1 June 2020

Via e-mail: regs.comments@federalreserve.gov and comments@fdic.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Ann E. Misback, Secretary
Docket No. OP-1699

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Executive Secretary
RIN 3064-ZA15

Re: Comments Related to Proposed Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies

Ladies and Gentlemen,

Barclays US LLC (BUSLLC), on behalf of itself and its ultimate parent company, Barclays PLC (BPLC) and its subsidiaries (collectively, Barclays), appreciates the opportunity to comment on the Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies (Proposed Guidance)[1] issued by the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (FDIC) (collectively the Agencies) to assist certain firms in developing their resolution plans, which are required to be submitted pursuant to Section 165(d) of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Executive Summary

Barclays is committed to enhancing our resolvability and resolution preparedness; strengthening our financial, structural and operational resiliency; and developing capabilities to support an orderly resolution. Barclays has taken, and continues to take, numerous actions to improve our resolvability and develop coordinated global resolution strategies, while at the same time adhering to all local resolution planning requirements.

Barclays has implemented capabilities to meet expectations based on the 2018 Guidance provided to Foreign-based Covered Companies (2018 FBO Guidance)[2] and has embedded these capabilities into business as usual (BAU) processes. Barclays has addressed all feedback provided by the Agencies in Barclays'

[1] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed Reg. 15449 (March 18, 2020).
[2] Guidance for 2018 §165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015.

2018 U.S. Resolution Plan Feedback Letter[3] (2018 Feedback Letter), and will provide updates regarding all initiatives in Barclays' 2020 Limited U.S. Resolution Plan.[4]

Barclays appreciates the Agencies' recognition that the preferred outcome for most foreign banking organizations (FBOs) is a successful home country resolution that encompasses their U.S. operations, not the separate, standalone U.S. resolution approach described in their U.S. resolution plan.[5] Barclays has worked closely with the Bank of England (BoE) regarding development of global resolution capabilities to ensure that successful implementation of a single point of entry (SPOE) strategy could be executed, if required. This approach has included significant enhancements to capital, liquidity, bail-inable resources, corporate structures, and resolution frameworks and strategies to implement both domestic and international standards. Barclays' U.S. corporate structure has been simplified and bail-inable resources have been put in place through internal TLAC for the recapitalization of U.S. operations. In addition, Barclays' U.S. entities have access to home country resources, a distinct advantage that is not available to the U.S. globally systemically important banks (GSIBs) and U.S. regional banks. Barclays has considerably reduced the size and complexity of the assets and activities of our U.S. operations, which include the U.S. Intermediate Holding Company (IHC) and a U.S. branch.

The Agencies took critical steps to tailor enhanced prudential standards (EPS Tailoring Rule)[6] and to revise U.S. resolution planning requirements in the 2019 Resolution Plan Final Rule (2019 Resolution Plan Rule).[7] The EPS Tailoring Rule designates certain FBOs, including Barclays, as Category II /III institutions based on the firm's size, complexity, and risk profile. Consistent with the EPS Tailoring, the 2019 Resolution Plan Rule designates Barclays and other Category II/III institutions as Triennial Full Filers for resolution planning purposes. The categorization is based on risk-based indicators defined by the Federal Reserve. The designations reflect the Agencies' recognition that many FBOs, including Barclays, have significantly reduced the systemic risk profile of their U.S. operations and increased their capital and liquidity levels, thereby ensuring that they pose less risk to U.S. financial stability. Specifically, the 2019 Resolution Plan Rule stated that, *"The Board believes the risk-based indicators are an effective means for identifying those firms with total consolidated assets of $100 billion or more and less than $250 billion whose material financial distress or failure would pose a threat to U.S. financial stability."*

The Agencies' intent to tailor **both frequency and content** of resolution plans was articulated by Vice Chair Quarles in the press release that accompanied the proposals where he stated that *"In the seven or so years of resolution plan submissions, we have seen substantial gains in both the resiliency and resolvability of large banking organizations and the broader financial system. Congress recognized this progress when it passed the Economic Growth, Regulatory Relief, and Consumer Protection Act last year. Consistent with the law, the proposal seeks to tailor both the **frequency and content** of resolution plans according to the business model and risk profile of firms."*[8]

The Proposed Guidance would revise the 2018 FBO Guidance provided to certain FBOs in Category II / III and impose expectations substantially similar to those applied to U.S. GSIBs (Category I institutions) in the 2019 revisions to resolution plan guidance applicable to the U.S. GSIBs[9] (2019 Domestic Guidance). Specifically, the Proposed Guidance would impose substantial new expectations in relation to payment, clearing, and settlement (PCS) services and derivatives and trading (D&T) activities, effectively treating Specified FBOs[10] as if they are as systemically important as the Category I institutions.

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[3] FRB and FDIC letter to Barclays received December 20, 2018.
[4] FRB and FDIC letters to Barclays, Credit Suisse, Deutsche Bank, and UBS received July 26, 2019.
[5] Resolution Plan Board Memo, From Board Staff to Board or Governors; April 1, 2019 (Board Staff includes: M. Gibson, M. Hsu, C. Tilford, and K. Ballintine (Division of Supervision and Regulation); M. Van Der Weide, L. Schaffer, J. Schwarz, S. Bowne, and S. Podrygula (Legal Division); D. Dobbeck and K. Malcarney (LISCC Recovery and Resolution Program).
[6] Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59032 (Nov. 1, 2019).
[7] Resolution Plans Required, 84 FR 59194 (November 1, 2019). Amendments became effective on December 31, 2019.
[8] Opening Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks by Vice Chair for Supervision Randal K. Quarles, April 08, 2019.
[9] 84 FR 1438 Federal Reserve System and FDIC [FRB Docket No. OP–1644] Final Guidance for the 2019, February 4, 2019.
[10] The scope of application of the proposed guidance would be FBOs that are triennial full filers whose intermediate holding companies (U.S IHCs) have a score of 250 more under the second methodology of the globally systemically important banks (GSIB).

In this regard, the Proposal appears inconsistent with intended tailoring promoted by the Agencies (including in public comments, such as the above) that acknowledge the reduced risk posed by the Specified FBOs. Therefore, the Proposed Guidance does not sufficiently recognize the reduced risk posed by the Specified FBOs to U.S. financial stability, particularly in comparison to Category I institutions.

Barclays recommends that the Agencies make the following revisions, as elaborated in the sections that follow:

I. **U.S. resolution guidance should align to the principles of tailoring:**

- The most stringent U.S. resolution requirements and expectations should apply to the most systemically important firms (i.e., the Category I institutions). The Proposed Guidance should be revised so that there is a meaningful distinction in the expectations required of the Category I and Category II/III institutions.

