

Date: October 3, 2019
To: Board of Governors
From: Staff¹
Subject: Joint final rule regarding resolution plans

ACTION REQUESTED: Staff seeks approval of the attached draft final resolution plan rule and accompanying *Federal Register* notice that would revise the regulation² implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).³ The draft final resolution plan rule would be issued jointly by the Board and the Federal Deposit Insurance Corporation (FDIC). Staff also requests that the Board (1) certify pursuant to the Regulatory Flexibility Act (RFA) that the draft final resolution plan rule would not have a significant economic impact on a substantial number of small entities and (2) delegate authority to staff to identify which holding company in a multi-tiered holding company will be a covered company under the draft final resolution plan rule. Staff also requests authority to make technical, non-substantive changes to the draft final resolution plan rule and *Federal Register* notice prior to publication.

EXECUTIVE SUMMARY:

- Resolution plans, commonly known as living wills, must describe a firm's strategy for orderly resolution under bankruptcy in the event of material financial distress or failure of the company.
- Since 2012, there have been several rounds of resolution plan submissions from firms and feedback from the agencies which, combined with other post-financial crisis reforms, have resulted in substantial gains in the resiliency and resolvability of large banking organizations and the financial system.

¹ Michael Gibson, Mona Elliot, Catherine Tilford, Kathryn Ballintine, and Tudor Rus (Division of Supervision and Regulation); Mark Van Der Weide, Laurie Schaffer, Jay Schwarz, Steve Bowne, and Sarah Podrygula (Legal Division); and Dianne Dobbeck and Kristin Malcarney (LISCC Recovery and Resolution Program).

² 12 CFR pt. 243 (Board); 12 CFR pt. 381 (FDIC).

³ Pub. L. No. 111-203, 124 Stat. 1376, 1426-1427; 12 U.S.C. § 5365(d)(1).

- The Board and the FDIC proposed to revise their joint resolution plan rule in April 2019. The draft final resolution plan rule is largely consistent with the resolution plan proposal, with certain narrow changes made in response to public comments.
 - In particular, the draft final rule would no longer allow the largest firms to request changes to the content of their resolution plans. And for those firms that can request changes, joint agency approval would be required for the changes to take effect.
- The draft final resolution plan rule builds on the Board’s tailoring of its rules and experience implementing those rules, and it accounts for changes to the enhanced prudential standards made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).⁴ It aligns with the four categories of tailored standards for firms with more than \$100 billion in total assets:
 - Category I: Firms in this category — the U.S. global systemically important banks (GSIBs) — would be required to file resolution plans every two years, alternating between full and targeted plans. Targeted plans would include core areas like capital and liquidity, as well as material changes in other areas. A two-year cycle is consistent with the current filing rate for the GSIBs.
 - Categories II and III: Domestic and foreign firms in this category would be required to file resolution plans every three years, alternating between full and targeted plans.
 - Category IV: Domestic firms in this category, owing to their limited systemic footprint, would not be required to file resolution plans. Foreign firms with \$250 billion or more in global assets, including those in this category, that do not fall in any other category would be required to file a reduced resolution plan every three years, reflecting their limited U.S. systemic footprint.

DISCUSSION:

The resolution plan proposal would have changed and improved certain resolution planning elements based on the agencies’ experience implementing the rule. These changes include the scope of application of the resolution planning requirement, the frequency of

⁴ Pub. L. No. 115-174, 132 Stat. 1296.

resolution plan submissions, informational content requirements, and the rule's procedures for the identification of critical operations. In addition, the resolution plan proposal would have made certain additional improvements and clarifications to the resolution plan rule. The draft final resolution plan rule is largely unchanged from the resolution plan proposal but includes certain modifications and clarifications based on comments received from the public, as described below.

