Via Electronic Mail

November 30, 2023

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–ZA3886
Federal Deposit Insurance Corporation
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; RIN 3064–ZA3886

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the proposed guidance ('the Proposal") for resolution plan submissions of foreign triennial full filers (hereafter referred to as the "specified firms") issued by the Board of Governors of the Federal Reserve System ("Federal Reserve") and the Federal Deposit Insurance Corporation ("FDIC," and collectively with the Federal Reserve, the "Agencies") in connection with the requirements of Section 165(d) of the Dodd-Frank Act.[2] The Proposal, when considered in combination with other recent proposals by the banking agencies, would have a deleterious impact on the ability of foreign banking organizations ("FBOs") to support the U.S. capital markets and broader economy, reducing an important source of diversity and competition for market participants and end-users.

The Proposal does not reflect that the specified firms have significantly reduced their risk profile and size over the past decade. The Proposal also fails to appropriately account for the heightened capital, liquidity, and resolution-related resource requirements that the specified firms are already subject to, and the planned capital increases resulting from the Agencies' recent proposals implementing the Basel III

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] Federal Reserve and FDIC, "Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers," 88 Fed. Reg. 64641 (Sept. 19, 2023).

Endgame reforms[3] and the effects of their long-term debt ("LTD") proposal.[4] It also does not fully consider heightened home country capital, liquidity, governance, and resolution requirements, including total loss absorbing capacity ("TLAC") requirements for the specified firms' parent entities (in addition to local TLAC at the U.S. intermediate holding company or "IHC" level for many specified firms). The specified firms are also subject to robust home country resolution planning requirements, which would ensure that that the global firm can be effectively resolved with minimal impact to the firm's U.S. operations, in addition to existing U.S. resolution planning requirements. As a result, the specified firms pose a much-reduced risk to the U.S. financial system and are far better positioned to ensure an orderly resolution of their U.S. operations should the need arise.

The Proposal does not acknowledge the reduced risk profile of the specified firms. Instead, it advances largely unsupported rationales for reversing a series of recent policy decisions the Agencies made in the Final Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies (the "2020 Final FBO Guidance"),[5] proposing stringent new resolution planning expectations that in many instances mirror those that the U.S. GSIBs are currently subject to. A number of these proposed new expectations, which include possible extension of extraterritorial derivatives and trading activities reporting, as well as capital and liquidity pre-positioning, were previously considered by the Agencies in their 2020 proposal (hereafter the "2020 Proposed FBO Guidance")[6] but ultimately rejected following an extensive notice-and-comment process. These added expectations are unnecessary and inappropriate for the reasons we discuss in this letter.

I. Executive Summary

This letter echoes many of the comments SIFMA submitted in response to the 2020 Proposed FBO Guidance.[7] SIFMA is also generally supportive of the recommendations submitted by the Institute of International Bankers ("IIB") in their letter responding to the Proposal, which mirror many of the points that are made below.[8] Specifically, we make the following observations and recommendations regarding the Proposal:

- **The specified firms play an important role in the U.S. capital markets and have reduced their risk profile in recent years. It would be inappropriate to apply the proposed new expectations to these firms.** The specified firms provide an important source of strength and diversity to the U.S. capital markets. Applying heightened resolution planning expectations on these firms would further undermine their ability to support U.S. capital markets activities and is unwarranted given their reduced size and systemic risk profile.

[3] See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, "Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity," 88 Fed. Reg. 64028 (Sept. 18, 2023).

[4] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, "Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions," 88 Fed. Reg. 64524 (Sept. 19, 2023).

[5] Federal Reserve and FDIC, "Notice of Proposed Rulemaking, Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies," 85 Fed. Reg. 15449 (Mar. 18, 2020).

[6] Federal Reserve and FDIC, "Final Rule, Resolution Plans Required," 84 Fed. Reg. 59194 (Nov. 1, 2019).

[7] SIFMA, Response to 2020 Proposed FBO Guidance, June 4, 2020. Available at: https://www.sifma.org/wp-content/uploads/2020/06/SIFMA-FBO-RRP-Comment-Letter-.pdf (hereafter "SIFMA Response to 2020 Proposed FBO Guidance").

[8] Institute of International Bankers, Comment Letter Response to the Proposal (hereafter "IIB Comment Letter").