II. **Replace the scoping methodology to appropriately consider the risks associated with FBO IHCs:**

- The Method 2 framework should not be used as the scoping method because it is arbitrary, is not appropriate for FBOs, and is inconsistent with the approach taken by the Agencies in the EPS Tailoring Rule;
- The Agencies should use the tailoring rule categories, which were designed after extensive deliberation, as the appropriate method of measuring risk and classifying institutions for similar purposes; and
- The scope of guidance should be applicable to all triennial full filers (both foreign and domestic) with weighted short-term wholesale funding (wSTWF) greater than $75 billion (for an FBO, as determined by the risk profile of its Intermediate Holding Company (IHC)). (As previously noted, for certain institutions that fall in scope, there should be distinct expectations that align to disparity in risk profiles between covered institutions).

III. **Information in a foreign bank's U.S. resolution plan should be relevant to resolvability of U.S. Material Entities[11]:**

- **<u>Limiting Extraterritorial Requirements</u>:** The Proposed Guidance should not request the identification, assessment or reporting of indirect relationships through non-U.S. affiliates or risk transfer arrangements with non-U.S. affiliates. Resolution of non-U.S. entities and activities are subject to jurisdictional specific resolution requirements and regimes through the applicable home country regulatory authorities and should be removed from the Proposed Guidance.
- **<u>Consistency with Title I U.S. Resolution Plan Requirements</u>**: Definitions and supervisory expectations detailed in the Proposed Guidance are inconsistent with the 2019 Resolution Plan Rule. For FBOs, definitions of applicable entities and activities should be aligned with the 2019 Resolution Plan Rule specific to Material Entities and activities that can be resolved under the U.S. Bankruptcy Code (the Bankruptcy Code).[12]

III. **The Agencies should tailor resolution plan requirements and expectations. Streamlining plan submissions would make the documents more actionable and reduce the Agencies' time to review and challenge the resolution plan submissions. The Agencies should consider:**

- Removing standalone Resolution Adequacy and Positioning (RLAP) and Resolution Capital Adequacy and Positioning (RCAP) expectation and integrating these capabilities into capital and liquidity requirements that were established through formal rulemakings;
- Leveraging information provided through the existing bank supervision and exam processes; and

[11] As defined in the 2019 Resolution Plan Rule, a subsidiary or foreign office of the covered company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company.
[12] Resolution Plans Required, 84 FR 59194 (November 1, 2019).

- Streamlining playbooks to require only key information required in a resolution.

I. U.S. Resolution Proposed Guidance should align to the principles of tailoring

The EPS Tailoring Rule and 2019 Resolution Plan Rule (collectively, the Final Rules) categorized institutions for the application of prudential and resolution planning requirements tailored to an institution's size, complexity and U.S. risk profile. The Final Rules focused on tailoring requirements by applying the most stringent requirements on the institutions that pose the most systemic risk, Category I institutions. To be consistent with these principles, the Proposed Guidance should reflect meaningful difference between the categories and be focused specifically on the resolvability of the U.S. operations of FBOs, which, as previously noted, have a home country plan and pre-positioned resources (e.g., internal Total Loss Absorbing Capacity (TLAC)) that many other Category II / III firms do not currently have. The Proposed Guidance should be calibrated so that the Specified FBOs[13] (i.e., a subset of the Cat. II/III firms) are not subject to comparable stringency of capabilities and expectations as apply to the Category I institutions. The Proposed Guidance should be appropriately tailored to the Specified FBOs and not subject them to expectations that would effectively treat them as being as systemically important to the U.S. as Category I institutions, given the significant disparity in size and risk profile.

Thus far, the "tailoring" that has been applied to U.S. resolution planning requirements for the Specified FBOs only applies to the frequency of the U.S. plan submission. While the Agencies modified the frequency of plan submission between the Category I and Category II/III filers in the 2019 Resolution Plan Rule, this minor change is the only difference in U.S. resolution planning requirements for the three Specified FBOs. In fact, the reduced frequency of plan submission does not provide any clear or meaningful differentiation in substantive expectations since all capabilities must be maintained in BAU and are subject to supervisory oversight, review, and challenge on an ongoing basis.

The scope of application of the Proposed Guidance is also inconsistent with the categories introduced in the Final Rules. The scope of application: (1) is only applied to FBOs; (2) would result in disparate treatment within Category II/III; and (3) uses the Method 2 score of the U.S. GSIB capital surcharge framework (Method 2) that fails to appropriately reflect the level of risk posed by the Specified FBOs to U.S. financial stability and their resolvability. Such an approach appears inconsistent with the Vice Chair for Supervision's statement that "... *in approaching this objective for foreign banks, we had two additional objectives that we sought to achieve: creating a level playing field between foreign banks operating in the United States and domestic firms of similar size and business models, and giving due regard to the principle of national treatment.*"[14]

Exhibit 1 below highlights the disparity in requirements and expectations applicable to the Specified FBOs as compared to the other firms categorized in Category II/III.

[13] Specified FBOs is a defined term in the Proposed Guidance meaning an FBO which the Proposed Guidance would apply to.
[14] Vice Chair for Supervision Randal K. Quarles opening Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks, April 1, 2019.

Exhibit 1 Summary of U.S. Resolution Planning Supervisory Expectations[15,16,17]

	Category I Biennial Filers (8 institutions)	Category II/III Triennial Full Filers (13 Total institutions)[17]			
	U.S. GSIBs (8 institutions)	FBOs currently subject to 2018 Guidance (4 institutions)[16]	FBOs subject to new expectations in Proposed Guidance (3 institutions)	Other FBOs (5 institutions)	Domestic Institutions (4 institutions)
Currently subject to US Resolution supervisory guidance	Yes	Yes	Yes	-	-
Enhanced PCS and D&T requirements (U.S. GSIBs; Proposed for Specified FBOs)	Yes	-	Yes (Proposed)	-	-
Agencies firm-specific feedback letters on Previous Plan Submissions	Yes	Yes	Yes	Yes	Yes
SR 14-1: Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies	Yes	Yes[15]	Yes[15]	-	-

II. Replace the scoping methodology to appropriately reflect the risks associated with FBO IHCs

The Agencies have proposed applying the Proposed Guidance to FBOs with IHCs that (i) are triennial full filers; and (ii) have an IHCs with a score of 250 or more under Method 2. The three Specified FBOs (which also have global SPOE resolution strategies) would be subject to expectations that are substantially similar to those applied to Category I institutions, which pose significantly greater systemic risk to the U.S. financial system than the Specified FBOs. The scope of application of the Proposed Guidance should be modified to be: 1) consistently applied to all triennial full filers; and 2) aligned to the EPS Tailoring Rule.

