcy scholars, lawyers, and judges.

BACKGROUND

As the global financial crisis ("2008 Crash") unfolded, policymakers were repeatedly faced with the same unacceptable dilemma: either allow large, systemically important firms to fail, potentially imperiling the entire financial system and economy, or bail those firms out, forcing taxpayers to pay the bill for the reckless risk-taking of these companies. With the notable exception of Lehman Brothers, policymakers generally chose the bailout option, spending or pledging vast amounts in taxpayer funds to support giant financial companies and save them from failure. And in the case of Lehman, its collapse led to massive disruptions and contagion.

In aftermath of the 2008 Crash, Congress passed the DFA, outlining reforms that were designed to address the TBTF issue, generally speaking, in two ways: first, through stronger capital and liquidity requirements to lower the probability of default and, second, to make these banks better prepared in the event of substantial deterioration and a need to resolve them through bankruptcy or an otherwise forced resolution. Readily available, loss absorbing capital stands between a bank and its failure during times of stress or crisis. Additionally, insufficient liquidity can promote an acceleration towards failure. In the event capital and liquidity turn out to be insufficient and a bank faces failure, large banks' resolution plans (often called "living wills") are intended to provide a detailed framework that enables an orderly resolution of a large bank and minimizes the likely contagion to other financial institutions and the impacts to broader financial system stability and the economy. That is, in the event capital and/or liquidity at a bank turn out to be insufficient, the resolution planning process – if designed and implemented effectively – can possibly contribute to facilitating the winding-down of a firm in a more orderly fashion than would otherwise be the case, which may reduce contagion effects across the financial system.

It is critical for the Agencies to acknowledge that success of the preferred resolution strategy for giant banks -- the single point of entry strategy ("SPOE") -- relies upon various optimistic assumptions about the reactions of the failing bank's creditors and counterparties. Will the bank's own current resolution plans work to facilitate a smooth resolution in bankruptcy? Will the resolution decision-making authorities be willing and able to pull the plug on one or more of these banks during a crisis, and then effectuate a smooth resolution using a single point of entry strategy? A smooth resolution in bankruptcy is very unlikely, and uncertainty about the outcome of execution of the government's Orderly Liquidation Authority is so great as to make the prospect of forcing a failing bank into resolution likely to be deemed too risky in the event. Further progress in requiring banks be better prepared for resolution is critical; currently a taxpayer-underwritten government bailout remains the most likely outcome if a giant bank gets in trouble.

Resolution planning standards have changed and been relaxed over time, and currently are significantly more rigorous for GSIBs than for other large banks. When resolution planning requirements were originally implemented in 2012 as per the DFA, bank holding companies with

total assets above $50 billion were required to submit resolution plans every year, but in effect by practice so-called "full" resolution plans were submitted every other year. In 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act amended the DFA such that the Agencies could engage in so-called "tailoring" of applicable rules and apply different requirements for banking organizations of different size and complexity. Trump-era principals at the Agencies seized this opportunity by officially making the submission of comprehensive resolution plans required only every four years for GSIBs and every six years for other LBOs over $250 billion in assets, while doing nothing to improve the process.

Comments

I. The Failure of Large Banking Organizations That Are Not GSIBs Still Presents Significant Risks to the U.S. Financial System; The Recovery and Resolution Planning Requirements for Them Should Be Strengthened.

As noted in the Release, the size of LBOs has increased materially in the last several years due to organic growth and, more importantly, mergers and acquisitions.[9] Indeed, in just the last three years the three largest resulting bank mergers since the 2008 Crash were approved by the Federal Reserve and the Office of the Comptroller of the Currency ("OCC").