- **The Agencies should not adopt onerous and duplicative expectations around a) derivatives and trading activities and b) capital and liquidity adequacy that they recently considered but did not adopt. The Agencies should also tailor guidance for specified firms that do not have IHCs**. The Agencies must provide more evidence to support the extension of expectations that they considered but chose not to adopt in the 2020 Final FBO Guidance, as well as the rationale for extending to firms that do not have U.S. IHCs. We recommend that the Agencies not include extraterritorial and duplicative expectations related to specified firms' trading and derivatives activities in the final guidance, nor that they add redundant resolution-related capital and liquidity adequacy expectations that could reduce the flexibility of the specified firms to deploy resources where needed most during periods of stress. We also recommend that the Agencies tailor the final guidance for specified firms that do not have a U.S. IHC given their different risk profiles and structures.

- **The Agencies should work with home country regulators to obtain information on group resolution plans.** Instead of requiring specified firms to share detailed assumptions, strategies, and capabilities about their global resolution plan that they may not have access to (as they are often written by their home country regulator) or otherwise be able to share, the Agencies should focus instead on ways to improve cooperation and information sharing with their counterparts in other jurisdictions to obtain the information they need.

- **The Agencies should clarify the types of information they will require in relation to non-U.S. "material entities."** The Agencies should also clarify how the concept of a "material entity" will be applied to their parent firm and other non-U.S. affiliates that operate outside the scope of specified firms' combined U.S. operations ("CUSO") to ensure that any information requests are aligned with the requirements in the Section 165(d) resolution planning rule.

- **The Agencies should a) provide specified firms 12 months following the finalization of the guidance to file their next set of resolution plans and b) also issue a statement by January 1, 2024, providing for an interim extension of the current July 1, 2024, plan submission date to December 31, 2024. In addition, the Agencies should provide additional time for new triennial full filers to come into compliance with the final guidance.** SIFMA recommends that the Agencies provide the specified firms 12 months following the finalization of the proposed guidance to file their 165(d) resolution plans to enable them to come into compliance with the revised expectations. The Agencies should also issue a statement by January 1, 2024, that provides for a 6-month interim extension of the filing date from July 1, 2024, to December 31, 2024, given that the specified firms are already working on their 2024 plan submissions. We also recommend that the Agencies provide firms that may find themselves moving into a higher tiering category and thus becoming triennial full filers owing to the Federal Reserve's recent GSIB Surcharge proposal[9] two years to come into compliance with the final guidance.

[9] 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 (Sept.1, 2023) (hereafter referred to as the "GSIB Surcharge proposal").

II. The specified firms play an important role in supporting the U.S. capital markets and have significantly reduced their risk profiles. Imposing enhanced resolution planning expectations on these firms is unnecessary.

a. The importance of FBOs to the U.S. capital markets.

The U.S. capital markets fund 75% of all non-financial U.S. corporate debt and equity financing, meaning that they are crucial drivers of broader U.S. economic activity.[10] FBOs play a particularly important role in the U.S. capital markets across all asset classes and activities, comprising 26.2% market share of U.S. equity and 37.2% of U.S. fixed income underwriting year to date. FBOs also comprise 62.5% of primary dealers in the U.S. Treasury markets, making them essential to the functioning of U.S. monetary policy. FBOs are furthermore crucial to the efficient functioning of derivatives markets that are used by corporations, municipalities, and other end-users to manage their risks, comprising 42.5% of registered U.S. swap dealers. In short, FBOs are a critical part of this diversity and support the depth and competitiveness of U.S. markets and play an important role in the broader economy – a role recognized by key policymakers.[11]

Yet, as SIFMA noted in a research paper in 2019[12], FBO market share has declined across all product types as has the size of their U.S. operations, a trend that has largely continued since that time. This period coincided with the imposition of enhanced prudential requirements, including IHC-level capital, stress testing, liquidity, and TLAC requirements, and heightened CUSO-level resolution planning and liquidity stress testing requirements for the specified firms. These post-crisis rules were designed largely for bank holding companies with a broader number of legal entities and product mix rather than broker dealers. The consistency, extent, and timing of the FBO broker-dealer decline suggests that this major shift in U.S. regulation likely played an important role (alongside individual bank strategy choices) in the reduction in FBO activity in U.S. capital markets.