The use of Method 2 is a significant departure from the EPS Tailoring Rule categorization framework. Notably, in the EPS Tailoring Rule, the Agencies considered, but decided against, using the U.S. GSIB capital surcharge framework for categorizing and applying enhanced prudential standards to non-Category I institutions because the adopted tailoring criteria better supported "the objectives of risk sensitivity and transparency."[18] The Agencies also purposefully designed the weighted STWF indicator in the EPS Tailoring Rule to serve as a broad measure of the risks associated with STWF in lieu of using Method 2 stating: *"The Agencies continue to believe the current scope of the weighted short-term wholesale funding indicator, and the weights applied in the indicator, are appropriately calibrated for assessing the risk to broader financial stability as a result of a banking organization's reliance on short-term wholesale funding."*[19] In scoping the application of the Proposed Guidance, the Agencies should use the EPS Tailoring Rule categories and weighted STWF indicator.

Method 2 is an inappropriate mechanism for determining the scope of applicability of the Proposed Guidance because it inaccurately inflates an IHC's systemic risk profile by overweighting STWF. The 250 threshold is also an arbitrary cutoff of systemic risk that lacks basis.

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[15] While FBOs are not subject to SR 14-1, elements of SR 14-1 have been incorporated into guidance applicable to Barclays along with three other FBOs, collectively and formerly known as the Group 1 FBOs).
[16] 2018 FBO Guidance was applicable to four institutions, one institution is no longer in scope under the Proposed Guidance.
[17] Seven of the 13 Triennial Full Filers are subject to US Total Loss Absorbing Capacity (TLAC) requirements.
[18] EPS Tailoring Rule, 84 Fed. Reg. at 59036.
[19] Id. at 59242.

The use of Method 2 for resolution planning guidance is not recognized globally, and is inconsistent with the purpose for which Method 2 was designed. Method 2 was designed for application to U.S. GSIBs at a top-tier consolidated level with the specific purpose of calculating the capital surcharge for U.S. GSIBs and does not reflect specific considerations of the U.S. operations of FBOs. Some key examples of concerns include:

- Method 2 penalizes FBOs as it double counts interaffiliate transactions in the STWF component; those transactions are counted in both the interconnectedness and cross-jurisdictional components of the Method 2 score.
- The Method 2 STWF component does not accurately measure liquidity risk because it does not consider the quality of the asset being financed (e.g., Level 1 high quality liquid assets) and does not consider tenor matching or asset-liability management (e.g., matched book repo).
- FBOs appear riskier because affiliate STWF is not eliminated in consolidation as it is for Category I institutions.
- Method 2's calculation of STWF as a ratio to average risk-weighted assets (RWA) penalizes FBOs because FBOs are subsidiaries with a smaller RWA base than top-tier domestic institutions. FBOs' smaller RWA base increases their STWF ratio. In absolute numbers, the Specified FBOs' average STWF is a fraction of Category I institutions' average STWF.
- The FRB originally intended to weight STWF such that it compromises an equal share (e.g., 20 percent) of the Method 2 score as the four other systemic risk components. The weighting was calibrated based upon estimates of STWF levels at the eight institutions now in Category I.[20] This weighting remains broadly balanced for Category I institutions (i.e., STWF comprises 26 percent of their total Method 2 score); however, STWF comprises 92 percent of the Specified FBOs' total Method 2 score.[21] This is the sole reason that the Specified FBOs breach the 250 threshold.

The Agencies have noted that the Specified FBOs all have had consistently high Method 2 scores compared to Category I institutions and other FBOs, driven primarily by reliance on STWF. But this inflationary outcome results from the Method 2 calculation methodology rather than an accurate assessment of systemic risk. The inflationary outcome is evident when the Specified FBOs' Method 2 scores are contrasted with their Method 1 scores and categorization under the EPS Tailoring Rule. Using Method 1, Barclays' IHC' systemic risk score is 40, a fraction of the Category I threshold of 130 and comparable to other Category II and III triennial full filers (which would not be subject to the Proposed Guidance).[22] The disparity in the scope of application of the Proposed Guidance to the triennial full filers creates an unlevel playing field between FBOs and domestic institutions (both for Category I and II / III domestic firms). In this context, it also is an important reminder that the Specified FBOs have separate global SPOE strategies, which include their U.S. operations; for domestic institutions, their U.S. resolution plans are their global resolution strategies.

Significantly, reliance on STWF is unrelated to resolvability and the new substantive expectations imposed in the Proposed Guidance. None of the new substantive expectations address potential liquidity concerns raised by reliance on increased levels of STWF. Notably, Barclays resolution analysis has confirmed that it is not dependent on new STWF for its unwind in resolution, and Barclays does not assume new repo issuance in resolution. There is low liquidity outflow risk in resolution from STWF secured by high quality liquidity assets (HQLA). A hypothetical large-scale short-term funding run would be unlikely to trigger a fire sale of the underlying assets because where the underlying assets are HQLA, they could be safely liquidated to pay short-term creditors.

While the Specified FBOs have comparable Method 2 scores to Category I institutions, the Specified FBOs could not reasonably be presumed to present comparable degree of systemic risk to the U.S. financial system as Category I institutions present. In fact, the Board acknowledged that the Specified FBOs pose less systemic risk to the U.S. financial system by placing the IHCs of the Specified FBOs in Category III, separate

[20] 80 Fed. Reg. at 49082, 49100.
[21] Data calculated from FR Y-15, Banking Organization Systemic Risk Report, as of December 31, 2019.
[22] Estimated systemic risk scores using Q3 2019 FR Y-15 data; BCBS denominators published on November 16, 2018; Barclays analysis of public data. Solely for informational purposes based on BCBS Method 1.

from Category I under the Final Rules. Further, in the 2019 Resolution Plan Rule, the Agencies recognized that the triennial full filers, including the Specified FBOs, are less likely to pose a threat to U.S. financial stability compared to the failure of a Category I biennial filer and accordingly reduced the frequency of their filing cycle. The Agencies explicitly acknowledged: *"While the failure of a firm in this [triennial full filer] group could threaten U.S. financial stability, such failure is less likely to threaten U.S. financial stability as compared to the failure of a biennial filer. Accordingly, it is appropriate to tailor this group's requirements relative to the requirements for biennial filers*."[23] The Board's statement about the reduced risk that triennial full filers present to financial stability illustrates that Method 2 is not the appropriate scoping methodology because it overstates the Specified FBOs' risk to the U.S. financial system.