BB&T and SunTrust banks merged in 2019 to become what is now the tenth largest BHC, Truist Financial, with $548 billion in assets. PNC Bank acquired the US operations of BBVA in 2021 and is now the ninth largest BHC with $560 billion in assets. In October 2022 the acquisition of MUFG Union Bank by U.S. Bancorp was approved, and U.S. Bancorp is now the seventh largest U.S. BHC with $600 billion in assets. Additionally, TD Group US Holdings ("TD Bank") has applied to acquire First Horizon Corporation, which would create the eighth largest bank with roughly $610 billion in assets.[10] TD Bank has also announced that it is planning to acquire Cowen Inc.,[11] an investment bank, which would increase its asset footprint further, and also make the bank more complex.[12]

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[9] *See* Better Markets comment letter to the Federal Deposit Insurance Corporation in response to their request for comment on the process to assess bank merger and acquisition applications (May 31, 2022), https://bettermarkets.org/wp-content/uploads/2022/05/Better_Markets_Comment_Letter_Request_for_Comment_Bank_Merger_Transactions.pdf ; *also see* Better Markets comment letter regarding the application of TD Group US Holdings to acquire First Horizon Corporation (August 11, 2022), https://bettermarkets.org/wp-content/uploads/2022/08/Better_Markets_Letter_TD_-First_Horizon_Merger.pdf.

[10] Financial information for current total assets obtained from the Federal Financial Institution Examination Council's webpage for the National Information Center, "Large Holding Companies," https://www.ffiec.gov/npw/Institution/TopHoldings.

[11] TD Bank Group and Cowen Inc. joint press release (August 2, 2022), "TD to Expand its U.S. Investment Banking Business and Capabilities with Acquisition of Cowen Inc.," https://www.cowen.com/news/td-to-expand-its-u-s-investment-banking-business-and-capabilities-with-acquisition-of-cowen-inc/.

[12] Financial information on Cowen Inc. obtained from the Wall Street Journal, https://www.wsj.com/market-data/quotes/COWN/financials/annual/balance-sheet.

Assuming the TD Bank acquisition of Cowen closes, it will join the other recent megabanks, Truist, PNC, and U.S. Bancorp, in also having substantial capital markets operations. Clearly, ***these banks are becoming not only much larger but significantly more complex and interconnected in the financial system while engaging in more potentially high-risk activities***. This enlarged and expanded footprint increases the risks any one of these banks could pose to financial stability and merits more robust expectations and requirements for recovery and resolution planning processes.

More generally, as noted in the Release, "the domestic Category III firms had an average of approximately $413 billion in total consolidated assets [as of December 2019], while as of December 2021, the same group of large banking organizations had grown to an average size of approximately $554 billion in total consolidated assets." This is an increase of 35% in just two years. Although these banks are still not as complex as most of the GSIBs, they are growing fast and are large participants in funding and other financial markets, making their possible collapse a clear potential source of systemic contagion.

The options for resolution of such banking organizations are currently very limited. As pointed out by Acting Comptroller of the Currency Michael Hsu in a speech in April of last year, "if a large regional bank were to fail today, the only viable option would be to sell it to one of the GSIBs."[13] Such an action would of course only make the acquiring GSIB riskier and more systemically important. For example, if Bank of America were to acquire U.S. Bancorp, its size would increase overnight by 15-20 percent.

The intention of the DFA with respect to the resolution process was clearly not to make it so that the largest TBTF banks would have to become even bigger still to save the system from collapse of smaller TBTF banks. Such an outcome could be perhaps avoided if there are other options made available through a more robust resolution preparedness and planning process, one that puts the onus on the banks to take meaningful actions today that will make them truly more resolvable in the future. While this may have additional costs, at least they will be borne by the entity that benefits from the activities that require the capital and resolution planning in the first place.

The recovery and resolution planning and preparedness *requirements* for GSIBs are themselves insufficient (as discussed in more detail below). LBOs currently face few if any binding requirements beyond the periodic submission of plans. They are not currently subject to the supervisory guidance that applies to GSIBs, in which most of the supervisory expectations are detailed. Recovery and resolution planning requirements should be made legally binding requirements, be strengthened and be applicable to both GSIBs and LBOs to serve as a more meaningful component of addressing the TBTF problem. This is necessary to have at least some increased level of (at best still only limited) confidence that large banks could perhaps be resolved without causing substantial damage to financial markets and the economy.

[13] Acting Comptroller Michael Hsu, "Financial Stability and Large Bank Resolvability" (April 1, 2022), Office of the Comptroller of the Currency, https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-33.pdf.