The Proposal, in conjunction with other recently released banking agency proposals that would increase risk-based capital requirements for most of the specified firms (particularly in relation to their trading book activities) and extend LTD requirements to those firms not already subject to TLAC requirements, would only exacerbate this trend, making it increasingly difficult for the specified firms to compete in the U.S. capital markets.

b. As the Agencies have previously recognized, the specified firms pose a significantly reduced risk to the U.S. financial system.

Despite recent events that the Agencies reference in the Proposal (see below), the specified firms represent a much-reduced risk to U.S. financial stability than they did prior to 2010 thanks to their reduced size and more robust capitalization and liquidity profiles at both their home and U.S. levels. The

[10] SIFMA, "2023 Capital Markets Fact Book," July 2023. Available at: https://www.sifma.org/wp-content/uploads/2022/07/2023-SIFMA-Capital-Markets-Factbook.pdf.

[11] E.g., 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). Chairman Powell noted that "foreign banks play an important role in our economy. They facilitate commerce, and provide credit and needed investment."

[12] SIFMA, "SIFMA Insights: The Importance of FBOs to U.S. Capital Markets," April 2019. Available at: https://www.sifma.org/wp-content/uploads/2019/04/SIFMA-Insights-The-Importance-of-FBOs-to-US-Capital-Markets.pdf.

specified firms have also made significant progress enhancing their resolution and recovery capabilities and have sizeable "bail-inable" resources to mitigate against the need for public assistance. The jurisdictions in which the specified firms are domiciled have strengthened both going- and gone-concern resources since the financial crisis. For example, they have raised additional TLAC supporting the credibility of home-country single-point-of-entry ("SPOE") and multiple-point-of-entry ("MPOE") strategies, and in many cases, they have provided cash-collateralized support for their U.S. operations in the form of internal LTD. These advances are augmented by improved local risk systems, including the creation of robust stress testing capabilities; simplified organizational structures and streamlined business mixes; and affiliate and third-party service arrangements that ensure the continuation of critical business operations under both stressed conditions and resolution.

Indeed, the agencies recognized this reduced size, risk profile, and improved resolvability when they placed the specified firms into lower risk categories than the U.S. GSIBs under their 2019 rule implementing changes to the resolution plan rule in line with its tailoring of other enhanced prudential requirements.[13] The Agencies also rightly acknowledged this reduced risk profile and enhanced resolution-related planning/resources in finalizing their 2020 Final FBO Guidance, which removed a number of inappropriately burdensome and extraterritorial expectations in the 2020 Proposed FBO Guidance that were designed to generally align with the 2019 U.S. GSIB Resolution Plan Guidance.[14] Instead, the Agencies committed themselves to improving cooperation and information on resolution planning with their counterparts in other jurisdictions.

However, the Agencies are now proposing to reverse many of the appropriately calibrated changes that they made in the 2020 Final FBO Guidance and apply redundant and needlessly burdensome expectations on the specified firms, in some cases potentially applying those expectations to transactions booked outside of the United States and to non-U.S. legal entities in a manner that would exceed their authority under the Section 165(d) rule itself. To decision to reverse policies the Agencies themselves finalized relatively recently appears odd given the enhanced home and U.S. requirements and resolution expectations that the specified firms are already subject to, as well as their significantly reduced U.S. risk profiles (both in absolute terms and relative to many of their domestic counterparts).

III. The Agencies must provide more evidence to support the extension of expectations that they considered, but chose not to adopt, in 2020.

SIFMA recognizes that extending the expectations included in the 2020 FBO Final Guidance (which were only applicable to Category II CUSO FBOs) to a broader range of firms may be warranted to reduce inconsistencies in reporting and plan assumptions amongst firms. However, applying the full range of enhanced expectations to Category II and III institutions without IHCs would be improper. As the IIB notes in their response to the Proposal[15], the Agencies have previously indicated that the operation of an IHC is an important materiality threshold for the application of U.S. resolution planning requirements and FBOs without an IHC would largely be resolved as part of a home country resolution. Therefore, the Agencies should tailor the final guidance for specified firms that do not have U.S. IHCs to ensure it appropriately matches their distinct U.S. risk profiles and structures.

Beyond the scope of application of the guidance, the addition of onerous resolution planning expectations, such as derivatives and trading activity and capital and liquidity pre-placement, that the Agencies previously considered in the 2020 Proposed FBO Guidance but decided not to adopt is

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[13] Federal Reserve and FDIC, "Final Rule, Resolution Plans Required," 84 Fed. Reg. 59194 (November 1, 2019).