The 250 threshold for application of the Proposed Guidance is not well supported and appears arbitrarily chosen to capture the three Specified FBOs and no other institution. Notably, the 250 threshold would not capture all Category I institutions.

If the Agencies believe additional guidance is appropriate for non-Category I institutions and remain concerned about the risks posed by reliance on STWF, notwithstanding their lower systemic risk to the U.S. financial system, the Agencies should align the scoping methodology to Category II and III institutions with $75 billion or more weighted STWF (for an FBO, as determined by the risk profile of its IHC) under the EPS Tailoring Rule. The Proposed Guidance (further tailored, as described below) should apply to FBOs based on the risk profile of their IHC's to align to the resolution capital and liquidity modeling that are based on the IHC's forecasted needs.

III. Information in an FBO's U.S. resolution plan should be relevant to resolvability of U.S. Material Entities

An FBO's U.S. resolution plan should not be expected to cover activities related to, and assets held in, legal entities domiciled outside of the U.S., and it should not seek information related to non-U.S. affiliates' contractual relationships with Financial Market Utilities (FMUs) and other service providers. Instead, an FBO's U.S. resolution plan should be focused on demonstrating a successful resolution of the operations of its U.S. Material Entities. Resolution planning is a legal entity construct and, as such, activities that are booked into non-U.S. affiliates or contractual relationships between a non-U.S. affiliate and third party are beyond the scope of Title I of the Dodd-Frank Act.

Consistent with the Agencies' statement that the preferred resolution outcome for FBOs is a successful home country resolution using a SPOE resolution strategy,[24] activities booked outside of the U.S. and contractual relationships between a non-U.S. affiliate and an FMU or key agent bank, should be viewed as falling under the purview of the resolution planning laws and regulations of the home country supervisor.

The 2019 Resolution Plan Rule defines scope for FBOs in *12 CFR 243.2* as:

"Rapid and orderly resolution means a reorganization or liquidation of the covered company (or, in the case of a ***covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States****) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States."*

Guidance is expected to clarify expectations regarding the rule; it should not expand the scope and/or modify the clearly defined terms and requirements within the resolution plan rules. In numerous instances within the Proposed Guidance, however, the Agencies have expanded the definitions in the 2019 Resolution Plan Rule to include activities booked outside of the U.S. entities.

The Proposed Guidance contains expectations that Specified FBOs identify and mitigate risks for trading activities that are booked into non-U.S. affiliates, including the operational unwind of prime brokerage

[23] 2019 Resolution Plan Rule, page 33.
[24] 85 FR 15449, 15450 (March 18, 2020)

activities booked into non-U.S. affiliates.[25] For FBOs, including Barclays, resolution of activities booked in legal entities outside of the U.S. entities (irrelevant of where the activities are originated) is subject to the regulatory supervision and oversight of the home country supervisor.

Under a Title I U.S. Resolution, the positions booked by FBOs into non-U.S. affiliates (legal entities) are **not resolved** as part of the U.S. operations or entities. Resolvability is undertaken on a legal entity basis, based on contracts agreed with counterparties, under the applicable legal jurisdiction and resolution regime and authority. It is important to note that an FBO's ability to execute its U.S. Resolution Strategy is, by design, not dependent on non-U.S. affiliates. Barclays' U.S. based personnel, who currently support the U.S. Material Entities, would be leveraged in a U.S. Resolution to address all areas of regulatory concern identified in the Proposed Guidance, including (but not limited to) client relationships, transaction settlement, management of risk limits and maintenance of access to U.S. FMUs.

Additionally, the Proposed Guidance provides that, if a firm accesses the services of an FMU or key agent bank indirectly through the membership of a non-U.S. affiliate, the firm should provide a playbook for that FMU or key agent bank. With regard to playbooks for indirect users or providers of PCS services, the Agencies should recognize that a U.S. Material Entity of a Specified FBO would not have the authority to make decisions on contingency actions (or any other arrangement) with an FMU that is accessed via a non-U.S. affiliate (indirect access). The non-U.S. affiliate that holds the membership with the FMU would drive the contingency actions through the resolution period, while the U.S. Material Entity would face the non-U.S. affiliate. In many cases, U.S. entities have agreements with their non-U.S. affiliates that they leverage for indirect access to FMUs. The Proposed Guidance should also recognize that a U.S. Material Entity will not have the ability to distinguish activity specific to its clients or counterparties with the indirect FMU, as this activity is typically subject to netting by the non-U.S. affiliate.

As such, it is critical that the Agencies narrow the extraterritorial reach of the Proposed Guidance so that only the derivatives and trading activities booked in U.S. entities are in scope and that information requested is limited to areas where U.S. entities have direct contractual relationships with an FMU or a key agent bank.

IV. Opportunity exists to tailor resolution plan requirements and expectations

As the Agencies' expectations regarding resolution planning have evolved to focus on capabilities, resolution guidance and requirements should evolve to ensure that firms maintain robust capabilities and develop actionable resolution plans that enable an orderly resolution. Information expectations should focus on demonstrating a firm's capabilities and readiness for resolution. Critical information includes the firm's documenting and demonstrating the production of resolution financial forecasts, strong governance and controls, mapping of all required shared services, key systems and contracts, and the ability to produce timely information and data to inform decision-making.

FBOs subject to resolution plan requirements, including Barclays, have embedded resolvability into BAU decision making, particularly in connection with decisions related to structure, business activities, capital and liquidity allocation and governance. Having robust capabilities to support resilience and resolvability in the U.S. and globally is a priority for Barclays, and is consistent with the Agencies' issuance of the EPS Tailoring Rule and 2018 FBO Guidance and 2017 and 2019 Domestic Guidance which are focused on BAU and resolution capabilities.

Resolution capabilities should be available in BAU to support both global and/or U.S. specific stress events and resolution scenarios. Resolution plans should be streamlined for firms in order to provide the Agencies

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[25] Key examples include: Page 20, Derivatives and Trading Activities: "It is important.....firms should have capabilities to identify and mitigate risks associated with their U.S. derivatives and trading activities (including those activities originated from the U.S. entities (as defined below) and booked directly into non-U.S. affiliate) and with the implementation of their preferred strategies."Page 30, Derivatives and Trading Activities footnote 33: to include activities "booked directly into a non-U.S. affiliate; Page 31: Footnote 36: "Activities "originated" from U.S. entities and those activities transacted or arranged by or behalf of those U.S. entities and their clients and counterparties, including any such activity for which a U.S. entity is compensated (directly or indirectly" by a non-U.S. affiliate......"

with the critical information required to leverage the capabilities, ensure informed decision making and maintain strong governance.