II. The Release Suggests TLAC Debt as the Primary Solution for Enhancing the LBO Resolution Process, but TLAC Debt Is Fundamentally Problematic and Untested. Resolution-related Capital and Liquidity Guidance Should Be Strengthened and Rules-based Requirements Should Be Implemented for Measuring Funding and Capitalization Needs of Material Subsidiaries to Better Prepare for Resolution.

The Release suggests that a primary way in which resolution options for LBOs could be facilitated is by introducing TLAC Debt requirements for these banks similar to those that currently apply to GSIBs. The release seeks comment on what the appropriate implementation of TLAC Debt requirements would look like for LBOs, including the level of TLAC Debt requirements. Better Markets recognizes that the Agencies would like to have bail-in capital they can push down to subsidiaries in the event of a resolution to allow the subsidiaries to continue to operate under a bridge holding company and obtain market funding while also protecting the DIF from greater losses. TLAC theoretically serves this purpose.

But more importantly, an emphasis on TLAC distracts from the underlying reality that capital requirements for these banks remain too low, and that the likelihood of a successful resolution relying on TLAC and a SPOE approach is both untested and highly speculative. Critically, TLAC does not eliminate the potential for contagion in the event of the failure of a large banking organization. Nor does it ensure there will not be runs on the surviving subsidiaries of a bank forced into resolution by the government. It simply assumes away that such runs are still likely to occur as investors and counterparties may want to avoid a situation in which they face tremendous uncertainty and may fear the potential for politically motivated decision making.

The TLAC framework itself is capable of propagating systemic risk. While other banking organizations holding the TLAC Debt of a failing bank is one channel through which this regime could allow a bank's failure to spread through the financial system, it is not the only means. If nonbank holders of TLAC Debt are forced to take significant losses as a result of the failure of a GSIB, systemic risk could and likely would arise. The failure of a GSIB or LBO, and the resulting losses imposed on holders of TLAC Debt—banks and nonbanks alike—can undermine the capital and liquidity positions of other financial institutions.

This is exacerbated by the strong likelihood that such a failure is unlikely to occur in isolation. It is more plausible that multiple large banking organizations would be experiencing severe distress at the same time, further intensifying the destabilizing impact of the uncertainty around the potential for cascading losses on TLAC Debt. Uncertainty about and fear of the knock-on effects will strongly encourage policy makers to not allow or force a bank to go into the resolution process by bailing it out.

In addition to systemic concerns stemming from potential losses on TLAC Debt, other holders of TLAC Debt are likely, directly or indirectly, to include a significant proportion of individual retail investors through investments in brokerage accounts, mutual funds, and pension

funds. In the event of a large bank's failure and potential losses from TLAC, there will likely be enormous political pressure to bail out large banks rather than impose losses on these investors.

Both of the scenarios described above -- the potential for broad financial market contagion caused by the failure of one or more very large banks and the potential harm to retail investors—increase the likelihood that policymakers will experience irresistible pressure to resort to bailouts, thereby defeating the underlying purpose of the resolution process and the TLAC framework. In his book, *Taming the Megabanks,* Art Wilmarth points to examples of this effect in European countries where controversies surrounding realized bail-in losses in some countries resulted in the EU's resolution authority not requiring the execution of bond's bail-in provisions in other episodes.[14]

For banking organizations whose TLAC Debt requirements are higher than the amount of debt they otherwise would have issued, the higher cost of servicing this additional debt could put strain on the banking organizations' liquidity positions.[15] This can create a type of wrong-way risk in stressed situations because, prior to their failure, banking organizations would be obligated to fulfil their higher debt payments to TLAC Debt holders to avoid default and use resources from their subsidiaries to do so. If instead those banking organizations had raised more of their funding through increasing their capital (rather than debt), they could more easily cut off their dividends or share repurchases in stress situations (or be required to do so by the banking agencies) to bolster their capital and liquidity positions while trying to avoid collapse rather than depleting them.