Scope of Application. EGRRCPA eliminated the resolution planning requirement for firms with less than \$100 billion in total consolidated assets and, effective November 2019, raises the minimum asset threshold for automatic application of the requirement to \$250 billion in total consolidated assets. Additionally, EGRRCPA provides the Board with the authority to apply the resolution planning requirement to firms with between \$100 billion and \$250 billion in total consolidated assets. Consistent with EGRRCPA, the Board has proposed a framework that tailors the prudential standards that apply to large U.S. banking organizations (domestic tailoring rule)⁵ and foreign banking organizations⁶ (together with the domestic tailoring rule, the tailoring rules).

The resolution plan proposal would have applied the resolution planning requirement to firms that would be subject to category I, II, or III standards under the tailoring rules.⁷ In

⁵ Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies (Proposed Rule), 83 FR 61408 (November 29, 2018).

⁶ Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies (Proposed Rule), 84 FR 21988 (May 15, 2019).

⁷ The tailoring rules would establish the following categories of firms:

- Category I: U.S. global systemically important banks;
- Category II: Domestic firms with \$700 billion or more in total consolidated assets, or \$100 billion or more in total consolidated assets and \$75 billion or more in cross-jurisdictional activity; and foreign banking organizations with \$700 billion or more in combined U.S. assets, or with \$100 billion or more in combined U.S. assets and \$75 billion or more in cross jurisdictional activity measured based on the firm's combined U.S. operations;
- Category III: Domestic firms that have (a) \$250 billion or more in total consolidated assets or (b) \$100 billion or more in total consolidated assets and \$75 billion or more in any of the following risk-based indicators: nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure; and foreign banking organizations that

addition, it would have applied the resolution planning requirement to all foreign banking organizations that have \$250 billion or more in total global consolidated assets, as required by the Dodd-Frank Act.⁸ The resolution plan proposal would not have applied resolution planning requirements to domestic firms with total consolidated assets between \$100 billion and \$250 billion that do not meet the risk-based indicator thresholds identified in the tailoring rules. The resolution plan proposal also would not have applied resolution planning requirements to foreign banking organizations with total global consolidated assets between \$100 billion and \$250 billion where the foreign banking organization's combined U.S. assets are less than \$100 billion and its risk-based indicators are below the thresholds identified in the tailoring rules.

Some commenters supported the proposed scope of application and others asserted that it might inappropriately eliminate resolution planning requirements for some firms. Staff believe that the proposed scope of application would appropriately apply the resolution planning requirement in a manner tailored to those firms whose material financial distress or failure would be most likely to give rise to risks to U.S. financial stability. Accordingly, the draft final resolution plan rule would have the same scope of application described in the resolution plan proposal.

Frequency of Plans. The resolution plan rule currently requires a resolution plan to be filed on an annual basis. Due to the time needed for the agencies to review plans and for firms to address agency feedback, the agencies have effectively moved to a two-year cycle and have

have (a) \$250 billion or more in combined U.S. assets or (b) \$100 billion or more in combined U.S. assets and \$75 billion or more in any of the following risk-based indicators: nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure measured based on the firm's combined U.S. operations; and

- Category IV: Domestic firms that have total consolidated assets equal to or greater than \$100 billion but less than \$250 billion; and foreign banking organization with at least \$100 billion in combined U.S. assets.

⁸ The scope of application for foreign banking organizations under the final resolution plan rule would differ from that of the draft final tailoring rules because the Dodd-Frank Act requires that all foreign banking organizations with \$250 billion or more in total global consolidated assets be subject to resolution planning requirements. Accordingly, certain foreign banking organizations that have \$250 billion or more in total global consolidated assets but do not meet the thresholds to be subject to category I through IV standards under the tailoring rules would nonetheless be subject to resolution planning requirements under the final resolution plan rule.

provided additional time between resolution plan submissions. As a result, the resolution plan proposal would have formalized a filing timeline of two years for firms that would be subject to category I standards and three years for all other firms.