Significant components of the U.S. resolution plan submissions could be streamlined to increase effectiveness of the plan submission and make the documents more actionable. Streamlining submissions would reduce: 1) the amount of time it would take the Agencies to review and (if necessary) challenge the plan; and 2) efforts for submitting firms who provide duplicative information through different supervisory channels. Key opportunities include:

- Resolution plan requirements and the Proposed Guidance should be streamlined to reduce duplicative information that is currently available through existing bank supervision (i.e., information on BAU processes) or existing financial regulatory reporting, and allow this information to be accessed through the existing supervisory processes. Firms should be able to provide this information by reference to internal document repositories and/or documentation previously submitted as part of supervisory reviews. Key examples of information available through the supervisory process include details and descriptions of Material Entities, core business lines and critical operations, legal entity financials, BAU processes and information related to capital and liquidity management.
- Playbooks should be streamlined to require only key information and data:
    - Financial Market Utility (FMU) Playbooks: Playbooks should be streamlined to provide critical information required to facilitate an orderly resolution. Critical information includes: management information (e.g., volumes, values by FMU), liquidity considerations, responsible parties within firms to manage the relationships, and key governance required. Firms should not be required to include information regarding FMU membership rules or expected behavior. This information is consistent amongst financial institutions and available through the supervisory process. Discussion and documentation regarding FMU expected behavior in a stress or resolution should also be facilitated and managed directly with the FMUs through the supervisory process.
    - Governance Playbooks: Playbooks should be focused on details regarding capabilities to produce and support timely and informed decision-making. Playbooks should detail key management information, governance forums and escalation procedures, detailed roles and responsibilities and process to resolve conflicts of interest. Information regarding decision-making will be driven by the circumstances and actual events specific to the firm and market conditions at the time and adds limited, if any value, in a resolution plan submission.

Liquidity Considerations

While Barclays supports maintaining the financial capabilities of Resolution Liquidity Execution Need (RLEN) and Resolution Capacity Execution Need (RCEN), the Agencies should remove standalone RLAP and RCAP expectations. RLAP and RCAP should be integrated into BAU capital and liquidity requirements to improve efficiency and remove duplicative requirements across BAU and resolution.

Liquidity held specifically to meet RLAP expectations should not be treated as separate and additive to what is required by BAU liquidity requirements (e.g., strong home-country requirements on a consolidated basis, including on U.S. operations, U.S. Liquidity Coverage Ratio, internal liquidity stress testing (ILST) framework, and U.S. Net Stable Funding Ratio (NSFR), when finalized). BAU requirements should set the binding financial resource constraint.

For example, the NSFR is expected to become the most binding liquidity constraint for some institutions. The NSFR would result in a non-stressed, BAU requirement that is more binding than the standalone liquidity requirements for each Material Entity calculated by the RLAP model in an institutions' ILST because the NSFR considers a longer-term horizon than the 30-day RLAP stress period. Post implementation of the NSFR, the treatment of liquidity held specifically for RLAP expectations (which is separate and additive) would result in financial resource consumption in excess of what would be required by either NSFR or RLAP in isolation. Ultimately, any guidance should be integrated in a holistic and cohesive manner to avoid

incremental constraints, and BAU requirements (created in formal rulemaking) should set the binding financial resource constraint.

Capital Considerations

IHCs controlled by a foreign GSIB are subject to holding U.S. TLAC, specific legal entity risk-based capital requirements as well as consolidated risk based capital requirements at the IHC. RCAP does not add significant value since it further constrains the positioning of capital within the IHC entities. Firms should have the ability to hold TLAC and incremental capital at the legal entities (e.g., holding companies) to provide the most efficiency and flexibility in a stress resolution scenario.

Contractual Binding Mechanisms (CBM)

The 2019 Resolution Plan Rule and 2018 FBO Guidance requires an FBO to consider a scenario in which an FBO's parent is unwilling or unable to provide financial support to its U.S. operations forcing at least one entity (i.e., the IHC) to be resolved under the U.S. Bankruptcy Code. Consistent with the 2018 FBO Guidance and the Proposed Guidance, CBMs were developed based on an FBO's Title I U.S. Resolution Strategy[26] to mitigate any potential legal obstacles associated with the hypothetical bankruptcy of the IHC.

While the FBO's CBMs were developed to support a U.S. Resolution Strategy, jurisdiction-specific requirements could result in trapping capital and liquidity in one jurisdiction. A CBM developed to support only a U.S. Resolution may create potential frictions for the FBO's parent in providing financial resources. Leading up to, and in, resolution, a CBM traps financial resources in the IHC and obligates a firm to leverage available capital and liquidity in the IHC for the benefit of the U.S. Material Entities. A CBM may discourage an FBO's parent from providing financial support to the U.S. Operations at any point prior to U.S. bankruptcy (e.g., steps to execute its global resolution strategy) if there is risk that financial resources could be trapped in the U.S. or become subject to a U.S. bankruptcy proceeding. Such restrictions could also impair efforts by the parent to distribute capital where it is most needed within the broader organization in times of stress, which could ultimately exacerbate the financial harm to the U.S.

Should the Proposed Guidance include expectations for an FBO to establish a CBM to mitigate legal obstacles, the Proposed Guidance should be amended to ensure that CBM arrangements do not impede capital and liquidity placed in the U.S. IHC from being returned to the foreign parent and deployed as needed.

V. Additional Considerations

In addition to the aforementioned recommendations, Barclays suggests the Agencies consider the following:

Transition Periods

Transition periods for institutions coming in or out of scope of the Proposed Guidance have not been clearly defined. It would be helpful if the Agencies provided a transition period so that institutions that may become subject to the Proposed Guidance have sufficient time to implement the enhanced capabilities and processes to comply.

The Agencies should also provide a clear exit process for a firm that no longer meet the requirements to be a Specified FBO under the Proposed Guidance.

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[26] As outlined in the Resolution Plans Q&As, for Foreign Banking Organization September 2017, www.federalreserve.gov/publications/resolution-plans-faqs-fbo-legal.htm.

Home Host Resolution Authority Cross Border Coordination

The Proposed Guidance highlights the importance of cross border coordination of home and host resolution authorities. Cross border coordination among resolution authorities is critical for the resolution of a U.S. GSIB or an FBO with global operations.