Issuing larger amounts of total debt without commensurate increases in capital leads to banking organizations becoming more leveraged, generally increasing their risk profile. If banking organizations fund themselves more than they otherwise would with debt vs. capital (i.e., increase their use of leverage), then those organizations will be less able to absorb losses under stressed situations, thus increasing their probability of failure. This point is also argued in the comment letter submitted in response to the Release by Stephen Miller and Thomas Hoenig.[16]

Instead of TLAC Debt requirements, which are designed to support an unproven and unlikely-to-be-successful resolution process, additional equity requirements should be implemented for both GSIBs and LBOs that reduce the probability of failure in the first place. This upfront reduction in the probability of failure should be supported by rules-based resolution-related capital and liquidity requirements for material subsidiaries. That is, large banks should have to bear the costs associated with simplifying their possible resolution in advance by requiring them to "pre-fund" capital and liquidity available for certain material subsidiaries. Currently, the "minimum" amount of capital and liquidity expected to be available for resolution at subsidiaries

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[14] Wilmarth, Arthur E. "Unfinished Business." *Taming the Megabanks*, Oxford University Press, 2020, pp. 311-316.
[15] Should TLAC Long Term Debt be used only to replace short-term wholesale funding, rather than adding on to current debt, the liquidity position of the bank would be improved even if debt service costs are marginally higher.
[16] *See* the comment letter submitted by Stephen Mateo Miller and Thomas Hoenig in response to the Release (December 2, 2022), https://www.fdic.gov/resources/regulations/federal-register-publications/2022/2022-resolution-resource-large-banking-3064-af86-c-003.pdf.

is communicated only in the form of supervisory guidance, which articulates a *non-binding expectation* that banking organizations have sufficient capital and liquidity for their subsidiaries to facilitate an orderly resolution. That is simply insufficient given the importance of this issue.

There must be ***enforceable*** conditions and requirements that specify appropriate levels of capital and liquidity to facilitate a nondisruptive resolution based on specific criteria and factors for material subsidiaries. These requirements would be complemented and supported by higher overall capital requirements (i.e., holding company level) to ensure that material subsidiaries have sufficient capital and liquidity cushions to absorb losses and continue operations even after failure of the holding company, rather than assuming it can be moved seamlessly to where it's most needed during a period of extreme stress.

III. Other GSIB Recovery and Resolution Requirements Should Be Strengthened and Also Applied to LBOs

Beyond the TLAC Debt requirements, we support the application of other requirements to LBOs that are currently applicable to GSIBs. Specifically, LBOs should be required to:

(1) Submit a full resolution plan every two years instead of the current requirement of every six years;

(2) Follow a "clean-holding company" requirement; and

(3) Adopt resolution-related stay provisions in qualified financial contracts.

The submission of resolution plans for LBOs should return to a two-year cycle from the four to six-year cycle currently required under the weakened regulation. This would increase their relevance and effectiveness. It is important to remember that in 2008 Bear Stearns had roughly $400 billion in assets when it required a Federal Reserve-brokered (and materially supported) fire sale and Lehman Brothers had roughly $640 billion in assets at the time it collapsed. Had resolution plans been required for these firms, they would have been essentially useless if they were many years out of date as allowed under the current rules for banks between $250 billion to $700 billion.

IV. There Should Be Requirements for Separability of Subsidiaries Instead of the Current Guidance

In addition to making the resolution related capitalization and liquidity needs of material subsidiaries rules-based requirements instead of guidance, conditions around the separability of subsidiaries should also be made requirements instead of guidance. Separability of material operations greatly increases the options available in both recovery and resolution situations. It could allow for a broad range of pieces of a banking organization's operations – from full legal entities or business lines to pools of assets – to more easily be sold or transferred to third parties. This would result in smaller pieces of the overall organization being prepared to be sold rapidly, which could greatly expand the pool of potential buyers beyond just even larger TBTF banks.

Currently, separability is covered in the resolution-related supervisory guidance that applies to GSIBs. Instead, there should be requirements in resolution-related rules around separability that apply to both GSIBs and LBOs. That is, there should be more than an expectation that large banking organizations identify and prepare realistic divestiture options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines. This should be a requirement. An important part of that requirement would be taking the steps in advance to ensure that the identified divestiture options are easily separable operationally, legally, and financially, including addressing any complications that may arise (e.g., from shared usage of systems and services across subsidiaries). The rules should contain minimum requirements around these factors that are then assessed through supervisory examinations.

CONCLUSION

We hope these comments are helpful as the Agencies consider proposals for strengthening resolution-related requirements, including for LBOs.

Sincerely,

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