

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Date: April 1, 2019
To: Board of Governors
From: Vice Chair for Supervision Quarles
Subject: Notices of proposed rulemaking to align prudential standards for foreign banking organizations with those proposed for domestic banking organizations and to amend resolution planning requirements

Attached are a memorandum to the Board and two draft notices of proposed rulemaking that would revise the prudential standards applicable to foreign banking organizations based on their U.S. risk profiles. The first draft notice is a Board-only proposal that would revise the framework for application of prudential standards to foreign banking organizations. The second draft notice, which would be issued jointly with the Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation (FDIC), is a proposal that would (i) modify the application of capital and liquidity requirements to the U.S. operations of a foreign banking organization, and (ii) modify the application of standardized liquidity requirements to certain U.S. depository institution holding companies with \$50 billion or more in weighted short-term wholesale funding. The interagency proposal would also request comment on whether the Board should impose standardized liquidity requirements on foreign banking organizations with respect to their U.S. branches and agencies, including possible approaches for doing so.

Also attached are a memorandum to the Board and a draft notice of proposed rulemaking that would revise the regulation¹ implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which would be issued jointly by the Board and the FDIC. The resolution plan proposal builds on the Board's tailoring of its rules and experience implementing those rules, and accounts for changes to application of the resolution planning requirement made by the Economic Growth, Regulatory Relief, and Consumer Protection Act.

I have reviewed the proposals and believe they are ready for the Board's consideration.

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

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Date: April 1, 2019
To: Board of Governors
From: Staff²
Subject: Notice of proposed joint rulemaking regarding resolution plans

ACTION REQUESTED: Staff seeks approval to invite public comment on the attached proposed rule and accompanying *Federal Register* notice that would revise the regulation³ implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁴ The resolution plan proposal would be issued jointly by the Board and the FDIC. Staff also requests authority to make technical, non-substantive changes to the proposal prior to publication in the *Federal Register*.

EXECUTIVE SUMMARY:

- Resolution plans, required by the Dodd-Frank Act and 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.
- The resolution plan proposal builds on the Board's tailoring of its rules and experience implementing those rules, and it accounts for changes to the enhanced prudential standards requirements made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). It aligns with the four categories of tailored standards identified for firms with more than \$100 billion in total assets:

² Michael Gibson, Michael Hsu, Catherine Tilford, and Kathryn Ballintine (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).

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

⁴ Pub. L. No. 111-203, 124 Stat. 1376, 1426-1427; 12 U.S.C. § 5365(d)(1).

- 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 don't fall in any other category would be required to file a reduced resolution plan every three years, reflecting their limited U.S. systemic footprint.
 - Categories III and II: Domestic and foreign firms in this category would be required to file resolution plans every three 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.
 - 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. This more frequent cycle is a result of the complex and global operations of these firms. A two-year cycle is consistent with the current filing rate for the GSIBs.
- The agencies would retain the ability to require a full resolution plan from any firm at any point, including if material changes to a firm occurred during the cycle.
 - The resolution plan proposal does not alter expectations for when firms with outstanding feedback, including shortcomings, are expected to address that feedback.

DISCUSSION:

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 issued a notice of proposed rulemaking to revise the framework for determining the prudential standards that apply to large U.S. banking organizations (domestic tailoring proposal)⁵ and is considering a notice of proposed rulemaking to revise the framework for determining the prudential standards that apply to foreign banking

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

organizations (together with the domestic tailoring proposal, the tailoring proposals). As shown by the attached chart, this proposal would apply resolution plan requirements to firms that would be subject to category I, II, or III standards under the tailoring proposals.⁶ In addition, the resolution plan proposal would apply 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.⁷

The resolution plan proposal would not apply 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 proposals. In their experience reviewing resolution plans for covered companies in this category, the agencies have noted that these firms' less complex activities seem to present less risk to U.S. financial stability and have identified fewer material weaknesses for the firms to remediate.

