



December 16, 2019

Mr. Brian Moynihan
Chairman of the Board and Chief Executive Officer
Bank of America Corporation
100 North Tryon Street
Charlotte, North Carolina 28255-0001

Dear Mr. Moynihan:

On or before July 1, 2019, the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC) (together, the Agencies) received the annual resolution plan submission (2019 Plan) of Bank of America Corporation (BAC) required by section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), 12 U.S.C. § 5365(d), and the jointly issued implementing regulation, 12 CFR part 243 and 12 CFR part 381 (the Resolution Plan Rule)¹. The Agencies have reviewed the 2019 Plan taking into consideration section 165(d) of the Dodd-Frank Act, the Resolution Plan Rule, the letter that the Agencies provided to BAC on December 19, 2017 (the 2017 Letter) regarding BAC's 2017 resolution plan submission (2017 Plan), the joint *Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations*, 84 Fed. Reg. 1438, 1449 (February 4, 2019) (the

¹ The Agencies recently amended the Resolution Plan Rule. See 84 Fed. Reg. 59,194 (November 1, 2019) (the Amended Resolution Plan Rule). The Amended Resolution Plan Rule will become effective on December 31, 2019. BAC submitted the 2019 Plan and the Agencies completed their review of that Plan before December 31, 2019; accordingly, the Amended Resolution Plan Rule is not applicable to the 2019 Plan.

Domestic Guidance), and other supervisory information available to the Agencies. In addition, the staffs of the Agencies engaged with BAC during the development of its 2019 Plan to answer questions, including those regarding the Domestic Guidance, and to understand the changes BAC has made since the 2017 Plan.

In reviewing the 2019 Plan, the Agencies noted meaningful improvements over BAC's prior resolution plan submissions. The Agencies concluded that the 2019 Plan satisfactorily addressed the shortcoming that the Agencies identified in the 2017 Plan, as further described in Section II below. Nonetheless, the Agencies have identified one shortcoming in the 2019 Plan and noted areas in which BAC could improve its resolution capabilities, as discussed in sections III and IV below. BAC should submit its plan to address this shortcoming by March 31, 2020, which the Agencies will take into account in determining the scope of the targeted resolution plan that the firm must submit by July 1, 2021 (2021 Plan).

I. Background

Section 165(d) of the Dodd-Frank Act requires that each bank holding company with \$250 billion² or more in total consolidated assets, certain bank holding companies with total consolidated assets of between \$100 billion and \$250 billion, and each designated nonbank financial company report to the Agencies the plan of such company for its rapid and orderly resolution in the event of material financial distress or failure. Under the statute, the Agencies may jointly determine, based on their review, that the plan is “not credible or would not facilitate an orderly resolution of the company under Title 11, United States Code.”³ The statute and the

² The Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115-174, 132 Stat. 1296) raised the minimum assets threshold for general application of the resolution planning requirement under section 165(d) of the Dodd-Frank Act from \$50 billion to \$250 billion in total consolidated assets.

³ 12 U.S.C. § 5365(d)(4).

Resolution Plan Rule provide a process by which the deficiencies jointly identified by the Agencies in such a plan may be remedied.

In addition to the Resolution Plan Rule, the Agencies have provided supplemental written guidance and feedback to assist BAC's development of a resolution plan that satisfies the requirements of section 165(d) of the Dodd-Frank Act.⁴ BAC's preferred resolution strategy is a single point of entry (SPOE) strategy, which is designed to provide for material entity subsidiaries to hold or have access to capital and liquidity resources required for an orderly resolution prior to the top tier parent company entering bankruptcy proceedings. The SPOE strategy calls for timely action by the firm to provide its material entities with sufficient capital and liquidity resources to further the strategy's key objectives, including avoiding multiple competing insolvencies and maintaining continuity of critical operations throughout resolution.