Commenters generally supported the proposal to formalize an extended filing timeline, although some commenters argued that it could cause resolution plans to become outdated during the time between submissions. The draft final resolution plan rule would adopt the filing timeline as proposed because staff believe that it would provide sufficient time for the agencies to review plans and for firms to address agency feedback. In addition, the proposed filing timeline is appropriately calibrated to require the most frequent submissions from firms whose material distress or failure would pose the highest degree of risk to U.S. financial stability, and the draft final resolution plan rule contains features designed to obtain more frequent submissions if necessary.⁹

Plan Content. The resolution plan proposal would have established three types of resolution plan submissions—full, targeted, and reduced resolution plans. Firms subject to category I, II, or III standards would alternate between full plan and targeted plan submissions, and other filers would submit only reduced plans. Full plans would have consisted of the information currently required to be included in resolution plan submissions. Targeted plans would have included the information that is required to be included in a full plan regarding capital, liquidity, and the firm’s plan for executing any recapitalization contemplated in its resolution plan. Targeted plans would also have included information about any areas of interest identified by the agencies in advance of the plan submission date and about changes in the firm or the firm’s plan since a firm’s previous plan filing. Reduced plans would have included only changes to a firm’s plan since its previous filing.

To facilitate tailoring of informational requirements for full plans, the resolution plan proposal included new procedures by which a firm could request that the agencies change certain

⁹ Under the draft final resolution plan rule, the agencies would retain the ability jointly to require interim updates between filings or move plan submission dates and could require a full plan submission when a targeted plan or reduced plan would otherwise be required. In addition, the draft final resolution plan rule would require firms to provide the agencies with notice of certain extraordinary events, such as major mergers, that occur between plan submissions.

informational elements for a full resolution plan. Under the proposal, such requests would have been deemed approved unless the agencies jointly denied them within six months.

The draft final rule would retain the proposed informational content requirements for full, targeted, and reduced plans, including the ability for certain firms to request changes to certain informational requirements in full plans. However, the draft final rule would modify the proposal in two ways. First, U.S. GSIBs would not be permitted to request changes to their resolution plans. And second, requests from other firms would only be granted if the agencies jointly approve.

Staff believe that the first change would facilitate appropriate differentiation of informational content requirements between U.S. GSIBs and other filers by keeping in place all full plan informational content requirements for those firms whose material distress or failure would present the most serious risks to U.S. financial stability. And staff believe that the second change to require joint approval would be consistent with other provisions of the rule that require joint agency approval. Staff believe that the proposed informational content requirements for full, targeted, and reduced plans are otherwise well calibrated to capture the information that is most material to assessing firms' resolvability.

Critical Operations. The resolution plan proposal described a process for firms and the agencies to identify particular operations as critical and to review periodically such designations. The proposal also set forth procedures by which firms could request that the agencies reconsider prior critical operations identifications. Commenters generally supported these changes, and the draft final resolution plan rule would implement them substantially as proposed.¹⁰

Timing Changes. Several commenters suggested that the agencies should provide more certainty regarding the timing of feedback to firms. In particular, commenters stated that the final resolution plan rule should include a formal timeline for the agencies to provide feedback to firms within one year following a resolution plan submission and advance notice requirements when the agencies change informational content requirements, require an interim update, or alter

¹⁰ Consistent with the resolution plan proposal, firms that do not currently have identified critical operations would, under the draft final resolution plan rule, be able to request an exemption from the requirement to establish a process and methodology to identify critical operations. However, the draft final resolution plan rule would allow such exemptions to remain effective for up to six years, rather than only three years, as proposed.

resolution plan submission dates. In response, the draft final resolution plan rule would require the agencies to identify any shortcomings or deficiencies in a resolution plan and provide any feedback on the plan no later than twelve months after the plan is submitted, absent extenuating circumstances. In addition, the draft final resolution plan rule provides for additional notice when the agencies alter submission dates or take actions that would affect plan content requirements.

Transition to New Rule. The effective date of the draft final resolution plan rule would be 60 days after publication in the *Federal Register*. Firms would submit their initial resolution plans under the draft final resolution plan rule as follows: U.S. GSIBs and firms subject to category II or III standards would submit targeted plans on July 1, 2021, and all other firms would submit reduced plans on July 1, 2022.¹¹

Regulatory Flexibility Act Certification. The RFA requires an agency to prepare a final regulatory flexibility analysis unless the agency certifies that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration has defined “small entities” to include banking organizations with total assets of less than or equal to \$550 million. Because the final rule would not apply to any banking organizations of this size, staff recommends that the Board certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Proposed Delegation. Staff recommends that the Board delegate to the Director of Supervision and Regulation, or his or her delegatee, in consultation with the General Counsel, or his or her delegatee, the authority to identify which holding company in a multi-tiered holding company will be a covered company under the draft final resolution plan rule. (See draft Order at Appendix D.) Staff believes that the proposed delegation would facilitate administration of the draft final resolution plan rule. The delegation would only cover actions that raise no significant legal, policy, or supervisory concerns.

¹¹ In addition, Barclays plc, Credit Suisse Group AG, Deutsche Bank AG, and UBS Group AG would submit information in July 2020 regarding the remediation of shortcomings identified in their 2018 plans, and Northern Trust Corporation would submit an update in January 2020 regarding projects undertaken to address the liquidity shortcoming identified in its 2015 resolution plan.

RECOMMENDATIONS: For the reasons discussed above, staff recommends that the Board approve the draft final resolution plan rule and proposed RFA certification and order of delegation. Staff also recommends that the Board authorize staff to make technical, non-substantive changes to the draft final resolution plan rule and *Federal Register* notice prior to publication in the *Federal Register*.

Attachments

Appendix A: Expected Resolution Plan Filing Groups¹²

Biennial Filers	Triennial Full Filers		Triennial Reduced Filers
Category I¹³	Category II¹⁴	Category III¹⁵	Other FBOs¹⁶
Two-year cycle <ul style="list-style-type: none"> • Alternating full and targeted plans 	Three-year cycle <ul style="list-style-type: none"> • Alternating full and targeted plans 	Three-year cycle <ul style="list-style-type: none"> • Reduced plans 	
Bank of America Bank of New York Mellon Citigroup Goldman Sachs JPMorgan Chase Morgan Stanley State Street Wells Fargo	Barclays Capital One Credit Suisse Deutsche Bank HSBC Mizuho MUFG Northern Trust PNC Financial Royal Bank of Canada Toronto-Dominion UBS U.S. Bancorp		53 FBOs <i>See accompanying list</i>

¹² Please see the accompanying visual “Resolution Plan Submission Dates” for a visualization of future submissions. Projected categories are based on data for Q1 2019. Actual categories will be based on 4-quarter averages. For certain measures for foreign banks, conservative assumptions were used to estimate incomplete data.

¹³ Firms subject to category I standards will be the U.S. GSIBs. Any future Council-designated nonbank would file full and targeted plans on a two-year cycle, unless the agencies jointly determine the firm should file full and targeted plans on a three-year cycle.

¹⁴ Firms subject to category II standards will be: (1) U.S. firms with (a) \geq \$700b average total consolidated assets; or (b) \geq \$100b average total consolidated assets with \geq \$75b in average cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a) \geq \$700b average combined U.S. assets; or (b) \geq \$100b average combined U.S. assets with \geq \$75b in average cross-jurisdictional activity.

¹⁵ Firms subject to category III standards will be: (1) U.S. firms with (a) \geq \$250b and $<$ \$700b average total consolidated assets; or (b) \geq \$100b average total consolidated assets with \geq \$75b in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure and (2) FBOs with (a) \geq \$250b and $<$ \$700b average combined U.S. assets; or (b) \geq \$100b average combined U.S. assets with \geq \$75b in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure.

¹⁶ Other FBOs subject to resolution planning pursuant to statute are FBOs with \geq \$250b global consolidated assets that are not subject to category II or category III standards.

Foreign banking organizations that are expected to be triennial reduced filers		
Agricultural Bank of China	Australia and New Zealand Banking Group	Banco Bradesco
Banco De Sabadell	Banco Do Brasil	Banco Santander
Bank of China	Bank of Communications	Bank of Montreal
Bank of Nova Scotia	Bayerische Landesbank	BBVA Compass
BNP Paribas	BPCE Group	Caisse Federale de Credit Mutuel
Canadian Imperial Bank of Commerce	China Construction Bank Corporation	China Merchants Bank
CITIC Group Corporation	Commerzbank	Commonwealth Bank of Australia
Cooperative Rabobank	Credit Agricole Corporate and Investment Bank	DNB Bank
DZ Bank	Erste Group Bank AG	Hana Financial Group
Industrial and Commercial Bank of China	Industrial Bank of Korea	Intesa Sanpaolo
Itau Unibanco	KB Financial Group	KBC Bank
Landesbank Baden-Weurtemberg	Lloyds Banking Group	National Agricultural Cooperative Federation
National Australia Bank	Nordea Group	Norinchukin Bank
Oversea-Chinese Banking Corporation	Shinhan Bank	Skandinaviska Enskilda Banken
Societe Generale	Standard Chartered Bank	State Bank of India
Sumitomo Mitsui Financial Group	Sumitomo Mitsui Trust Holdings	Svenska Handelsbanken
Swedbank	UniCredit Bank	United Overseas Bank
Westpac Banking Corporation	Woori Bank	

Appendix B: Final Resolution Plan Rule – Full and Targeted Resolution Plan Requirements