Similarly, the resolution plan proposal would not apply resolution planning requirements to foreign banking organizations with total global consolidated assets between \$100 billion and \$250 billion where the firm's combined U.S. assets are less than \$100 billion and their risk-based indicators are below the category thresholds identified in the tailoring proposals. These foreign banking organizations have limited U.S. activities and interconnections with other U.S. market

⁶ The tailoring proposals 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 organization 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 organization that 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.

⁷ The scope of application for foreign banking organizations under the resolution plan proposal would not be the same as the scope of application of category I through IV standards under the tailoring proposals 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 are not subject to category I through IV standards under the tailoring proposals would nonetheless be subject to resolution planning requirements under the resolution plan proposal.

participants. Resolution plan submissions from these firms should not be warranted given the low probability that their failure would threaten U.S. financial stability.

Frequency of Plans. The current rule requires a resolution plan to be filed on an annual basis. The resolution plan proposal would extend this filing timeline by establishing three groups of resolution plan filers—biennial filers, triennial full filers, and triennial reduced filers.

Biennial Filers

Biennial filers, comprised of covered companies that would be subject to category I standards (i.e. GSIBs), would submit a resolution plan every two years, alternating between full and targeted plans (as described below). For GSIBs, the biennial filing cycle codifies the two-year filing cycle that these filers have been subject to over the last four years. As both the covered companies' submissions and the agencies' feedback have matured over several resolution plan cycles, the rule's annual filing requirement has become less necessary and the additional time between cycles has allowed the firms to respond to agency feedback by taking significant and material actions to enhance their resolution strategies as well as to develop capabilities to improve their resolvability. Over the past several years, these covered companies have enhanced their resolution strategies and addressed key resolution vulnerabilities by modelling resolution liquidity and capital needs, rationalizing legal structures, developing governance mechanisms to increase the likelihood of timely entry into resolution, and more clearly identifying and mitigating organizational dependencies, among other changes.

Triennial Full Filers

Triennial full filers, comprised of covered companies that would be subject to category II or III standards under the tailoring proposals, would submit a resolution plan every three years, alternating between full and targeted plans. Compared to the biennial filers, the domestic covered companies in this group are generally smaller and engage in fewer complex activities with a lower systemic risk profile. Similarly, many of the foreign banking organizations in this group have significantly reduced the systemic risk profile of their U.S. operations and increased their capital and liquidity levels. In addition, the preferred outcome for most foreign banking organizations is a successful home country resolution that encompasses their U.S. operations, not the separate U.S. resolution approach described in their U.S. resolution plan. Accordingly, staff have determined that a three-year filing cycle is appropriate for this group. While the disorderly

failure of a covered company in this group could potentially pose a threat to U.S. financial stability, it is less likely to do so than the failure of a biennial filer.

Triennial Reduced Filers

Triennial reduced filers, comprised of all other filers, would submit a reduced content plan every three years. The failure of these firms presents the smallest threat to U.S. financial stability of all the filers, justifying a corresponding limitation in their resolution planning burden. Most of these firms are already filing reduced content plans under the current rule.

Plan Content. The resolution plan proposal would tailor the content of resolution plan filings based on the categories of filers identified above. To that end, the proposal would establish three types of resolution plan submissions—full, targeted, and reduced content plans. Each filer’s initial plan would be a full plan. Thereafter, biennial filers and triennial full filers would alternate between full plan and targeted plan submissions, and triennial reduced filers would submit only reduced content plans.

Full plans would consist of the information currently required to be included in resolution plan submissions. The resolution plan proposal would set forth new procedures by which a covered company could request that the agencies change certain informational elements for a full resolution plan, other than certain key elements such as information responsive to a deficiency or shortcoming, or that would be required to be included in a targeted plan. The agencies would retain sole discretion to jointly deny such a request, but the request would become automatically effective after a period of time has expired during which the agencies have not jointly denied it. This change to the rule would allow the agencies to tailor the informational content of full plans to individual covered companies when it is appropriate to do so.

Targeted plans would include the information that is required to be included in a full plan regarding capital, liquidity, and the covered company’s plan for executing any recapitalization contemplated in its resolution plan. Staff believes that this is the most important information for evaluating a covered company’s resolution plan and, accordingly, the information should be updated and submitted in each plan submission from larger and more complex filers. Targeted plans would also include information about any areas of interest identified by the agencies in advance of the plan submission date. Other sections of a full plan would be included in a targeted plan only to the extent that there have been material changes experienced by the covered company since its previous plan filing or changes to the covered company’s plan resulting from

any change in law, change in regulation, guidance, or feedback from the agencies. By requiring only information about changes to these sections, staff believes that targeted plans would strike the appropriate balance between reducing resolution planning burden and ensuring that resolution plans contain up-to-date information.

Reduced content plans would be filed only by triennial reduced filers and would include only material changes to a covered company's plan since its previous filing. Because many triennial reduced filers have limited and relatively simple U.S. operations, staff believes that their material distress or failure would be less likely to affect U.S. financial stability and it is appropriate to limit their resolution planning burden in this way.

In addition to the plan elements outlined above, all plan types would continue to include a public section and information regarding actions taken to address any shortcomings or deficiencies identified by the agencies.

Material Changes

Notwithstanding the above changes to the frequency and content of plan submissions, the resolution plan proposal contains several features designed to ensure that the agencies have all necessary information to mitigate risks to U.S. financial stability. Under the proposal, the agencies would retain the ability to jointly require interim updates between filings or more frequent filings from covered companies and could require a full plan submission when a targeted plan or reduced content plan would otherwise be required. In addition, the proposal would require covered companies to provide the agencies with notice of certain extraordinary events, such as major mergers, that occur between plan submissions.

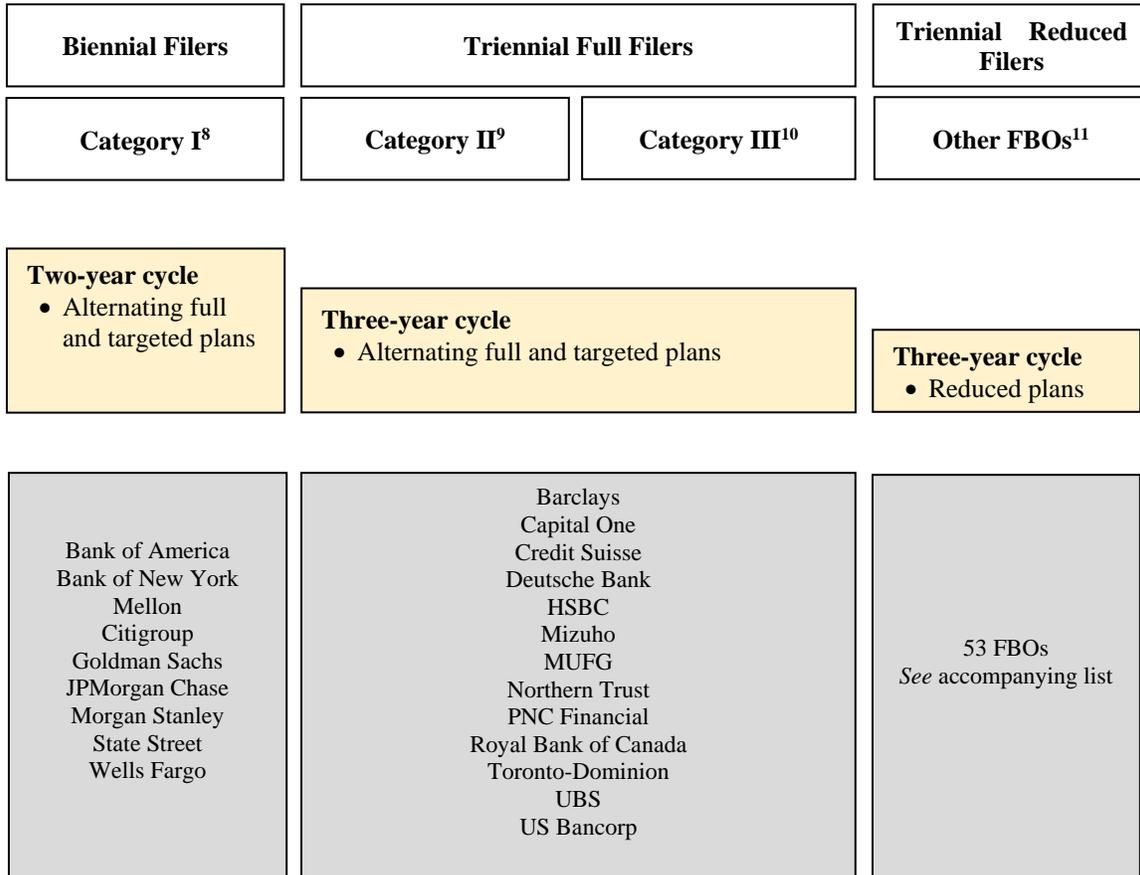
Critical Operations. Under the rule, a covered company's operations are considered critical operations if their failure or discontinuance would pose a threat to U.S. financial stability. The resolution plan proposal would describe a process for covered companies and the agencies to identify particular operations as critical and to review periodically such designations. The proposal would also set forth procedures by which covered companies could request that the agencies rescind prior critical operations designations. These changes would help to ensure that critical operations designations remain up-to-date and increase transparency around the agencies' critical operations designations

RECOMMENDATIONS: For the reasons discussed above, staff recommends that the Board approve the resolution plan proposal. Staff also recommends that the Board authorize staff to

make technical, non-substantive changes to the proposal prior to publication in the *Federal Register*.

Attachments

Appendix A: Resolution Plan Filing Groups⁸



⁸ Please see the accompanying visual “Proposed Resolution Plan Submission Dates” for a visualization of proposed future submissions. Projected categories are based on point in time data. Actual categories would be based on 4-quarter averages.

⁹ Firms subject to Category I standards would 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.

¹⁰ Firms subject to Category II standards would be: (1) U.S. firms with (a) \geq \$700b total consolidated assets; or (b) \geq \$100b total consolidated assets with \geq \$75b in cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a) \geq \$700b combined U.S. assets; or (b) \geq \$100b combined U.S. assets with \geq \$75b in cross-jurisdictional activity.

¹¹ Firms subject to Category III standards would be: (1) U.S. firms with (a) \geq \$250b and $<$ \$700b total consolidated assets; or (b) \geq \$100b total consolidated assets with \geq \$75b in nonbank assets, weighted short-term wholesale funding (wSTWF), or off-balance sheet exposure and (2) FBOs with (a) \geq \$250b and $<$ \$700b combined U.S. assets; or (b) \geq \$100b combined U.S. assets with \geq \$75b in nonbank assets, wSTWF, or off-balance sheet exposure.

¹² 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 would 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-Weurttemberg	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: Resolution Plan Proposal – Full and Targeted Resolution Plan Requirements

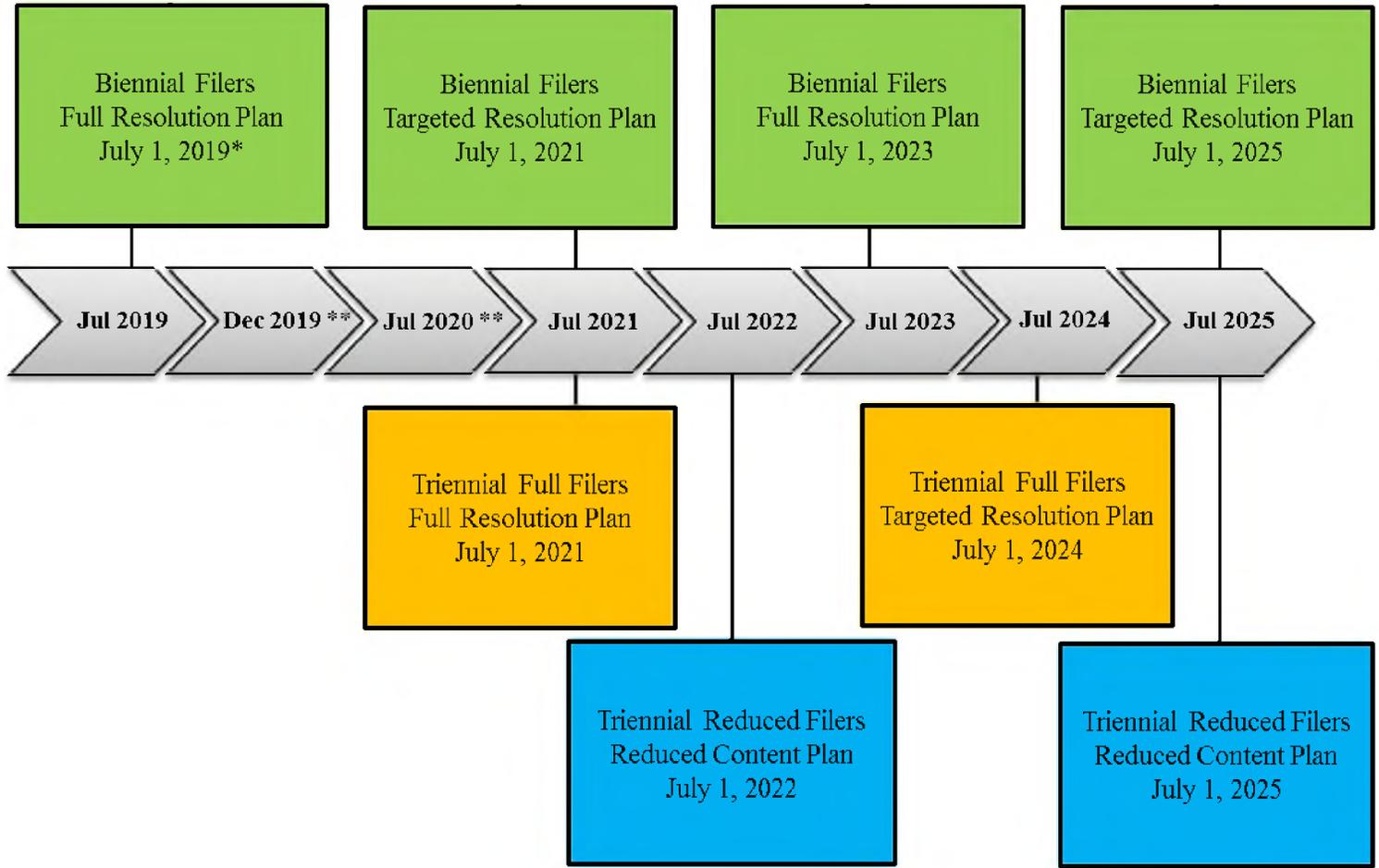
FULL RESOLUTION PLANS	TARGETED RESOLUTION PLANS
<p>Public Section An executive summary of the resolution plan that describes the business of the company and includes certain key elements material to an understanding of the company</p>	<p>Public Section An executive summary of the resolution plan that describes the business of the company and includes certain key elements material to an understanding of the company</p>
<p>Confidential section¹³</p> <p>Executive summary</p> <p>Strategic analysis</p> <p>Corporate governance relating to resolution planning</p> <p>Organizational structure and related information</p> <p>Management information systems</p> <p>Interconnections and interdependencies</p> <p>Identification of agencies with supervisory, regulatory, or resolution authority over company</p>	<p>Confidential section (subset of full resolution plan addressing only items listed below)</p> <p>Core elements of a full resolution plan: capital, liquidity, and plan for executing any recapitalization¹⁴</p> <p>Changes resulting from changes in laws or regulations, agency guidance or feedback, and material changes (as defined in the proposal)</p> <p>Information responsive to a targeted information request¹⁵</p>

¹³ A covered company may request changes to certain informational requirements for its full resolution plan, as described in the proposal.

¹⁴ For additional information about core elements, *see* Supplementary Information section III.B.3 of the proposal.

¹⁵ Targeted information requests may be made by the agencies at least 12 months prior to a targeted resolution plan submission date.

Appendix C: Proposed Resolution Plan Submission Dates



* These submissions from the firms (“Biennial Filers” under the proposal) are subject to the requirements of the current Rule.
 ** In accordance with the agencies’ feedback letters dated December 20, 2018 and March 29, 2019, certain firms are to provide updates to their previously-submitted resolution plans.