[14] Federal Reserve and FDIC, "Final Guidance for the 2019," 84 Fed. Reg. 1438 (February 4, 2019).

[15] IIB Comment Letter, pp. 8-9.

inappropriate and is largely unsubstantiated in the Proposal. As noted above, these changes – particularly potential changes to trading and derivatives expectations - would impose significant and unnecessary burdens on the specified firms and would hurt their ability to provide capital markets services in the United States.

The Agencies offer four sets of explanations for re-considering expectations that were not adopted in 2020:[16]

1. They cite "significant inconsistencies in the amount and nature of information" in their 2021 review of resolution plans submitted by foreign triennial full filers.
2. They note that the same review found that triennial full filers relied on "optimistic assumptions regarding the availability of financial resources at the time of a bankruptcy filing as well as the ability of a firm to access financial assistance prior to and during resolution."
3. The Agencies indicate that the expanded expectations in contained in the Proposal reflects the Agencies' recent experience with UBS's acquisition of Credit Suisse, which illustrated "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."
4. The Agencies reference the events surrounding the resolutions of domestic regional banking organizations in March 2023 as being relevant for FBOs with large subsidiary insured depository institutions ("IDIs").

These justifications, however, are largely unsupported in the Proposal. For example, the fact that inconsistencies and differences in assumptions would exist amongst triennial full filers should not be surprising given that 2020 Final FBO Guidance was only applicable to four firms that met Category II CUSO thresholds. The specified firms in the Proposal (i.e., foreign triennial full filers) consists of a broader grouping that also includes Category III CUSO FBOs that were not previously subject to the 2020 Final FBO Guidance. The Agencies ought to provide more information on the apparent inconsistencies and problematic assumptions they identified in their 2021 review, particularly whether they were prevalent between the four firms subject to the 2020 FBO Final Guidance or between that group of firms and other triennial full fillers. Disclosing this information would better permit outside stakeholders to evaluate the merits of extending new expectations to the specified firms.

The Agencies also need to provide more detail on why recent external events require such a radical reversal of policy after just three years and a single resolution plan submission by the specified firms. For example, it is unclear what specific concerns arise out of the UBS acquisition of Credit Suisse given that the situation wase effectively managed by the home country authorities. As a Financial Stability Board ("FSB") report on the matter noted, while "some have suggested that this episode demonstrates that the resolution framework is not workable… the FSB's review does not support that conclusion… a [home country SPOE] resolution was ready to be implemented that weekend."[17] Moreover, had Credit Suisse been subject to a home country SPOE resolution, there would have been no need for a separate U.S. resolution. In short, it is unclear what features of this event led the Agencies to propose such significant reversals of recently established policy. The connection between the U.S. regional banking stresses and the proposed changes is even less clear, particularly for specified firms that do not operate large IDIs.

[16] The Proposal at 64642.

[17] Financial Stability Board, "2023 Bank Failures: Preliminary lessons learnt for resolution," Oct.10. 2023, p. 11. Available at https://www.fsb.org/wp-content/uploads/P101023.pdf.

a. *The Agencies should not add additional extraterritorial and other new expectations around derivatives and trading activities.*

In the Proposal, the Agencies request comment on whether to provide guidance on derivatives and trading activities for specified firms, noting that is important that these activities "be stabilized and de-risked during resolution without causing significant disruption to U.S. markets, particularly for firms with large U.S. broker-dealers." The Agencies also ask whether to provide guidance related to transactions "that originate in the U.S. but are booked outside the U.S.," and whether it would "be appropriate to adopt all or some of the expectations contained in the 2020 Proposed FBO Guidance."[18] Applying the overly broad derivatives and trading expectations contained in the 2020 Proposed FBO Guidance is unwarranted and would negatively impact the ability of the specified firms to provide a range of capital markets-related services to their clients. As such, SIFMA strongly recommends that any trading and derivatives guidance for specified firms should a) only apply to transactions that are originated and booked within the United States and within material entities that would be resolved under applicable U.S. laws and b) should be based on the expectations in the 2020 Final FBO Guidance, not the 2020 Proposed FBO Guidance.

First, as SIFMA noted in its response to the proposed 2020 FBO guidance, any resolution plan information that may be required in connection with derivatives and trading activities should not have an extraterritorial application and should be confined to transactions that are originated and booked within the United States.[19] Requiring specified firms to provide extensive detail on transactions that are booked overseas and would not be resolved under U.S. law would contradict the statutory requirements under Section 165(d) of the Dodd-Frank Act as well as the Agencies' resolution planning rule. Moreover, U.S. derivatives and trading activities booked into a non-U.S. entity represent minimal risk to specified firms' U.S. operations since these trades would not typically be unwound due to the bankruptcy or resolution of U.S. legal entities. As a result, any unwinding of these positions would be done by the entity who carries the principal risk on its books outside the United State, subject to the relevant foreign jurisdiction's resolution laws. This applies even in instances in which the transaction originated in the United States and/or were conducted with U.S. counterparties or involved U.S. employees. It should also be acknowledged that these types of booking models were put in place mainly to *reduce* systemic risk in U.S. operations in response to regulatory feedback; thus, it is particularly unclear why the Agencies would need to issue onerous new requirements in relation to these types of transactions.

As SIFMA noted in its 2020 comment letter, this type of information on non-U.S. affiliates and non-U.S. transactions could easily be obtained from home country regulators. Indeed, the Agencies make clear in the 2020 Final FBO Guidance 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"[20] and thus additional guidance on transactions that originate from U.S. entities but are booked into non-U.S. affiliates would be unnecessary. This cooperative approach to information sharing should be retained in any final guidance instead of requiring specified firms to submit duplicative information that is outside the scope of the Agencies' statutory and regulatory authority. Moreover, to the extent that this approach has had inadequacies since 2020, the Agencies should be transparent about the reasons for those inadequacies and explore ways to improve cooperation with their foreign counterparts before proposing new reporting expectations for specified firms.

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[18] See the Proposal at 64647.

[19] SIFMA Response to 2020 Proposed FBO Guidance at 10-11.

[20] 2020 Final FBO Guidance at 83567.

Second, if the Agencies do adopt expectations related to derivatives and trading activities for the specified firms, they should be based on the expectations included in the 2020 Final FBO Guidance, not the 2020 Proposed FBO Guidance. The Agencies note in the Proposal that the specified firms have limited trading and derivatives activities relative to the U.S. GSIBs.[21] Given this, it is not entirely clear why the Agencies need to consider the addition of new expectations around trading and derivatives activities. Moreover, the 2020 Proposed FBO Guidance contained a number of problematic elements that we're removed from the 2020 Final FBO Guidance. The 2020 Proposed FBO Guidance would have not only scoped in overseas transactions, but inappropriately applied derivatives guidance to non-derivatives transactions (such as securities financing transactions) and contained unclear expectations around definitions of U.S. prime brokerage accounts and balances.[22] Applying these expectations to the specified firms would needlessly impede their ability to provide capital markets-related services to U.S. clients. Thus, any expectations related to derivatives and trading activities for the broader grouping of specified firms should be based on the more thoughtful framework established in the 2020 Final FBO Guidance.

b. The Agencies should not include duplicative resolution-related capital and liquidity adequacy expectations in the final guidance.

In the case of resolution capital adequacy and positioning ("RCAP") and liquidity adequacy and positioning ("RLAP") expectations, the Agencies note that they are proposing guidance that is substantially similar to the provisions included in the 2020 Proposed FBO Guidance. As with other parts of the Proposal, there is no rationale offered for revisiting policies that the Agencies previously considered but decided to omit from the 2020 FBO Final Guidance other than to say that there were "opportunities for improvements" to firms' capital and liquidity adequacy, that these expectations would "better support U.S. SPOE strategies," and were being proposed "in light of the LTD proposal."[23]

In line with our comments on the 2020 Proposed FBO Guidance, SIFMA opposes the inclusion of RCAP and RLAP expectations. At that time, we noted that the inclusion of these expectations was redundant given that there were other regulatory requirements or expectations that would ensure capital and liquidity adequacy in the event of a resolution of the FBO's U.S. operations. Regarding the proposed RCAP expectations, we noted that they were duplicative of U.S. TLAC requirements, which provides for local bail-inable resources that would ensure the recapitalization of the bank's U.S. operations. The Agencies agreed, stating in the 2020 Final FBO Guidance that it did not include RCAP expectations "among the U.S. IHC and its subsidiaries because 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."[24] It is unclear what has changed since 2020 to justify adding this expectation, which we are concerned will lead to excessive capital pre-placement in the U.S. operations and undermine the resiliency of the global firm by restricting their ability to deploy capital resources where needed during periods of stress.

In SIFMA's comments on the 2020 Proposed FBO Guidance, we similarly noted that RLAP requirements were largely duplicative of internal stress testing requirements and standardized liquidity requirements and thus unnecessary to ensure liquidity adequacy during a U.S. resolution. Moreover, we noted that the overall reduced systemic risk profile of the specified FBOs under the Proposal rendered these additional resolution-related expectations unnecessary. The Agencies agreed and removed the RLAP expectations from the 2020 Final FBO Guidance given "the Specified FBOs' relatively simple U.S.

[21] The Proposal at 64647.

[22] As noted in the 2020 Final FBO Guidance at 83567-83568.

[23] The Proposal at 64643.

[24] 2020 Final FBO Guidance at 83563.

legal entity structures and reduced risk profiles."[25] The Agencies do not offer a clear rationale for proposing this policy reversal, which if implemented could make it more difficult for the global firm to deploy liquidity resources where needed during periods of stress.

IV. The Agencies should work with home country regulators to obtain group plan assumptions, strategies, and capabilities instead of setting expectations that specified firms may be unable to meet.

The Agencies outline new proposed expectations for specified firms that are designed "to clarify the interaction between U.S. and global resolution strategies."[26] The specified firms' resolution plans would be expected "to describe the impact of executing the firm's global, group-wide resolution plan on the firm's U.S. operations and detail the extent to which resolution planning under the Rule relies on different assumptions, strategies, and capabilities from the global plan."[27] This added expectation may be impossible for many specified firms to satisfy given that resolution plans are written by home country supervisors rather than the firms themselves in several major jurisdictions. The specified firms' often do not have access to the detailed assumptions, strategies, and capabilities that their home country regulators have laid out in their global resolution plan, and thus may only be able to share more general details with the Agencies. In addition, specified firms may be limited in their ability to share relevant global plan information with the Agencies given that it may be considered confidential supervisory information by their home country regulators.

Instead of setting expectations that many specified firms may be unable to meet, the Agencies should work to implement their stated goal in the 2020 FBO Final Guidance and "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."[28] As the Agencies noted at the time, such collaboration, together with the fact that "the preferred resolution outcome for many Specified FBOs is a successful home country resolution using an SPOE strategy" rendered guidance on how the U.S. plan integrates into the global plan unnecessary.[29] SIFMA agrees with the Agencies' conclusions in the 2020 FBO Final Guidance: this potentially unworkable expectation should therefore be removed from the final guidance and the Agencies should focus instead on ways to improve cooperation and information sharing with their counterparts in other jurisdictions.

V. The Agencies should clarify the types of Information they will require in relation to non-U.S. affiliates that are "material entities."

The Agencies should also clarify how the concept of a "material entity" is applied to their parent firm and other non-U.S. affiliates that operate outside the scope of the CUSO. While the Section 165(d) rule does require firms to report limited additional information about non-U.S. material entities, that reporting is limited 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."[30] This does not mean, for example, that specified firms need to provide the

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[25] Id.

[26] The Proposal at 64644.

[27] 2020 Final FBO Guidance at 83567.

[28] Id. at 83566-7.

[29] Id. at 83568

[30] See 12 C.F.R. § 243.5(a)(2)(i) and 12 C.F.R. § 381.5(a)(2)(i).

Agencies with resolution plans or liquidity analyses of overseas material entities. While the Proposal is generally clear that such entities are out-of-scope of its expectations (with some limited exceptions), the Proposal's sub-section on "Material Entities" appears to require significant additional information about non-U.S. material entities that exceed the provisions of the 165(d) rule and would represent an inappropriate extraterritorial application of the guidance.[31] The Agencies should clarify in the final guidance that reporting related to material entity non-U.S. affiliates will be limited to the types of information specified in the 165(d) rule.

VI. The Agencies should a) provide specified firms 12 months following the finalization of the guidance to file their next set of resolution plans and b) issue a statement by January 1, 2024, providing for an interim extension of the current July 1, 2024, plan submission date to December 31, 2024. In addition, the Agencies should provide additional time for new triennial full filers to come into compliance with the final guidance.

SIFMA recommends that the Agencies provide the specified firms with sufficient time to come into compliance with the final guidance given the potential application of material new expectations and extension of the guidance to a broader range of specified firms. In the Proposal, the Agencies note they 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."[32] We urge the Agencies to follow through on this statement and provide specified firms 12 months following the finalization of the proposed guidance to file their next set of resolution plans. This would provide an appropriate amount of time for firms build out their resolution planning and internal governance processes and would be consistent with the approach that the Agencies have previously taken when applying new guidance expectations (e.g., by providing covered FBOs with 12 months to come into compliance with the 2020 Final FBO Guidance and nearly 15 months for 2018 resolution guidance).[33]

Moreover, we urge the Agencies to issue a statement by January 1, 2024, providing the specified firms with a 6-month interim extension of their plan submissions from the current due date of July 1, 2024, to December 31, 2024. It is essential that the Agencies provide clarity on this as soon as possible given that the specified firms are already working on their 2024 plan submissions, with firms in many cases basing their planning on the assumption that the Proposal will be implemented as currently written. Not only is this lack of clarity resulting in an efficient allocation of limited internal resources within the specified firms, but it is also inappropriate given that the Agencies have yet to finalize the guidance or consider public comments on it. If the Agencies decide to maintain the current plan submission deadline of July 1, 2024, they should clarify as soon as possible that those plans will be assessed using the guidelines that are currently applicable to the specified firms instead of the yet-to-be-finalized guidance, as it would be unreasonable to expect firms to come into compliance with the revised guidance by that date.

Finally, the Agencies should provide additional flexibility to firms that may find themselves moving into a higher tiering category and thus becoming triennial full filers owing to the Federal Reserve's recent GSIB Surcharge proposal and its associated changes to the Systemic Risk Report (FR Y-15). If an

[31] See the Proposal at 64658.

[32] Id. at 64644.

[33] 2020 Final FBO Guidance at 83571. The 2018 guidance was issued in March 2017 and applied to plans that were due July 1, 2018; see Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System, "Guidance for 2018 Section 165(d) Annual Resolution Plan Submissions by Foreign-based Covered Companies that Submitted Resolution Plans in July 2015."

institution were to become a triennial full filer as a result of that proposal or other future regulatory changes (as opposed to the growth in the size of the institution or changes in key risk indicators), the Agencies should provide for an extended transition period of two years to permit those institutions to come into compliance with the final resolution guidance. This extended transition period would be appropriate given the significant amount of work and internal resources that would be dedicated to transitioning from being a reduced filer to a full filer subject to significantly enhanced resolution expectations.

VII. Conclusion

The Proposal, when considered in combination with other recent proposals by the banking agencies, would have a negative impact on the ability of FBOs to support the U.S. capital markets and broader economy, reducing an important source of diversity and competition for market participants and end-users. The Proposal does not reflect the fact that the specified firms have significantly reduced their risk profile and size over the past decade. It fails to appropriately account for the heightened capital, liquidity, and resolution-related resource requirements that the specified firms are already subject to, and it does not consider the planned capital and debt increases resulting from recent proposals issued by the banking agencies. It also does not fully consider heightened home country capital, liquidity, governance, and resolution requirements, including TLAC requirements at the parent level, that specified firms are subject to (in addition to local TLAC at the U.S. IHC level for many specified firms).

Instead of appropriately tailoring resolution planning expectations for the specified firms to reflect the risks they pose, the Proposal advances largely unsupported rationales for reversing a series of recent policy decisions the Agencies made in the 2020 Final FBO Guidance, proposing new stringent resolution planning expectations, including the possible extension of extraterritorial derivatives and trading activities reporting and capital and liquidity pre-positioning, that were previously considered by the Agencies in their 2020 Proposed FBO Guidance." These added expectations are wholly unnecessary and inappropriate for the reasons we have discussed in this letter and should be removed in the final guidance. In addition, the Agencies should work cooperatively with their counterparts in other jurisdictions to obtain relevant information on home country resolution plans, eliminate other extraterritorial features from the guidance, and provide specified firms with additional time following finalization of the guidance to submit their resolution plans.

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SIFMA appreciates the Agencies' consideration of these comments and would be pleased to discuss any of these views in greater detail if it would assist with their deliberations. Please contact Peter Ryan at pryan@sifma.org or at (202) 962-7452 if you wish to discuss the points raised in this letter further.

Sincerely,

Kenneth E. Bentsen, Jr.
CEO and President
Securities Industry and Financial Markets Association