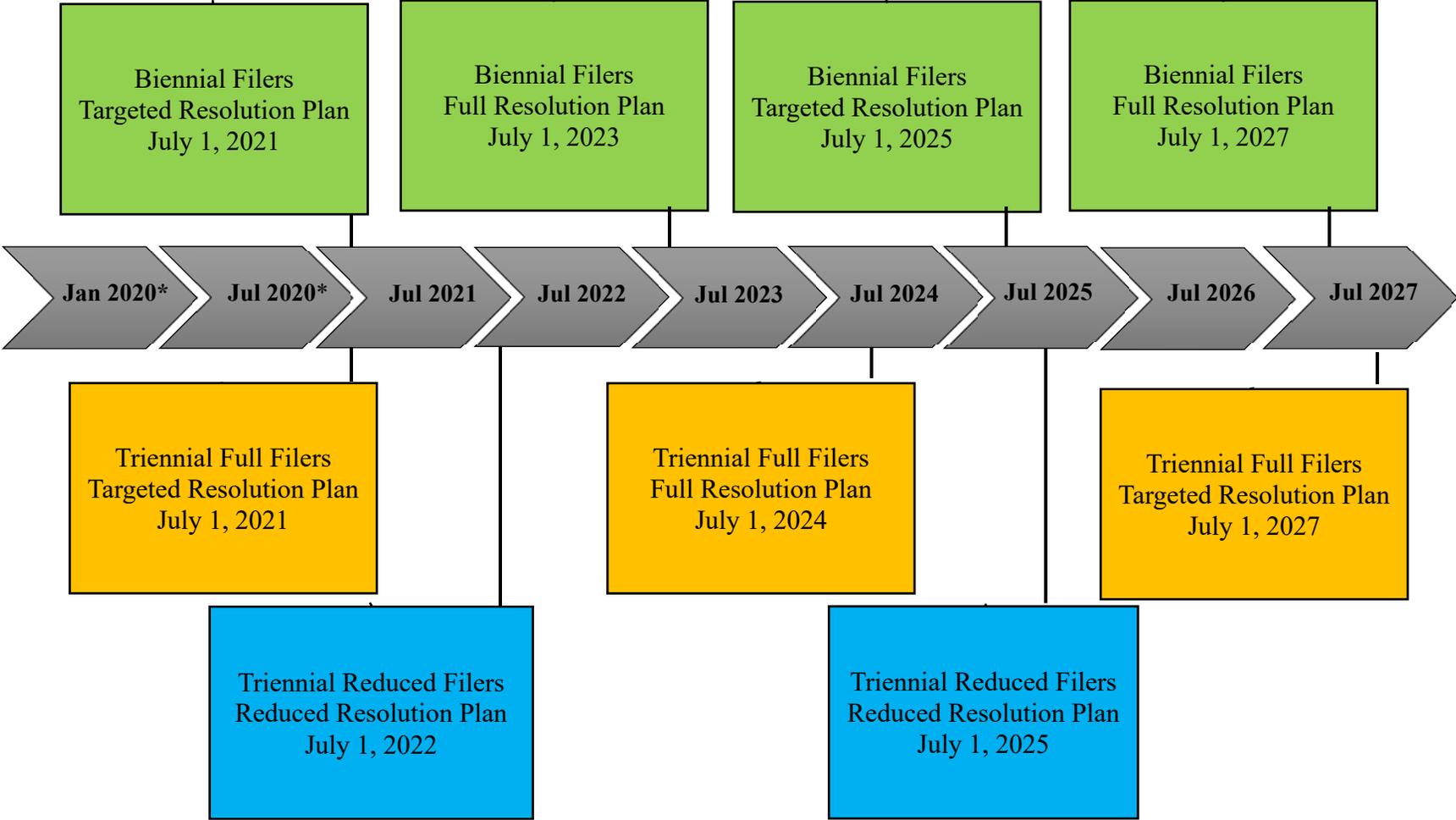
FULL RESOLUTION PLANS	TARGETED RESOLUTION PLANS
<p>Public Section An executive summary of the resolution plan that describes the business of the company and includes certain key elements material to an understanding of the company</p>	<p>Public Section An executive summary of the resolution plan that describes the business of the company and includes certain key elements material to an understanding of the company</p>
<p>Confidential section¹⁷</p> <ul style="list-style-type: none"> Executive summary Strategic analysis Corporate governance relating to resolution planning Organizational structure and related information Management information systems Interconnections and interdependencies Identification of agencies with supervisory, regulatory, or resolution authority over company 	<p>Confidential section (subset of full resolution plan addressing only items listed below)</p> <ul style="list-style-type: none"> Core elements of a full resolution plan: capital, liquidity, and plan for executing any recapitalization¹⁸ Changes resulting from changes in laws or regulations, agency guidance or feedback, and material changes (as defined in the final resolution plan rule) Information responsive to a targeted information request¹⁹

¹⁷ A firm, other than a biennial filer, may request changes to certain informational requirements for its full resolution plan, as described in the final resolution plan rule.

¹⁸ For additional information about core elements, *see* preamble section III.B.5 of the final resolution plan rule.

¹⁹ Targeted information requests may be made by the agencies at least 12 months prior to a targeted resolution plan submission date.

Appendix C: Resolution Plan Submission Dates



* In accordance with the agencies’ feedback letters dated December 20, 2018 and March 29, 2019, certain firms are to provide to the agencies submissions in connection with their previously-submitted resolution plans.

Appendix D: Order of Delegation

FEDERAL RESERVE SYSTEM

Order Delegating Authority to Make Certain Determinations under Regulation QQ

The Board hereby delegates to the Director of Supervision and Regulation, or his or her delegatee, in consultation with the General Counsel, or his or her delegatee, the authority to identify which holding company in a multi-tiered holding company will be a covered company under Regulation QQ²⁰ to the extent such identification is consistent with the criteria specified in Regulation QQ and does not raise any significant legal, policy, or supervisory concerns.

By order of the Board of Governors,²¹ effective October [], 2019.

Ann E. Misback
Secretary of the Board

²⁰ 12 CFR 243.

²¹ Voting for this action: [_____].