BAC has taken important steps to enhance the firm's resolvability and facilitate its orderly resolution in bankruptcy, the most recent of which are summarized in more detail in section II below. Given the significant progress in BAC's resolution planning and capabilities since its initial resolution plan submission, the Agencies' review was increasingly focused on testing of the firm's resolution capabilities. Testing of resolution capabilities by the Agencies and by the firm can help to inform the firm and its management, as well as the Agencies, about strengths and weaknesses in BAC's resolution preparedness and areas on which BAC should focus its ongoing efforts. To that end, the Agencies' 2019 Plan review included tests of certain

⁴ This written guidance and feedback includes:

- The 2017 Letter, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20171219a1.pdf>.
- The Domestic Guidance, <https://www.federalregister.gov/documents/2019/02/04/2019-00800/final-guidance-for-the-2019>.

capabilities relevant to the execution of BAC's SPOE strategy, including governance, financial reporting, and management information systems capabilities related to implementation of the Bank of America Support Agreement (SSA).

II. Progress Made by BAC

BAC's initiatives to enhance the firm's resolvability have included efforts to incorporate resolution planning into business-as-usual governance, operations, and processes. These initiatives have also entailed investment of considerable resources into technology and systems to enhance resolution capabilities. In the payment, clearing, and settlement area, BAC has focused on its ability to identify key clients and financial market utility providers, as well as planning for continuity of access to payment, clearing, and settlement services in times of stress and resolution. BAC also continues to enhance its resolution liquidity calculation capabilities by enhancing its ability to calibrate and alter assumptions in its resolution liquidity execution need (RLEN) methodologies and developing the capability to forecast the parent survival horizon based on RLEN calculations using real-time observations. BAC has also made meaningful progress in its identification and maintenance of its objects of sale, including improving its capabilities to populate virtual data rooms and focusing on the continuation of services from key vendors. BAC has enhanced its ability to analyze its derivatives portfolio and identify and map its shared services.

Finally, BAC has adequately addressed the derivatives shortcoming identified in the 2017 Letter. In response to the shortcoming, BAC enhanced its capabilities related to operational cost and basis risk-related cost estimation and incorporated these improved practices into its

resolution liquidity frameworks. In addition, BAC improved its re-hedge capability to assess potential basis risk and profit and loss volatility during the projected wind-down period.

III. Shortcoming Regarding Governance Mechanisms

The Agencies found BAC to have a shortcoming related to implementation of its governance mechanism intended to facilitate SPOE by providing for the timely deployment of internal capital and liquidity. BAC's SPOE strategy contemplates that board actions will take place at the appropriate time, and having the underlying procedures in place to facilitate these board actions is inherently necessary to the strategy. Developing governance mechanisms has formed an integral part of BAC's resolution planning process, including through the development and execution of the SSA. The Agencies recognize this progress and the need for the firm's flexibility in a time of crisis. Nonetheless, highly developed processes and capabilities for producing and presenting the information necessary for implementation of SPOE — which are tested and validated with key decisionmakers — are key to facilitating orderly resolution pursuant to the firm's strategy.⁵ Continued improvement of operational readiness and capabilities to implement the SSA is therefore important to BAC's resolution plan development.

BAC's 2019 Plan and related capabilities did not demonstrate a reliable and timely process that would provide an appropriate level of confidence to the firm's decisionmakers to act pursuant to the firm's SSA, calling into question the feasibility of the 2019 Plan. Although BAC may have ad hoc capabilities to source appropriate data in a limited simulation, in an actual stress these capabilities may be insufficient to produce the correct balance between timeliness

⁵ See *Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations*, 84 Fed. Reg. 1438, 1442 ("SPOE is untested and there remain inherent challenges and uncertainties associated with the resolution of a systemically important financial institution under any specific resolution strategy. In light of this uncertainty, the final guidance provides that the firms should develop and maintain capabilities to address situations where their selected strategy presents vulnerabilities.").

and accuracy necessary to execute key actions contemplated by the SSA, including the timely deployment of Support Investments. For example, the Agencies note that the processes for validating data inputs and controls associated with its current production environment are likely to delay timely production of key metrics.