The Agencies have stated in their 2018 Feedback letters that they *"will continue to coordinate with non-U.S. authorities regarding [legal entity rationalization, PCS, and derivative booking practices] and other resolution matters (e.g., resources in resolution, communications), including developments in the U.S. and home country resolution capabilities of the Specified FBOs."* Barclays agrees with the Agencies and would welcome the opportunity to participate in dialogue to support regulatory coordination. These discussions and cooperation are critical to facilitate the orderly resolution of an FBO's U.S. legal entities and global operations, which would be resolved under their respective resolution regimes and applicable resolution authority.

Conclusion

Barclays appreciates the Agencies' consideration of our comments on the Proposed Guidance. As highlighted in this letter, further changes should be made before finalizing the Proposed Guidance to utilize the well deliberated measures of systemic risk (i.e., the EPS Tailoring Rule) as the appropriate scoping mechanism and to ensure both a level playing field among similarly situated financial institutions and the tailoring of requirements and expectations among firms with different risk profiles.

* * *

Barclays would welcome the opportunity to provide further information or assistance to the Agencies. Please contact Brendan Reilly (brendan.t.reilly@barclays.com, 202 452 4721) or Adina Brownstein (adina.brownstein@barclays.com, 212 320 7708) if we can provide any additional information.

Sincerely,

Richard Haworth
U.S. Chief Executive Officer

CC:
Gerard LaRocca, U.S. Chief Administrative Officer
Brendan Reilly, Head of U.S. Government Relations and Regulatory Policy
Adina Brownstein, Head of U.S. Recovery and Resolution Planning
Erin Mansfield, Global Head of Regulatory Relations and Policy
Emma Bailey, U.S. General Counsel

Responses to Questions included in the Proposed Guidance

Barclays has answered certain questions based on applicability to our US operations and areas of interest. Key points addressed in the questions below are also included in Barclays comment letter.

The responses to the questions are identified by the section in the Proposed Guidance and order they appear in the section.

Scope of Application

Question [SofA - 1]: Is the proposed scope of applicability of the proposed guidance appropriate? Should the agencies adopt a different methodology for determining the scope of the proposed guidance? For example, should the proposed guidance apply to FBOs whose U.S. operations have a systemic risk profile (as assessed by the method 1 GSIB score) that is similar to the systemic risk profile of the U.S. financial institutions that are assigned to Category I under the Board's tailoring rules? Should the proposed guidance apply to FBOs that are subject to Category II standards (based on the firm's combined U.S. operations) under the Board's tailoring rules? Should the proposed guidance apply to FBOs that have exposure of a certain level (in the range of $50 to $100 billion) in one or more of the risk-based indicators identified in the Board's tailoring rules, such as non-bank assets and/or STWF? If the agencies adopt a different scope of application than what is being proposed, should the agencies also modify the content of the guidance, for example by removing certain sections of the guidance? Commenters are invited to explain in detail the basis for their positions.

Response

The proposed scope of applicability of the proposed guidance including: (i) triennial full filers and (ii) whose IHCs have a score of 250 or more under Method 2 is NOT appropriate. The Agencies should replace the scoping methodology to appropriately reflect the risks associated with FBO IHCs. See Section II of Barclays comment letter for specific details regarding scope and methodology.

Question [SofA - 2]: Should the agencies outline in the final guidance their methodology and process for determining the FBOs to which the guidance should apply? Should the agencies specify in the final guidance an implementation period for any FBO that did not receive the 2018 FBO guidance, but to which the final guidance will apply? If so, should the implementation period be fixed or subject to adjustment by the agencies?

Response

The Agencies should specify implementation periods for institutions coming in or out of scope of the Proposed Guidance. The Agencies should also provide a clear exit process for banks that no longer meet the requirements to be a Specified FBO. See Section V of Barclays comment letter for recommendations.

Governance Mechanisms - Contractual Binding Mechanisms (CBM)

Question [Gov- 4]: Does the existence of a CBM that follows either of the aforementioned CBM approaches have the potential to facilitate or pose a potential conflict with a Specified FBO's home country global resolution strategy? If so, are there alternative approaches that would mitigate the conflict while providing sufficient confidence that appropriate levels of capital and liquidity will be timely provided to material entity subsidiaries?

Response

A CBM developed to support only a U.S. Resolution may create potential frictions for the FBO's parent in providing financial resources. Leading up to, and in, resolution, a CBM traps financial resources in the IHC and obligates a firm to leverage available capital and liquidity in the IHC for the benefit of the U.S. Material Entities. A CBM may discourage an FBO's parent from providing financial support to the U.S. Operations at any point prior to U.S. bankruptcy (e.g., steps to execute its global resolution strategy) if there is risk that financial resources could be trapped in the U.S. or become subject to a U.S. bankruptcy proceeding. Such restrictions could also impair efforts by the parent to distribute capital where it is most needed within the broader organization in times of stress, which could ultimately exacerbate the financial harm to the U.S.

Should the Proposed Guidance include expectations for an FBO to establish a CBM to mitigate legal obstacles, the Proposed Guidance should be amended to ensure that CBM arrangements do not impede capital and liquidity placed in the U.S. IHC from being returned to the foreign parent and deployed as needed.

Payment, Clearing and Settlement

Framework

Question [Framework: PCS - 1]: Is the proposed guidance sufficiently clear with respect to the following concepts: scope of PCS services, user vs. provider, and direct vs. indirect relationships? What additional clarifications or alternatives concerning the proposed framework or its elements, if any, should the agencies consider? For instance, would further examples of ways that a Specified FBO may act as provider of PCS services be useful? Should the agencies consider further distinguishing between providers based on the type of PCS service they provide?

Response

Further examples of ways that a Specified FBO may act as provider (or recipient) of PCS services would be useful in interpreting and applying the Proposed Guidance.

PCS - Content related to Playbooks

Question [Playbooks: PCS - 1]: Are the expectations with respect to playbook content for firms that are direct or indirect users or providers (or both) of PCS services sufficiently clear? What additional clarifications, alternatives, or additional information, if any, should the agencies consider?

Response

With regard to playbooks for indirect users or providers of PCS services, the Proposed Guidance should recognize that a U.S. Material Entity of a Specified FBO would not have the authority to make decisions on contingency actions (or any other arrangement) with an FMU that is accessed via a non-U.S. affiliate. The non-U.S. affiliate that holds the membership with the FMU would drive the contingency actions through the resolution period, while the U.S. Material Entity would face off the non-U.S. affiliate. In many cases, U.S. entities have agreements with their non-U.S. affiliates whom they leverage for indirect access to FMUs.

The Proposed Guidance should also recognize that a U.S. Material Entity will not have the ability to distinguish activity specific to its clients or counterparties with the indirect FMU, as this activity is typically subject to netting by the non-U.S. affiliate.

Question [Playbooks: PCS - 2]: Should the guidance indicate that providers of PCS activities are expected to consider particular contingency arrangements (e.g., methods to transfer client activity to other firms with whom the clients have relationships, alternate agent bank relationships, etc.)? Should the guidance also indicate that firms should consider particular actions they may take concerning the provision of intraday credit to affiliate and third-party clients, such as requiring pre-funding? If so, what particular actions should these firms address?

Response

The Proposed Guidance should outline examples of particular actions and arrangements that the Agencies expect the firms to consider, particularly around the provision of intraday credit to affiliate and third-party clients. These should be used as examples only, rather than a requirement that the firm assess and/or implement each of the examples. Aside from pre-funding, actions could include stoppage of intraday credit provision and the transfer of activity away from the Specified FBO's Material Entity(ies).

The Proposed Guidance should recognize that there is specific default guidance already in place for certain Financial Market Utilities (e.g., Central counterparties [CCP]) that are applicable to the entire industry and would govern a Specified FBO's activities in a resolution. The Specified FBO would follow the CCP guidelines in the event of stress or resolution, rather than its self-defined arrangements elaborated in a firm-specific playbook.

PCS - Capabilities

Question [Capabilities: PCS - 1]: Are the agencies' expectations concerning these capabilities sufficiently clear? What additional clarifications, if any, should the agencies consider?

Response

With regard to service level agreements (SLAs) cited on page 59 of the Proposed Guidance, the Proposed Guidance should recognize that the vast majority of FMUs and agent banks do not implement bilateral SLAs for core clearing and custody services.

Derivatives and Trading (D&T) Activities

Barclays response to the Agencies five questions' on D&T activities is centered on around common themes.

- Scope of Applicability: An FBO's U.S. resolution plan should not be expected to cover activities booked outside of the U.S. The Agencies should narrow the extraterritorial reach of the Proposed Guidance so that only the derivatives and trading activities that are booked in the U.S. are in scope.
    - Agencies have expanded scope that is inconsistent with 2019 Resolution Plan Rule, where resolution planning for FBOs is applicable to subsidiaries (including U.S. Branches) and operations that are domiciled in the U.S. All areas which have expanded scope to apply to activities booked outside of U.S. entities should be removed. These activities are booked in entities which are (1) under the Supervisory oversight of home country authorities; (2) outside the scope of U.S. Title 1 Resolution Planning. The following definitions in the Proposed Guidance should be updated to be consistent with the 2019 Resolution Plan Rule.
- U.S. Entities: Only U.S. Material Entities should be subject to D&T expectations. The term U.S. Entities needs to be consistent with the term U.S. Material Entities defined in the 2019 Resolution Plan Rule, aligned to U.S. Core Business Lines and Critical Operations.
- U.S. Derivatives and Trading Activities: Scope of U.S. derivatives and trading activity should be refined to include only positions of Core Business Lines and Critical Operations associated with Material Entities that are domiciled in the U.S.
- U.S. Prime Brokerage Accounts and Balances: Definitions of U.S. Prime Brokerage Accounts and Balances in the Proposed Guidance are inconsistent and go beyond the scope of the 2019 Resolution Plan Rule. Activities booked outside of the U.S. entities (irrelevant of where the activities are originated) are subject to regulatory supervision and oversight of an FBO's home country supervisor and should be removed from the Proposed Guidance.
- Expectations should align to the principles of Tailoring: D&T expectations should be tailored based on a firm's size, complexity, risk profile and should differ from expectations applicable to Category I institutions. The proposed guidance should (1) include a threshold to determine an FBO's applicability and (2) not be "larger and broader" and thus more stringent than the expectations for Category I institutions.

    The D&T (and PCS) expectations added to the Proposed Guidance imposes expectations substantially similar to those applied to Category I institutions. At a minimum, these incremental expectations should be removed when the Final Guidance is issued.

    This view is supported by Vice Chair Quarles' statements on the size and complexity of the four LISCC FBOs. *"Since 2010, these four banks have significantly shrunk their U.S. footprint, and their U.S. operations are much less risky than they used to be. Since 2008, the size of the LISCC FBOs' combined U.S. assets has shrunk by about 50 percent, and they have reduced the assets at their broker-dealers from a peak of $1.9 trillion in 2008 to $340 billion today, a reduction of over 80%. In addition, the estimated systemic impact of the LISCC FBOs today is much smaller than the U.S.*

GSIBs. The average method 1 GSIB score of the combined U.S. operations of the LISCC FBOs is less than a quarter of the average GSIB score of the six non-processing U.S. GSIBs."[27]

And further supported by the Agencies clear statements in the 2019 Resolution Plan Rule stating that *"the U.S. footprints of the larger and more complex foreign banking organizations are significantly smaller than those of, and do not present the same complexities as, the U.S. GSIBs."*

Question [D&T - 1]: Should the proposed guidance incorporate a set of criteria explaining the circumstances under which the expectations related to derivatives and trading activities apply to firms that would be Specified FBOs under the proposed guidance? If so, what criteria would be the most relevant indicators of a derivatives and trading portfolio that may pose risks to the orderly resolution of a firm? For example, should the agencies consider some or all of the following indicia: being a foreign GSIB subject to U.S. Internal TLAC requirements, having an identified critical operation or a core business line related to U.S. derivatives and trading activities, or other indicia?

Response

As discussed in Barclays comment letter, the D&T components of the Proposed Guidance should be removed. Specifically, an FBO's U.S. resolution plan should not be expected to cover activities held in legal entities domiciled outside of the U.S. (see Section III of Barclays comment letter). In the case where the Agencies include the D&T components of the Proposed Guidance, then a set of criteria explaining the circumstances under which the expectations related to D&T activities would apply to an FBO should be incorporated.

The criteria to determine an FBO's applicability should be consistent to the principles of tailoring, consider the size and complexity of an FBO's U.S. derivatives and trading activity and be aligned to other supervisory rule making.

The Agencies should leverage the threshold and methodology jointly developed by the FRB, the FDIC, the Commodity Futures Trading Commission (CFTC), the Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC) as part of the revisions to simplify the Volcker Rule.[28]

The revisions to simplify the Volcker Rule include a threshold and methodology to determine requirements for firms based on the firm's level of trading activity. The definition of trading activity considers the complexity and risk of a firm's positions and defines the activity as "the average gross trading assets and liabilities of the banking entity and its subsidiaries and affiliates (excluding obligations of or guaranteed by the U.S. or any agency of the U.S.) over the previous four consecutive quarters". The methodology calculates trading assets and liabilities based on an FBO's combined U.S. operations. The most stringent requirements apply to firms with "significant trading assets and liabilities" defined as those equal to or exceeding $20 billion.

Consistent with the definitions, methodology and thresholds defined in Volcker Rule revisions, the D&T expectations should only be applicable to Category II/III firms with "significant trading assets and liabilities" (i.e., equal to or exceeding $20 billion).

Adopting the above criteria would be reflective of the size and complexity of a Category II/III firms' D&T activities and would be consistent with the definitions and thresholds that have been jointly developed by the U.S. regulators in a related rulemaking.

Question [D&T - 2]: Is the proposed guidance sufficiently clear with respect to the following concepts: U.S. derivatives and trading activities, activities originated from U.S. entities, risk transfer arrangements, and U.S. prime brokerage accounts? What additional

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[27] Vice Chair for Supervision Randal K. Quarles speech on Transparency, Accountability, and Fairness in Bank Supervision, January 17, 2020

[28] Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, October 2019, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20191008a1.pdf.

clarifications or alternatives concerning the proposed derivatives and trading practices framework or its elements, if any, should the agencies consider?

Response

As discussed above in overarching comments on the D&T expectations, the Proposed Guidance is not sufficiently clear. See Section III of Barclays comment letter for additional details.

Question [D&T - 3]: Is the proposed guidance sufficiently clear concerning the scope of expectations related to the Booking Practices and U.S. Activities Monitoring subsections? Should the agencies consider applying a different scope of expectations for these subsections? For instance, should the scope of these subsections only include U.S. derivatives activities, instead of both U.S. derivatives and trading activities (e.g., securities financing transactions)? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Response

Booking practices and U.S. activities monitoring expectations outlined in the Proposed Guidance should only apply to an FBO's U.S. derivatives activities.[29] The scope should not be expanded to be "larger and broader" and include U.S. trading activities making the FBO expectations for booking practices and U.S. activities monitoring more stringent than the expectations for Category I institutions. Consistent with the overall principles of tailoring requirements based on a firm's size, complexity and risk profile, expectations of Category II/III FBOs should not be more stringent than expectations for Category I institutions. See Barclays comment letter for additional details.

Question [D&T - 4]: Is the proposed guidance sufficiently clear concerning the scope of expectations related to the Prime Brokerage Customer Account Transfers subsection? Should the agencies consider applying a different scope of expectations for this subsection? For instance, should the scope of this subsection only apply to account positions and balances that are booked into U.S. IHC subsidiaries? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Response

The scope outlined in the Proposed Guidance related to the Prime Brokerage Customer Account Transfer is not clear in that it is expecting assessment of operational capacity and ability to transfer accounts that would be associated with the failure of non-U.S. entities.

Yes, the Agencies should consider applying a different scope of expectations to the Prime Brokerage Customer Account Transfers subsection. The scope of expectations should be consistent with the resolvability of U.S. operations which is in line with a Title I U.S. Resolution which focuses on the orderly resolution of U.S. Material Entities under the U.S. Bankruptcy code. The Agencies in footnote 91 on page 72 of the Guidance define "U.S. prime brokerage account or balances" to include the account positions and balances of a client of the firm's U.S. prime brokerage business, regardless of where positions are booked. Our position is that U.S. prime brokerage client is a client who signs a prime brokerage agreement with a U.S. Material Entity.

The preamble to the 2019 Resolution Plan Rule clarified that "Although the agencies recognize that foreign banking organizations may have home-country resolution strategies under which U.S. entities are not planned to enter resolution, the Dodd-Frank Act requires firms to <u>plan for the failure of their U.S. operations</u>." Operational capacity and ability to transfer accounts is part of a firm's strategic analysis, as such the strategy that the Agencies are requesting includes prime brokerage accounts or balances that are booked outside of the U.S. Material Entities. This clearly <u>falls outside of the scope of the U.S. Resolution Plan requirements as stated in the 2019 Resolution Plan Rule</u>.

The above is clearly documented in the §ll.2 Definitions of the 2019 Resolution Plan Rule that defines scope for Foreign Banking Organizations:

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[29] Footnote 42 of the Proposed Guidance outlines "The scope of the proposed guidance is larger and broader for a Specified FBO relative to the 2019 domestic guidance and includes, for example, account balances and securities financing transactions related to prime brokerage services and other derivatives trading businesses".

"Rapid and orderly resolution means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States."

The Proposed Guidance is expecting FBOs to contemplate the operational feasibility of moving accounts and balances booked in non-us affiliates that are not in scope for a Title I U.S. Resolution Strategy but rather would be contemplated as part of a FBO's Global Resolution Strategy. The scope of "U.S. prime brokerage account[s]" and "U.S. prime brokerage account balances" should be defined to apply to account positions and balances booked only into U.S. Material Entities.

Question [D&T - 5]: Is the proposed guidance sufficiently clear concerning the scope of expectations related to the Portfolio Segmentation subsection? Should the agencies consider applying a different scope of expectations for this subsection? For instance, should the scope of this subsection only apply to U.S. IHC subsidiaries with a derivatives portfolio, instead of both U.S. IHC subsidiaries and U.S. material entity branches with a derivatives portfolio? If so, what should be the basis for such differing expectations, and what additional clarifications or alternatives should the agencies consider?

Response

Yes, the Agencies should apply a different scope. The scope of this section should only apply to U.S. IHC subsidiaries (i.e., not material entity branches) that are Material Entities.

In response to the first part of the question, if applicable in the Final Guidance - No, the Guidance is not sufficiently clear concerning the scope of expectations. The Proposed Guidance expects firms to develop capabilities to analyze portfolios taking into account "trade level characteristics" the agencies should consider position level characteristics commensurate with the level of risk associated with a firms U.S. derivative portfolio.

Further, consistent with the 2019 Domestic Guidance, the Proposed Guidance should allow FBOs to define linked non-derivatives trading positions based on an its overall business and resolution strategy trading positions.

Format and Structure of Plans

Question [F&S - 2]: The proposal incorporates portions of, and is generally aligned with, the 2018 FBO guidance and components of the 2019 domestic guidance. Are there any components of the proposal that should be augmented or removed? If so, which provisions? Are there any elements of the proposed guidance that are not relevant to the Specified FBOs? If such is the case, commenters are invited to explain in detail and provide evidence to support.

Response

The Proposed Guidance should be tailored based on a firm's size, complexity, risk profile and differ than expectations of a Category I institutions. The Proposed Rule should be revised to eliminate activities held in legal entities domiciled outside of the U.S. and should not seek information related to non-U.S. affiliates' contractual relationships with FMUs and other service providers.

See Barclays comments letter above for details.