To address this shortcoming, BAC should provide a description of how the firm balances timeliness and accuracy in taking action under the SSA and develop and take substantive steps to implement a plan (action plan) to make the procedural improvements necessary to produce the reporting contemplated by the SSA during a stress period for an extended period of time. This action plan should include a timeline for completion with specified deliverables, milestones, and information concerning funding to execute it.

Testing of BAC's resolution capabilities is expected to be a key area of focus for the firm's 2021 targeted resolution plan.⁶ In connection with the 2021 Plan, the Agencies expect to revisit the governance mechanism capabilities tested in the 2019 Plan review and may identify additional areas for testing. Accordingly, BAC should provide its action plan to the Agencies by March 31, 2020. The Agencies will take the information received and the firm's progress in completing its milestones into account in determining the scope of the 2021 targeted resolution plan and may assess whether the shortcoming has been addressed at that time or may wait until after the submission of the 2021 targeted resolution plan.

⁶ See 12 CFR §§ 243.4(f)(1), 381.4(f)(1) ("Each resolution plan shall include ... (iii) An identification of the scope, content and frequency of the key internal reports that senior management of the covered company, [and] its material entities ... use to monitor the financial health, risks and operations of the covered company, its material entities, critical operations and core business lines and ... (v) A description and analysis of (A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company ... the information and data underlying the resolution plan; and (B) Any deficiencies, gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such deficiencies, gaps, or weaknesses, and the timeframe for such actions." See also *Resolution Plans Required*, 84 Fed. Reg. 59,194, 59,224-59,225 (November 1, 2019) *to be codified at* 12 CFR § 243.5(f)(1) and 12 CFR § 381.5(f)(1)).

IV. Remaining Projects

BAC's 2019 Plan described ongoing resolvability enhancement initiatives. It is important that BAC continue making progress to maintain and improve resolvability under the U.S. Bankruptcy Code, thus increasing the likelihood of BAC's successful implementation of its preferred SPOE strategy, should the need arise.

BAC described enhancements it has underway to improve its capabilities for producing the firm's RLEN. The enhancements relate to the calibration of input assumptions for RLEN. BAC's 2019 Plan identified specific planned steps to implement those enhancements. An RLEN framework that can be calibrated to reflect actual stress conditions and that utilizes reliable and timely forecasts produced by the firm's data and reporting systems can help reduce the likelihood of false resolution triggers. The Agencies will continue to monitor the firm's progress on this initiative.

The Agencies are considering RLEN capabilities as a potential area of focus for the 2021 targeted resolution plan. Accordingly, BAC should provide an update on its RLEN enhancement initiatives by March 31, 2020. The Agencies will take any information received by that date into account in determining the scope of the 2021 targeted resolution plan. The Agencies will provide supplementary information to BAC by June 30, 2020, on key areas of focus, questions, and issues that must be addressed in its 2021 targeted resolution plan, consistent with the Amended Resolution Plan Rule.

V. Conclusion

The resolvability of firms will change as markets change and as firms' activities, structures, and risk profiles change. The Agencies expect BAC to continue to address the resolution consequences of these changes and its day-to-day management decisions to fulfill its

obligation to enable the rapid and orderly resolution of BAC in bankruptcy. The Agencies continue to consider areas where more work may need to be done to improve the resolvability of the firms, including intra-group liquidity and internal loss absorbing capacity. The Agencies expect that any future actions in these areas, whether guidance or rules, would be adopted through notice and comment procedures, which would provide an opportunity for public input.

If you have any questions about the information communicated in this letter, please contact the Agencies.

Sincerely,
(Signed)

Ann E. Misback
Secretary of the Board
Board of Governors of the Federal
Reserve System

Sincerely,
(Signed)

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation