

**FEDERAL RESERVE SYSTEM**

**Docket No. OP-[]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**RIN 3064-ZA37**

**Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers**

**AGENCIES:** Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed guidance; request for comments.

**SUMMARY:** The Board and the FDIC (together, the agencies) are inviting comments on proposed guidance for the 2024 and subsequent resolution plan submissions by certain domestic banking organizations. The proposed guidance is meant to assist these 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, as amended (the Dodd-Frank Act), and 12 CFR Parts 243 and 381 (the Rule). The scope of application of the proposed guidance would be domestic triennial full filers (specified firms or firms).<sup>1</sup> The proposed guidance is based on the agencies' review of the specified firms' 2021 and prior resolution plan submissions, as well as the agencies' experiences resolving several large domestic banking organizations, and would describe the agencies' expectations regarding several aspects of the specified firms' plans for an orderly resolution under the U.S. Bankruptcy Code. The agencies invite public comment on all aspects of the proposed guidance.

**DATES:** Comments must be received by November 30, 2023.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to both

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<sup>1</sup> Domestic Category II and III banking organizations.

agencies. Comments should be directed to:

*Board:* You may submit comments, identified by Docket No. OP-[], by any of the following methods:

- Agency Website: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>s as submitted, unless modified for technical reasons or to remove personal information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY-TRS, please call 711 from any telephone, anywhere in the United States.

*FDIC:* You may submit comments, identified by RIN 3064-ZA37, by any of the following methods:

- FDIC Website: <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the FDIC's website.
- Email: [comments@fdic.gov](mailto:comments@fdic.gov). Include "RIN 3064-ZA37" on the subject line of the message.
- Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments-RIN 3064-ZA37, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- Public Inspection: Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:**

*Board:* Catherine Tilford, Deputy Associate Director, (202) 452-5240, Elizabeth MacDonald, Assistant Director, (202) 475-6316, Tudor Rus, Lead Financial Institution Analyst, (202) 475-6359, Division of Supervision and Regulation; or Jay Schwarz, Assistant General Counsel, (202) 452-2970; Andrew Hartlage, Special Counsel, (202) 452-6483; Sarah Podrygula, Senior Attorney, (202) 912-4658; or Brian Kesten, Senior Attorney, (202) 843-4079, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

*FDIC:* Robert C. Connors, Senior Advisor, (202) 898-3834, Division of Complex Financial Institution Supervision and Resolution; Celia Van Gorder, Senior Counsel, (202) 898-6749, Esther Rabin, Counsel, (202) 898-6860, erabin@fdic.gov, Legal Division.

## **SUPPLEMENTARY INFORMATION:**

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#### **I. Background**

##### *A. The Dodd-Frank Act and the Rule*

Section 165(d) of the Dodd-Frank Act<sup>2</sup> and the Rule require certain financial institutions to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers;

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<sup>2</sup> 12 U.S.C. 5365(d).

(b) triennial full filers; and (c) triennial reduced filers.<sup>3</sup>

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.<sup>4</sup> The Rule requires each covered company's full resolution plan to include, among other things, a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material entities, and interconnections and interdependencies.<sup>5</sup> Targeted resolution plans are required to include a subset of information contained in a full plan.<sup>6</sup> In addition, the Rule requires that all resolution plans consist of two parts: a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies and a section that the agencies make available to the public.<sup>7</sup> Public sections of resolution plans can be found on the agencies' websites.<sup>8</sup>

### *B. Recent Developments*

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. To assist the development of covered companies' resolution planning capabilities and plan submissions, the agencies have provided feedback on individual plan submissions, promulgated guidance to certain groups of covered companies, and issued answers to frequently asked questions. The agencies believe that guidance can help focus the efforts of similarly situated covered companies

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<sup>3</sup> 12 CFR 243.4 and 12 CFR 381.4. The terms "covered company" and "triennial full filer" have the meanings given in the Rule, as do other, similar terms used throughout this proposal.

<sup>4</sup> 12 CFR 243.4(b) and 12 CFR 381.4(b).

<sup>5</sup> 12 CFR 243.5 and 12 CFR 381.5.

<sup>6</sup> 12 CFR 243.6(b) and 12 CFR 381.6(b).

<sup>7</sup> 12 CFR 243.11(c) and 12 CFR 381.11(c).

<sup>8</sup> The public sections of resolution plans submitted to the agencies are available at [www.federalreserve.gov/supervisionreg/resolution-plans.htm](http://www.federalreserve.gov/supervisionreg/resolution-plans.htm) and [www.fdic.gov/regulations/reform/resplans/](http://www.fdic.gov/regulations/reform/resplans/).

to improve their resolution capabilities and clarify the agencies' expectations for those filers' future progress. The agencies have issued guidance to: (a) U.S. global systemically important banks (GSIBs);<sup>9</sup> which constitute the biennial filer group; and (b) certain large foreign banking organizations (FBOs) that are triennial full filers.<sup>10</sup> The agencies have not, however, issued guidance to the domestic firms and additional FBOs that make up the remainder of the triennial full filers.

As the agencies previously indicated,<sup>11</sup> they believe that it is now appropriate to issue guidance to the specified firms. The agencies' review of the 2021 targeted resolution plans submitted by domestic triennial full filers revealed significant inconsistencies in the amount and nature of information they provided on critical informational elements required by the Rule. In addition, some resolution plans included optimistic assumptions regarding the availability of financial resources at the firm at the time of a bankruptcy filing as well as the ability of a firm to access financial assistance prior to and during resolution. The agencies believe that future resolution plans from these firms would benefit from guidance regarding critical informational elements required by the Rule as well as appropriate assumptions.

The proposed guidance also reflects the agencies' recent experience with Silicon Valley Bank (SVB), Signature Bank (SB), and First Republic Bank (First Republic). While SVB, SB, and First Republic were not required to file resolution plans under section 165(d) of the Dodd-Frank Act and the Rule, the effects of their failures illustrate that the failure of a large insured depository institution (IDI) may have serious adverse effects on financial stability in the United

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<sup>9</sup> Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019) (2019 GSIB Guidance).

<sup>10</sup> Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

<sup>11</sup> <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220930a.htm>.

States.<sup>12</sup> This experience illustrates the importance of issuing guidance to domestic triennial full filers (many of which have large subsidiary IDIs) to assist their progress in developing plans for an orderly resolution in the event of material financial distress or failure.

### *C. Resolution Plan Strategy*

The specified firms have adopted one of two resolution strategies: a single point of entry (SPOE) or multiple point of entry (MPOE) strategy. The SPOE and MPOE resolution plan strategies require firms to consider different risks and require different types of planning and development of capabilities for the execution of the respective strategies. The agencies do not prescribe a specific resolution strategy for any covered company, nor do the agencies identify a preferred strategy. The proposed guidance is not intended to favor one strategy or another. Specified filers may continue to submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms, but a resolution plan must address the key vulnerabilities and support the underlying assumptions required to successfully execute the chosen resolution strategy.

Under an SPOE strategy for a U.S. firm, all material entity subsidiaries are recapitalized and provided with liquidity, if needed, so that only the top tier bank holding company (BHC) enters resolution. The MPOE approach entails multiple U.S. material entities entering separate resolution proceedings: any top-tier U.S. material entity holding company enters bankruptcy; any U.S. material entity IDI subsidiary is resolved separately under the Federal Deposit Insurance Act of 1950, as amended (the FDI Act); and other individual U.S. material entity

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<sup>12</sup> For example, the FDIC – upon the recommendation of two-thirds of each of the board of directors of the FDIC and the Board, as well as a determination by the Secretary of the Treasury, in consultation with the President – resolved SVB and SB using the systemic risk exception to the statutory requirement to employ the least-costly method to resolve a failed IDI. <https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23017.html>.

subsidiaries separately enter bankruptcy (or another appropriate resolution regime) or are wound down. All of the specified firms presented an MPOE strategy in their 2021 targeted resolution plan submissions.

#### *D. Long-Term Debt Rulemaking*

The agencies, as well as the Office of the Comptroller of the Currency, are issuing a proposed rule for comment that would require certain large IDI holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs, to issue and maintain outstanding a minimum amount of long-term debt (LTD), among other proposed requirements.<sup>13</sup> This proposed rule would improve the resolvability of these firms, and, in particular, their IDI subsidiaries, in case of failure, reducing costs to the Deposit Insurance Fund (DIF), and mitigating financial stability and contagion risks by reducing the risk of loss to uninsured depositors. LTD issued by the IDI could help support resolution strategies by, among other things, recapitalizing a bridge depository institution and facilitating its exit from resolution as a newly chartered IDI that would have new ownership. The agencies expect that a final long-term debt rule could interact with how the specified firms plan for resolution under the Rule, and the agencies anticipate ensuring that the final resolution plan guidance for domestic triennial full filers is consistent with any final long-term debt rule. Accordingly, the agencies welcome comments that take the proposed long-term debt rulemaking into consideration.<sup>14</sup>

## **II. Overview of the Proposed Guidance**

The proposed guidance begins with the proposed scope and then is organized into several substantive topical areas. Each substantive topic is bifurcated, with separate guidance for an

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<sup>13</sup> This proposed rulemaking is published elsewhere in this *Federal Register*.

<sup>14</sup> The public also may provide comments on the proposed guidance that assume that no long-term debt rule is finalized and that specified firms remain subject to current capital rules.



SPOE resolution strategy and an MPOE resolution strategy. As discussed, each resolution strategy poses distinct risks and requires its own type of planning and capabilities development for executing the strategy. Accordingly, the proposed guidance would account for the different challenges posed by each approach.

The proposed guidance for firms that adopt an SPOE resolution strategy is generally based on the 2019 GSIB Guidance, with certain modifications that reflect the specific characteristics of and potential risks posed by the failure of the specified firms. Successful execution of an SPOE strategy relies on the ability to provide sufficient capital and liquidity to material entities, a governance structure that can identify the onset of financial stress events, and the ability to ensure the timely execution of the strategy and to maintain continuity of operations throughout resolution.

The proposed guidance for firms that utilize an MPOE resolution strategy incorporates certain aspects of the 2019 GSIB Guidance that the agencies believe are applicable to large banking organizations, with modifications appropriate to this strategy and institutions with the characteristics displayed by the specified firms. For MPOE firms, the proposed guidance also omits aspects of the 2019 GSIB Guidance that would not apply in an MPOE resolution. The agencies are, however, proposing to clarify their expectations for specified firms that utilize an MPOE strategy that includes the resolution of a material entity that is a U.S. IDI. As discussed elsewhere in this proposal, the resolution of a large U.S. IDI under the FDI Act likely would pose substantial operational and legal challenges and complexities. Accordingly, the agencies believe that the resolution plans of firms whose resolution plans contemplate the separate resolution of a material entity that is a U.S. IDI would benefit from developing capabilities specific to and considering legal requirements regarding U.S. IDI resolution.

The agencies believe that each substantive area of the proposed guidance would play a part in helping to ensure that the specified firms can be resolved in an orderly manner. The proposed guidance would describe the agencies' expectations for each of these areas. In addition, the proposed guidance would consolidate items of feedback provided to a number of the specified firms in the past, thereby providing the public with one source of applicable guidance for the specified firms. The proposed guidance is not, however, intended to override the obligation of an individual specified firm to respond, in its next resolution plan submission, to pending items of individual feedback or any shortcomings or deficiencies identified or determined by the agencies in that specified firm's prior resolution plan submission. The proposed guidance also is not meant to limit specified firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy, and that should be factored into the specified firm's resolution plan submission.

The proposed guidance concludes with information about the format and structure of a plan that applies equally to plans contemplating either an SPOE strategy or an MPOE strategy.

#### *A. Scope of Application*

The agencies propose to apply the guidance to all domestic triennial full filers. The Board's tailoring framework provides clear, predictable scoping based on publicly reported quantitative data. As discussed above, the agencies believe that it is appropriate to provide resolution planning guidance to all domestic triennial full filers given issues identified in these firms' 2021 targeted resolution plans and considering lessons learned from recent events.

The agencies would like the specified firms to submit resolution plans that take into consideration the final version of the proposed guidance as soon as practicable. However, the

agencies understand that the specified firms may need time to take into consideration the guidance when developing their resolution plans. In light of the timing of this proposal, the agencies are considering providing a short extension of the next resolution plan submission date for the specified firms, with the expectation that these plan submissions would be due sooner than one year after the proposed guidance is published in final form.

*The agencies seek comment on all aspects of the proposed scope of application.*

*Question 1: Should the agencies provide more than 6 months for the specified firms to take into consideration the expectations in the proposed guidance, once finalized? If so, what time period should the agencies provide?*

### *B. Capital*

For specified firms with an SPOE resolution strategy, the agencies propose guidance substantially similar to the 2019 GSIB Guidance regarding capital. The ability to provide sufficient capital to material entities without disruption from creditors is important in order to ensure that material entities can continue to maintain operations as the firm is resolved. The proposal describes expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (e.g., debt that a parent holding company may choose to forgive or convert to equity) among the material entities within the firm (resolution capital adequacy and positioning, or RCAP). The positioning of capital resources within the firm should be consistent with any applicable rules requiring prepositioned resources in IDIs in the form of long-term debt. The proposal also describes expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The agencies are not proposing further expectations concerning capital to firms whose

plans contemplate an MPOE resolution strategy, as an MPOE strategy assumes most material entities do not continue as going concerns upon entry into resolution.

*Question 2: In addition to the capital-related resolution plan requirements under the Rule, are there other capital-related expectations that would reasonably enhance the resolvability of a specified firm that utilizes an MPOE strategy in its resolution plan?*

*Question 3: Do the capital-related resolution expectations in the proposed guidance align with the provisions of the interagency long-term debt rulemaking proposal? Are there any aspects of the proposed guidance that should be revised, or additional expectations added, in light of the interagency long-term debt rulemaking proposal?*

*Question 4: Is it appropriate for a specified firm utilizing an SPOE resolution strategy to assume, during the transition period for any final long-term debt rulemaking, that the entire amount of debt required under the rule after the transition period has been issued?*

### *C. Liquidity*

For firms that adopt an SPOE resolution strategy, the agencies propose guidance substantially similar to the 2019 GSIB Guidance regarding liquidity. A firm's ability to reliably estimate and meet its liquidity needs prior to, and in, resolution is important to the execution of a firm's resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows the subsidiaries to continue to operate while the firm is being resolved in accordance with the firm's preferred resolution strategy.

For firms that adopt an MPOE resolution strategy, the agencies propose that a firm should have the liquidity capabilities necessary to execute its preferred resolution strategy, and

its plan should include analysis and projections of a range of liquidity needs during resolution.

*Question 5: In addition to the liquidity-related resolution plan requirements under the Rule and the liquidity-related expectations in the proposed guidance, are there other liquidity related expectations that would reasonably enhance the resolvability of a specified firm that utilizes an MPOE resolution strategy? Are there circumstances under which it would be appropriate for a resolution plan that utilizes an MPOE strategy to include the movement of liquidity among material entities that are in resolution?*

#### *D. Governance Mechanisms*

For firms using an SPOE resolution strategy, the agencies propose guidance that is substantially similar to the 2019 GSIB Guidance regarding governance mechanisms. An adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress is important to ensure that there is sufficient time to allow firms to prepare for resolution, and to ensure the timely execution of the resolution strategy. The governance mechanisms section proposes expectations that firms have playbooks that describe the board and senior management actions necessary to execute the firm's preferred strategy. In addition, the proposal describes expectations that these firms have triggers that are linked to specific actions outlined in these playbooks to ensure the timely escalation of information to senior management and the board, to address the successful recapitalization of subsidiaries prior to the parent's bankruptcy, and to address how the firm would ensure the timely execution of a bankruptcy filing. The proposal also describes the expectations that firms identify and analyze potential legal challenges to the provision of capital and liquidity to subsidiaries that would precede the parent's bankruptcy filing under an SPOE resolution strategy, and any defenses and mitigants to such challenges.

The agencies do not propose issuing guidance on this topic to firms whose resolution plans contemplate an MPOE resolution strategy, as entry of many types of material entities, including IDIs, into resolution would be determined by criteria prescribed in statute or dependent to some extent on actions taken by regulatory authorities in implementing a statute.

*Question 6: Should the agencies consider applying aspects of the governance mechanisms guidance developed for an SPOE strategy to resolution plans utilizing an MPOE resolution strategy? If so, what aspects should be extended to resolution plans utilizing an MPOE resolution strategy? Should the agencies consider developing new governance mechanisms guidance specific to resolution plans utilizing an MPOE resolution strategy?*

*Question 7: If a specified firm chooses to switch from utilizing an MPOE resolution strategy to an SPOE resolution strategy in its resolution plan, should the agencies provide a transition period for a firm to take into consideration the SPOE-specific guidance when developing its resolution planning capabilities and its next resolution plan? If so, are there aspects that should have a shorter transition period, and what period or periods would be appropriate?*

#### *E. Operational*

The development and maintenance of operational capabilities is important to support and enable execution of a firm's preferred resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse effects on U.S. financial stability. For firms that utilize an SPOE resolution strategy, the agencies propose adopting portions of the operational expectations of the 2019 GSIB Guidance and SR letter 14-1,<sup>15</sup> with modifications that reflect the specific characteristics and complexities of the specified

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<sup>15</sup> SR letter 14-1, "Principles and Practices for Recovery and Resolution Preparedness" (Jan. 24, 2014), available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm>.

firms. Like the 2019 GSIB Guidance, the proposal contains expectations on payment, clearing and settlement activities, managing, identifying and valuing collateral, management information systems, and shared and outsourced services. For firms that utilize an MPOE resolution strategy, the agencies propose adopting expectations based on SR letter 14-1 and the 2019 GSIB Guidance that are most relevant to an MPOE resolution strategy. For example, the proposed expectations regarding payment, clearing and settlement activities are those most likely to support resolution in the MPOE context.

#### *F. Legal Entity Rationalization & Separability*

For specified firms that utilize an SPOE resolution strategy, the agencies propose substantively adopting the 2019 GSIB Guidance regarding legal entity rationalization and separability. It is important that firms maintain a structure that facilitates orderly resolution. To achieve this, the proposal states that a firm should develop and describe in their plans criteria supporting its resolution strategy and integrate them into day-to-day decision-making processes. The criteria would be expected to consider the best alignment of legal entities and business lines and facilitate resolvability as a firm's activities, technology, business models, or geographic footprint change over time. In addition, the proposed guidance provides that the firm should identify discrete operations that could be sold or transferred in resolution to provide meaningful optionality for the resolution strategy under a range of potential failure scenarios and include this information in their plans.

For firms that utilize an MPOE resolution strategy, the proposed guidance would clarify that the firms should have legal entity structures that support their preferred resolution strategy and describe those structures in their plans. The proposal also provides that to the extent a material entity IDI relies upon other affiliates during resolution, the firm should discuss its

rationale for the legal entity structure and associated resolution risks and potential mitigants. In addition, the agencies propose that the firms include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution.

*Question 8: Are there other separability related expectations that would reasonably enhance resolution plans that utilize an MPOE resolution strategy?*

*G. Insured Depository Institution (IDI) Resolution<sup>16</sup>*

*Background.* When an IDI fails and the FDIC is appointed receiver, the FDIC generally must utilize the resolution option for the failed IDI that is least costly to the DIF of all possible methods (the least-cost requirement).<sup>17</sup> An exception to this requirement is provided where a determination is made by the Secretary of the Treasury, in consultation with the President and after a written recommendation from two-thirds of the FDIC's Board of Directors and two-thirds of the Board, that complying with the least-cost requirement would have serious adverse effects on economic conditions or financial stability and implementing another resolution option would avoid or mitigate such adverse effects.<sup>18</sup> A specified firm should not assume the use of this systemic risk exception to the least-cost requirement in its resolution plan.

*Purchase and Assumption Transaction.* The FDIC typically seeks to resolve a failed IDI by identifying, before the IDI's failure, one or more potential acquirers so that as many of the IDI's assets and deposit liabilities as possible can be sold to and assumed by the acquirer(s)

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<sup>16</sup> The FDIC has a separate rule requiring resolution plans from certain IDIs, 12 CFR 360.10, "Resolution Plans Required for Insured Depository Institutions With \$50 Billion or More in Total Assets" (the IDI Rule). The Rule and the IDI Rule each have different goals and the expected content of the respective resolution plans accordingly also is different. The Rule requires a covered company to submit a resolution plan that would allow rapid and orderly resolution of the covered company under the Bankruptcy Code in the event of material financial distress or failure. The purpose of the IDI Rule is to ensure that the FDIC has access to all of the material information it needs to efficiently resolve an IDI in the event of its failure.

<sup>17</sup> See 12 U.S.C. 1823(c)(4). A deposit payout and liquidation of the failed IDI's assets (payout liquidation) is the general baseline the FDIC uses in a least-cost requirement determination. See 12 U.S.C. 1823(c)(4)(D).

<sup>18</sup> See 12 U.S.C. 1823(c)(4)(G).



instead of remaining in the receivership created on the failure date.<sup>19</sup> This transaction form, termed a “purchase and assumption” or “P&A” transaction, has historically been the resolution approach that is least costly to the DIF, easiest for the FDIC to execute, and least disruptive to the depositors of the failed IDI – particularly in the case of transactions involving the assumption of all the failed IDI's deposits by the assuming institution (an “all-deposit transaction”) – and typically can be completed over the weekend following the IDI’s closure by its primary regulator but before business ordinarily would commence the following Monday (closing weekend). The limited size and operational complexity present in most small-bank failures has allowed the FDIC to execute a P&A transaction with a single acquirer on numerous occasions. Resolving an IDI via a P&A transaction over the closing weekend, however, may not be available to the FDIC, particularly in failures involving large IDIs. P&A transactions require lead time to identify potential buyers and allow due diligence on, and an auction of, the failing IDI’s assets and banking business, also termed its “franchise.” Additionally, larger banks can pose significant, and potentially systemic, challenges in resolutions. These challenges include: a more limited pool of potential acquirers as a failed IDI increases in size, which makes a transaction in which nearly all assets and liabilities are transferred to one or more acquirers increasingly less likely; operational complexities which require advance planning on the part of the IDI and the FDIC and the development of certain capabilities; potential market concentration and antitrust considerations; and potentially the need to maintain the continuity of activities conducted in whole or in part in the IDI that are critical to U.S. financial stability.

For example, the largest failed IDI in U.S. history, Washington Mutual Bank, had approximately \$307 billion in assets. The DIF did not incur a loss associated with this failure in

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<sup>19</sup> See generally <https://www.fdic.gov/resources/resolutions/bank-failures/> for background about the resolution of IDIs by the FDIC.

part because it benefitted from the FDIC’s sale of the institution to an acquirer which had first engaged in exhaustive due diligence of the institution during a self-marketing effort conducted by the IDI prior to its failure. A more recent example, that of First Republic Bank, which was also acquired in an all-deposit transaction, illustrates that such a transaction can be difficult to effectuate. The FDIC invited 21 banks and 21 nonbanks to participate in the bidding process and received bids from only four bidders.<sup>20</sup> The least costly bid necessitated a loss-sharing agreement, and the transaction is expected to result in a significant loss to the DIF. In addition, the FDIC received only one viable bid for Silicon Valley Bank during the weekend following its failure, but this bid did not satisfy the least-cost test. The FDIC received no viable all-deposit bids for Signature Bank at the time it failed.<sup>21</sup>

If no P&A transaction that meets the least-cost requirement can be accomplished at the time an IDI fails, the FDIC must pursue an alternative resolution strategy. The primary alternative resolution strategies for a failed IDI are: (1) a payout liquidation; or (2) utilization of a BDI. The FDIC conducts payout liquidations by paying insured deposits in cash or transferring the insured deposits to an existing institution or a new institution organized by the FDIC to assume the insured deposits (generally, a Deposit Insurance National Bank or DINB). In payout liquidations, the FDIC as receiver retains substantially all of the failed IDI’s assets for later sale, and the franchise value of the failed IDI is lost.

*Bridge Depository Institution.* If the FDIC determines that temporarily continuing the

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<sup>20</sup> See Remarks by Chairman Martin J. Gruenberg on “Oversight of Prudential Regulators” before the Committee on Financial Services, United States House of Representatives available at <https://www.fdic.gov/news/speeches/2023/spmay1523.html>; see also Remarks by Chairman Martin J. Gruenberg on “Recent Bank Failures and the Federal Regulatory Response” before the Committee on Banking, Housing, and Urban Affairs, United States Senate available at <https://www.fdic.gov/news/speeches/2023/spmar2723.html>.

<sup>21</sup> To protect depositors and preserve the value of the assets and operations of each of SVB and SB following failure – which can improve recoveries for creditors and the DIF – the FDIC ultimately transferred all the deposits and substantially all of the assets of each failed bank to a full-service bridge depository institution (BDI) operated by the FDIC while the FDIC marketed the institutions to potential bidders.

operations of the failed IDI is less costly than a payout liquidation, it may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.<sup>22</sup> Generally, a BDI would continue the failed bank's operations according to business plans and budgets approved by the FDIC and carried out by FDIC-selected leadership of the BDI. In addition to providing depositors access to deposits and banking services, the BDI would conduct any necessary restructuring required to rationalize the failed IDI's operations and maximize value to be achieved in an eventual sale. Subject to the least-cost requirement, the initial structure of the BDI may be based upon an all-deposit transaction, a transaction in which the BDI assumes only the insured deposits, or a transaction in which the BDI assumes all insured deposits and a portion of the uninsured deposits. Once a BDI is established, the FDIC seeks to stabilize the institution while simultaneously planning for the eventual termination of the BDI. In exiting and terminating a BDI, the FDIC may merge or consolidate the BDI with another depository institution, issue and sell a majority of the capital stock in the BDI, or effect the assumption of the deposits or acquisition of the assets of the BDI.<sup>23</sup> However, many of the same factors that challenge the feasibility of a traditional P&A transaction also complicate planning for the termination of a BDI through a sale of the whole entity or its constituent parts. The proposed guidance would clarify the expectations for a firm adopting an MPOE resolution strategy with a material entity IDI to demonstrate how the IDI can be resolved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States,

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<sup>22</sup> Before a BDI may be chartered, the chartering conditions set forth in 12 U.S.C. 1821(n)(2) must also be satisfied. For purposes of this guidance, if the Plan provides appropriate analysis concerning the feasibility of the BDI strategy, there is no expectation that the resolution plan also demonstrate separately that the conditions for chartering the BDI have been satisfied.

<sup>23</sup> 12 U.S.C. 1821(n)(10).

while also adhering to the requirements of the FDI Act regarding failed bank resolutions without relying on the assumption that a systemic risk exception will be available. These expectations would not be applicable to firms adopting an SPOE resolution strategy because U.S. IDI subsidiaries of such firms would not be expected to enter resolution.

*Question 9: Should the guidance indicate that if a specified filer proposes a strategy using a BDI to resolve its subsidiary material entity IDI, the plan should include a detailed description of the balance sheet components that would transfer to the BDI and of the process the specified filer believes is most appropriate to value the transferred components, inclusive of pro forma balance sheet and income statements?*

*Question 10: Should the guidance indicate that if a specified filer proposes a strategy using a BDI to resolve its subsidiary material entity IDI, the plan should describe and quantify:*

- *The amounts to be realized through liquidating the failed IDI's assets and any expected premiums associated with selling the institution's deposits;*
- *Any franchise value bid premiums expected to be realized through maintaining certain ongoing business operations in a BDI; and*
- *A comparison of the loss to the DIF realized from a payout liquidation and from utilizing a BDI so as to support the conclusion that a BDI would result in the least costly resolution?*

#### *H. Derivatives and Trading Activities*

The agencies request comment on whether to provide guidance on derivatives and trading activities for specified firms that utilize an SPOE resolution strategy. Although the specified firms have limited derivatives and trading operations compared to the U.S. GSIBs, it remains important that their derivatives and trading activities can be stabilized and de-risked

during resolution without causing significant disruption to U.S. markets. If the agencies were to provide guidance on derivatives and trading activities, the agencies likely would adopt aspects of the 2019 GSIB Guidance. The agencies do not anticipate providing derivatives and trading activities guidance to specified firms that utilize an MPOE resolution strategy.

In the 2019 GSIB Guidance, the agencies specified the particular covered companies to which the derivatives and trading activities guidance was directed. The agencies recognize that covered companies may move in and out of the triennial full filer category and want to ensure that the proposal would remain applicable and relevant regardless of which covered companies are considered triennial full filers at any moment in time.

*Question 11: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize an SPOE resolution strategy? If so, what should be the content of that guidance, what methodology should the agencies use to determine the scope of specified firms to be subject to that guidance, and would it be appropriate to adopt all or some of the expectations contained in the 2019 GSIB Guidance? What other derivatives and trading activities-related expectations would reasonably enhance resolution plans that utilize an SPOE resolution strategy?*

*Question 12: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize an MPOE resolution strategy? If so, what should be the content of that guidance and what methodology should the agencies use to determine the scope of specified firms to be subject to that guidance?*

#### *I. Format and Structure of Plans; Assumptions*

This section states the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Plans should contain an executive summary, a

narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions are generally similar to those in the 2019 GSIB Guidance, except that the proposed guidance reflects the expectation that a firm should support any assumptions that it will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy and clarifies expectations around such assumptions and that firms should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt an MPOE resolution strategy, the proposal includes the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress, including consideration of the likelihood of the diminution the firm's liquidity and capital levels prior to bankruptcy.

*Question 13: Certain firms' plans rely on lending facilities, including the Discount Window or other government-sponsored facilities in the period immediately preceding a bankruptcy filing. Should the guidance include additional clarifications related to assumptions regarding these lending facilities? Should the guidance contain clarifications relating to other assumptions discussed in the guidance or additional appropriate assumptions?*

*Question 14: The agencies included in the 2019 GSIB Guidance and 2020 FBO Guidance answers that had been previously published to frequently asked questions (FAQs) the agencies received from the guidance recipients about the topics in resolution plan guidance (e.g., capital, liquidity, etc.); however, there was no FAQ process for the specified firms given the limited number of common questions received. Should the agencies include in resolution guidance for the specified firms answers to FAQs similar to those contained in the 2019 GSIB Guidance and 2020 FBO Guidance? If so, which answers to FAQs should the final guidance*

*contain, and what changes, if any, should the agencies make to the answers to FAQs in the 2019 GSIB Guidance and 2020 FBO Guidance?*

#### **IV. Paperwork Reduction Act**

Certain provisions of the proposed guidance contain “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed guidance and determined that it would revise the reporting revisions that have been previously approved by OMB under the Board’s OMB control number 7100-0346 (Reporting Requirements Associated with Regulation QQ; FR QQ) and the FDIC’s control number 3064-0210 (Reporting Requirements Associate with Resolution Planning). The Board has reviewed the proposed guidance under the authority delegated to the Board by OMB.

Comments are invited on the following:

- (a) Whether the collections of information are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;
  - (b) the accuracy of the agencies’ estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
  - (c) ways to enhance the quality, utility, and clarity of the information to be collected;
  - (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology;
- and
- (e) estimates of capital or start-up costs and costs of operation, maintenance, and

purchase of services to provide information.

Comments on aspects of this document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of the Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to (202) 395-5806, Attention, Federal Banking Agency Desk Officer.

### **Proposed Revisions, With Extension, of the Following Information Collections**

#### **Board**

*Collection title:* Reporting Requirements Associated with Regulation QQ.

*Collection identifier:* FR QQ.

*OMB control number:* 7100-0346.

*Frequency:* Triennial, Biennial, and on occasion.

*Respondents:* Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978 and meets the relevant total consolidated assets threshold) with total consolidated assets of \$250 billion or more, bank holding companies with \$100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

#### **FDIC**

*Collection title:* Reporting Requirements Associated with Resolution Planning.

*OMB control number:* 3064-0210.

*Current Actions:* The proposed guidance would apply to all triennial full filers, but expectations



would differ based on whether a firm adopts an SPOE or an MPOE resolution strategy and whether it is foreign or domestic. The proposed guidance is intended to clarify the agencies' expectations concerning the resolution plans required pursuant to the Rule. The document does not have the force and effect of law. Rather, it describes the agencies' expectations and priorities regarding these the resolution plans of triennial full filers and the agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of its preferred resolution strategy.

The proposed guidance for triennial full filers using an SPOE strategy is based on the 2019 GSIB guidance (for domestic firms) and the 2020 FBO guidance (for foreign firms). It would clarify the agencies' expectations around capital, liquidity, governance mechanisms, and operations. The proposed guidance also would clarify expectations concerning management information systems capabilities and the identification of discrete separability options appropriate to the resolution strategy. Additionally, if finalized, the foreign banking organizations that adopt an SPOE resolution strategy should address how their U.S. resolution plan aligns with their group resolution plan. Domestic firms using an SPOE strategy would be expected to include legal analysis around emergency motions related to qualified financial contracts.

The proposed guidance for triennial full filers using an MPOE resolution strategy addresses similar topics but reflects the risks of and capabilities needed for an MPOE resolution. The proposed guidance explains the agencies' expectations around liquidity and operational capabilities, and legal entity rationalization. The proposed guidance also provides clarified

expectations related to the separate resolution of a U.S. IDI and to identification of discrete separability options. Foreign banking organizations that adopt an MPOE resolution strategy would have expectations related to governance mechanisms; the role of branches; and the group resolution plan.

The proposed guidance does not specify expectations around derivatives and trading activities.

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. As a result of this split and the proposed revisions, there is a proposed net increase in the overall estimated burden hours of 13,386 hours for the Board and 17,610 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection would be 216,853 hours and the total FDIC estimate burden for its entire information collection would be 211,300 hours.

The following table presents only the change in the estimated burden hours, as amended if the guidance were finalized, broken out by agency. The table does not include a discussion of the remaining estimated burden hours, which remain unchanged.<sup>24</sup> As shown in the table, the Triennial Full filing types would be estimated more granularly according to SPOE and MPOE resolution strategies.

Table 1 – Burden Hour Estimates Under Current Regulations and Under the Proposed Guidance

<b>FR QQ</b>	<i>Estimated number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
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<sup>24</sup> In addition to the proposed revisions to the estimations for Triennial Full filings, the agencies have revised the estimation for Biennial Full filings from 40,115 hours per response to 39,550 hours per response to align the burden estimation methodology with what was used for Triennial Full filings under the proposed guidance. Specifically, the agencies removed a component for a biennial full filer’s analysis of its critical operations as part of its submission of targeted and full resolution plans, because this critical operations analysis is integrated in the preparation of such plans.

<b>Board Burdens</b>				
<b>Current</b>				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
<i>Current Total</i>				42,446
<b>Proposed</b>				
Triennial Full:				
FBO SPOE*	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3		5,513	<u>16,539</u>
<i>Proposed Total</i>				58,052
<b>FDIC Burdens</b>				
<b>Current</b>				
Triennial Full:				
Complex Foreign	0	1	9,777	0
Foreign and Domestic	7	1	4,667	<u>32,669</u>
<i>Current Total</i>				32,669
<b>Proposed</b>				
Triennial Full:				
FBO SPOE*	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,513	<u>11,026</u>
<i>Proposed Total</i>				52,539

\* There are currently no domestic triennial full filers utilizing a SPOE strategy. Estimated hours per response for a domestic SPOE triennial full filer would be 11,235 hours.

## V. Text of the Proposed Guidance

### *Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers*

#### *I. Introduction*

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (the FDIC) (together, the agencies) their plans for rapid and orderly resolution in the

event of material financial distress or failure. On November 1, 2011, the agencies promulgated a joint rule implementing the provisions of Section 165(d).<sup>25</sup> Subsequently, in November 2019, the agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the agencies' experience implementing the joint rule since its adoption.<sup>26</sup> Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain domestic financial companies required to submit Plans to assist their further development of a Plan for their 2024 and subsequent Plan submissions. Specifically, the guidance applies to any domestic covered company that is a triennial full filer under the Rule (specified firms).<sup>27</sup> The Plan for a specified firm would address the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

In general, this document is organized around a number of key challenges in resolution (capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and insured depository institution resolution, if applicable) that apply across resolution plans, depending on their strategy. Additional challenges or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan. In addition, each topic of this guidance is separated into expectations for a specified firm that utilizes a single point of entry (SPOE) resolution strategy for its Plan and expectations for a specified firm that utilizes a multiple point

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<sup>25</sup> Resolution Plans Required, 76 FR 67323 (Nov. 1, 2011).

<sup>26</sup> Resolution Plans Required, 84 FR 59194 (Nov. 1, 2019). The amendments became effective December 31, 2019. "Rule" means the joint rule as amended in 2019. Terms not defined herein have the meanings set forth in the Rule.

<sup>27</sup> See 12 CFR 243.4(b)(1) and 12 CFR 381.4(b)(1).

of entry (MPOE) resolution strategy for its Plan.

Under the Rule, the agencies will review a Plan to determine if it satisfactorily addresses key potential challenges, including those specified below. If the agencies jointly decide that an aspect of a Plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the Plan, the agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

## ***II. Capital***

### **SPOE**

The firm should have the capital capabilities necessary to execute its resolution strategy, including the modeling and estimation process described below.

*Resolution Capital Adequacy and Positioning (RCAP).* In order to help ensure that a firm's material entities<sup>28</sup> could operate while the parent company is in bankruptcy, the firm should have an adequate amount of loss-absorbing capacity to recapitalize those material entities. Thus, a firm should have outstanding a minimum amount of loss-absorbing capacity, including long-term debt, to help ensure that the firm has adequate capacity to meet that need at a consolidated level (external LAC).

A firm's external LAC should be complemented by appropriate positioning of loss-absorbing capacity within the firm (i.e., internal LAC), consistent with any applicable rules requiring prepositioned resources at IDIs in the form of long-term debt. After adhering to any requirements related to prepositioning long-term debt in IDIs, the positioning of a firm's remaining resources should balance the certainty associated with pre-positioning resources directly at material entities with the flexibility provided by holding recapitalization resources at

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<sup>28</sup> The terms “material entities,” “identified critical operations,” and “core business lines” have the same meaning as in the Rule.

the parent (contributable resources) to meet unanticipated losses at material entities. That balance should take account of both pre-positioning at material entities and holding resources at the parent, and the obstacles associated with each. With respect to material entities that are not U.S. IDIs subject to pre-positioned long-term debt requirements, the firm should not rely exclusively on either full pre-positioning or parent contributable resources to recapitalize such entities. The Plan should describe the positioning of resources within the firm, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned resources at a material entity are in the form of intercompany debt and there are one or more entities between that material entity and the parent, the firm should structure the instruments so as to ensure that the material entity can be recapitalized.

*Resolution Capital Execution Need (RCEN).* To support the execution of the firm's resolution strategy, material entities need to be recapitalized to a level that allows them to operate or be wound down in an orderly manner following the parent company's bankruptcy filing. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (RCEN). The firm's positioning of resources should be able to support the RCEN estimates. In addition, the RCEN estimates should be incorporated into the firm's governance framework to ensure that the parent company files for bankruptcy at a time that enables execution of the preferred strategy.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,<sup>29</sup> consistent with the firm's resolution strategy. The RCEN methodology

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<sup>29</sup> The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred resolution strategy.

should be calibrated such that recapitalized material entities will have sufficient capital to maintain market confidence as required under the preferred resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for “well-capitalized” status and meet estimated additional capital needs throughout resolution. Material entities that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm’s corporate governance processes and controls for the use of models and methodologies.

#### MPOE

The agencies do not propose issuing guidance on this topic to firms whose Plans contemplate a MPOE resolution strategy.

### ***III. Liquidity***

#### SPOE

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at or readily available to material entities and a methodology for estimating the liquidity needed to successfully execute the resolution strategy, as described below.

*Resolution Liquidity Adequacy and Positioning (RLAP).* With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each material entity (including material entities that are non-U.S. branches)—i.e., the high-quality liquid assets (HQLA) at the material entity less net outflows to third parties and affiliates—and ensure that liquidity is readily

available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile and risk of the firm. The model should balance the reduction in frictions associated with holding liquidity directly at material entities with the flexibility provided by holding HQLA at the parent available to meet unanticipated outflows at material entities. Thus, the firm should not rely exclusively on either full pre-positioning or an expected contribution of liquid resources from the parent. The model<sup>30</sup> should ensure that the parent holding company holds sufficient HQLA (inclusive of its deposits at the U.S. branch of the lead bank subsidiary) to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity position of each material entity (HQLA less net outflows) should be measured using the firm's internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to an affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Additionally, the RLAP methodology should take into account: (A) the daily contractual mismatches between inflows and outflows; (B) the daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) the daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

*Resolution Liquidity Execution Need (RLEN)*. The firm should have a methodology for estimating the liquidity needed after the parent's bankruptcy filing to stabilize the surviving

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<sup>30</sup> “Model” refers to the set of calculations estimating the net liquidity surplus/deficit at each legal entity and for the firm in aggregate based on assumptions regarding available liquidity, e.g., HQLA, and third-party and interaffiliate net outflows.



material entities and to allow those entities to operate post-filing. The RLEN estimate should be incorporated into the firm's governance framework to ensure that the firm files for bankruptcy in a timely way, i.e., prior to the firm's HQLA falling below the RLEN estimate.

The firm's RLEN methodology should:

- (A) Estimate the minimum operating liquidity (MOL) needed at each material entity to ensure those entities could continue to operate post-parent's bankruptcy filing and/or to support a wind-down strategy;
- (B) Provide daily cash flow forecasts by material entity to support estimation of peak funding needs to stabilize each entity under resolution;
- (C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates; and
- (D) Estimate the minimum amount of liquidity required at each material entity to meet the MOL and peak needs noted above, which would inform the firm's board(s) of directors of when they need to take resolution-related actions.

The MOL estimates should capture material entities' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that material entities could operate without disruption during the resolution. The peak funding needs estimates should be projected for each material entity and cover the length of time the firm expects it would take to stabilize that material entity. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that material entities could operate post-filing consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, i.e., the minimum

amount of HQLA required to facilitate the execution of the firm's strategy. The RLEN estimate should be tied to the firm's governance mechanisms and be incorporated into the playbooks as discussed below to assist the board of directors in taking timely resolution-related actions.

#### MPOE

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy. A Plan with an MPOE strategy should include analysis and projections of a range of liquidity needs during resolution, including intraday; reflect likely failure and resolution scenarios; and consider the guidance on assumptions provided in Section VIII, Format and Structure of Plans; Assumptions.

#### ***IV. Governance Mechanisms***

#### SPOE

*Playbooks and Triggers.* A firm should identify the governance mechanisms that would ensure execution of required board actions at the appropriate time (as anticipated under the firm's preferred strategy) and include pre-action triggers and existing agreements for such actions. Governance playbooks should detail the board and senior management actions necessary to facilitate the firm's preferred strategy and to mitigate vulnerabilities, and should incorporate the triggers identified below. The governance playbooks should also include a discussion of: (A) the firm's proposed communications strategy, both internal and external;<sup>31</sup> (B) the boards of directors' fiduciary responsibilities and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; and (D) any employee retention policy. All responsible parties and timeframes for action should be identified. Governance playbooks should

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<sup>31</sup> External communications include those with U.S. and foreign authorities and other external stakeholders, such as large depositors and shareholders.

be updated periodically for all entities whose boards of directors would need to act in advance of the commencement of resolution proceedings under the firm's preferred strategy.

The firm should demonstrate that key actions will be taken at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To ensure that these actions will occur, the firm should establish clearly identified triggers linked to specific actions for:

- (A) The escalation of information to senior management and the board(s) to potentially take the corresponding actions at each stage of distress leading eventually to the decision to file for bankruptcy;
- (B) Successful recapitalization of subsidiaries prior to the parent's filing for bankruptcy and funding of such entities during the parent company's bankruptcy to the extent the preferred strategy relies on such actions or support; and
- (C) The timely execution of a bankruptcy filing and related pre-filing actions.<sup>32</sup>

These triggers should be based, at a minimum, on capital, liquidity, and market metrics, and should incorporate the firm's methodologies for forecasting the liquidity and capital needed to operate as required by the preferred strategy following a parent company's bankruptcy filing. Additionally, the triggers and related actions should be specific.

Triggers linked to firm actions as contemplated by the firm's preferred strategy should identify when and under what conditions the firm, including the parent company and its material entities, would transition from business-as-usual conditions to a stress period and from a stress period to the recapitalization/resolution periods. Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite

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<sup>32</sup> Key pre-filing actions include the preparation of any emergency motion required to be decided on the first day of the firm's bankruptcy. *See infra* OPERATIONAL—Legal Obstacles Associated with Emergency Motions.

actions to be completed. For example, breach of the triggers needs to occur early enough to ensure that resources are available and can be downstreamed, if anticipated by the firm's strategy, and with adequate time for the preparation of the bankruptcy petition and first-day motions, necessary stakeholder communications, and requisite board actions. Triggers identifying the onset of stress and recapitalization/resolution periods, and the associated escalation procedures and actions, should be discussed directly in the governance playbooks.

*Pre-Bankruptcy Parent Support.* The Plan should include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to planned provision of capital and liquidity to the subsidiaries prior to the parent's bankruptcy filing (Support). Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (e.g., imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the Plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's preferred resolution strategy.

The analysis should include mitigants to the potential challenges to the planned Support. The Plan should identify the mitigant(s) to such challenges that the firm considers most effective. In identifying appropriate mitigants, the firm should consider the effectiveness of a contractually binding mechanism (CBM), pre-positioning of financial resources in material entities, and the creation of an intermediate holding company. Moreover, if the Plan includes a CBM, the firm

should consider whether it is appropriate that the CBM should have the following:

- (A) Clearly defined triggers;
- (B) Triggers that are synchronized to the firm's liquidity and capital methodologies;
- (C) Perfected security interests in specified collateral sufficient to fully secure all Support obligations on a continuous basis (including mechanisms for adjusting the amount of collateral as the value of obligations under the agreement or collateral assets fluctuates); and
- (D) Liquidated damages provisions or other features designed to make the CBM more enforceable.

The firm also should consider related actions or agreements that may enhance the effectiveness of a CBM. A copy of any agreement and documents referenced therein (e.g., evidence of security interest perfection) should be included in the Plan.

The governance playbooks included in the Plan should incorporate any developments from the firm's analysis of potential legal challenges regarding the Support, including any Support approach(es) the firm has implemented. If the firm analyzed and addressed an issue noted in this section in a prior plan submission, the Plan may reproduce that analysis and arguments and should build upon it to at least the extent described above. In preparing the analysis of these issues, firms may consult with law firms and other experts on these matters. The agencies do not object to appropriate collaboration between firms, including through trade organizations and with the academic community, to develop analysis of common legal challenges and available mitigants.

#### MPOE

The agencies do not propose issuing guidance on this topic to firms whose Plans utilize a MPOE

resolution strategy.

## ***V. Operational***

### SPOE

*Payment, Clearing, and Settlement Activities Framework.* Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,<sup>33</sup> or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution through a framework to support such access by:

- Identifying clients,<sup>34</sup> FMUs, and agent banks as key from the firm's perspective, using both quantitative (volume and value)<sup>35</sup> and qualitative criteria;
- Mapping material entities, identified critical operations, core business lines, and key clients to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank reflecting the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (e.g., a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations, or a firm's contractual relationship with an agent bank) and indirect relationships (e.g., a firm's provision of

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<sup>33</sup> A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of a financial market utility (FMU) through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations (e.g., payment services or custody services).

<sup>34</sup> For purposes of this section, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and any related credit or liquidity offered in connection with those services.

<sup>35</sup> In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank).

*Playbooks for Continued Access to PCS Services.* The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and its key clients in maintaining continued access to PCS services in the period leading up to and including the firm's resolution. Each playbook should provide analysis of the financial and operational impact to the firm's material entities and key clients due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's material entities, identified critical operations and core business lines, and key clients, while the firm is in resolution. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its preferred resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients, and playbooks should reflect any feedback received during such ongoing outreach.

*Content Related to Users of PCS Services.* Individual key FMU and key agent bank playbooks should include:

- Description of the firm's relationship as a user with the key FMU or key agent bank and the identification and mapping of PCS services to material entities, identified critical operations, and core business lines that use those PCS services;
- Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution,<sup>36</sup> the operational and financial impact of

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<sup>36</sup> Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

such actions on each material entity, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and

- Discussion of PCS-related liquidity sources and uses in business-as-usual (BAU), in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by material entity.
  - PCS Liquidity Sources: These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and key client prefunded amounts in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (e.g., facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in various currencies, including placements of firm liquidity at central banks, key FMUs, and key agent banks.
  - PCS Liquidity Uses: These may include firm and key client margin and prefunding and intraday extensions of credit, including incremental amounts required during resolution.
  - Intraday Liquidity Inflows and Outflows: The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.



*Content Related to Providers of PCS Services.*<sup>37</sup> Individual key FMU and key agent bank playbooks should include:

- Identification and mapping of PCS services to the material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;
- Identification and mapping of PCS services to key clients to whom the firm provides such PCS services and any related credit or liquidity offered in connection with such services;
- Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to its key clients, including the viability of transferring key client activity and any related assets, as well as any alternative arrangements that would allow the firm's key clients continued access to PCS services if the firm could no longer provide such access (e.g., due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;
- Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as: (i) requiring key clients to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (e.g., direct members of key FMUs) or any similar custodial arrangements that allow ready access to

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<sup>37</sup> Where a firm is a provider of PCS services through the firm's own operations, the firm is expected to produce a playbook for the material entities that provide those services, addressing each of the items described under "Content Related to Providers of PCS Services," which include contingency arrangements to permit the firm's key clients to maintain continued access to PCS services.

- key clients' funds for such obligations in various currencies; (ii) delaying or restricting key client PCS activity; and (iii) restricting, imposing conditions upon (e.g., requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients; and
- Descriptions of how the firm will communicate to its key clients the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients (e.g., due to the key client's BAU usage of that access and/or related intraday credit or liquidity), and the expected timing and form of such communication.

*Capabilities.* The firm is expected to have and describe capabilities to understand, for each material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. The firm should be able to:

- Track the following items by: (i) material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:
  - PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;<sup>38</sup>
  - Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;<sup>39</sup>
  - Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and<sup>40</sup>

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<sup>38</sup> 12 CFR 243.5(e)(12) and 12 CFR 381.5(e)(12).

<sup>39</sup> *Id.*

<sup>40</sup> 12 CFR 252.34(h).

- Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).<sup>41</sup>
- Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's operations and customers and counterparties of those operations;<sup>42</sup>
- Develop contingency arrangements in the event of such adverse actions;<sup>43</sup> and
- Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

*Managing, Identifying, and Valuing Collateral.* The firm is expected to have and describe its capabilities to manage, identify and value the collateral that it receives from and posts to external parties and affiliates. Specifically, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;
- Be able to track both collateral sources (i.e., counterparties that have pledged collateral) and uses (i.e., counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;
- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;

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<sup>41</sup> 12 CFR 243.5(f)(1)(i) and 12 CFR 381.5(f)(1)(i).

<sup>42</sup> 12 CFR 252.34(f).

<sup>43</sup> *Id.*

- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;
- Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and
- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.<sup>44</sup>

*Management Information Systems.* The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity. The firm should have the capabilities to produce the following types of information in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;
- Gross and net risk positions with internal and external counterparties;
- Guarantees, cross holdings, financial commitments and other transactions between material entities;
- Data to facilitate third-party valuation of assets and businesses, including risk metrics;

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<sup>44</sup> The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
- Licenses and memberships to all exchanges and value transfer networks, including FMUs;
- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

*Shared and Outsourced Services.* The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations or core business lines and robust arrangements to support the continuity of shared and outsourced

services, including, without limitation appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or core business lines. Examples may include personnel, facilities, systems, data warehouses, and intellectual property. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

The firm should (A) maintain an identification of all shared services that support identified critical operations or core business lines;<sup>45</sup> (B) maintain a mapping of how/where these services support its core business lines and identified critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all shared services that support identified critical operations or core business lines.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution. The firm should also store SLAs in a central repository or repositories in a searchable format, develop and document contingency strategies and arrangements for replacement of critical shared services, and complete re-alignment or restructuring of activities within its corporate structure. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's preferred strategy) in such

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<sup>45</sup> This should be interpreted to include data access and intellectual property rights.

entities sufficient to cover contract costs, consistent with the preferred resolution strategy.

The firm should identify all critical service providers and outsourced services that support identified critical operations or core business lines and identify any that could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated despite continued performance upon the parent's bankruptcy filing, and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

*Qualified Financial Contracts.* The Plan should reflect how the early termination of qualified financial contracts triggered by the parent company's bankruptcy filing could impact the resolution of the firm's operations, including potential termination of any contracts that are not subject to statutory, contractual or regulatory stays of direct default or cross-default rights. A Plan should explain and support the firm's strategy for addressing the potential disruptive effects in resolution of early termination provisions and cross-default rights in existing qualified financial contracts at both the parent company and material entity subsidiaries. This discussion should address, to the extent relevant for the firm, qualified financial contracts that include limitations of standard contractual direct default and cross default rights by agreement of the parties.

#### MPOE

*Payment, Clearing and Settlement (PCS) Capabilities.* Firms are expected to have and describe capabilities to understand, for each material entity, its obligations and exposures associated with

PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- As users of PCS services:
  - Track the following items by: (i) material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:
    - PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;
    - Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;
    - Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and
    - Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).
  - Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm and its customers and counterparties;
  - Develop contingency arrangements in the event of such adverse actions; and
  - Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including intraday requirements.
- As providers of PCS services:



- Identify their PCS clients and the services they provide to these clients, including volumes and values of transactions;
- Quantify and explain time-sensitive payments; and
- Quantify and explain intraday credit provided.

*Managing, Identifying and Valuing Collateral.* The firm should have appropriate capabilities related to managing, identifying, and valuing the collateral that it receives from and posts to external parties and its affiliates, including tracking collateral received, pledged, and available at the CUSIP level and measuring exposures.

*Management Information Systems.* The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy. The firm should have the capabilities to produce the following types of information, as appropriate for its resolution strategy, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;
- Gross and net risk positions with internal and external counterparties;
- Guarantees, cross holdings, financial commitments and other transactions between material entities;
- Data to facilitate third-party valuation of assets and businesses, including risk metrics;
- Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights

(for example, termination and change in control clauses);

- Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
- Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
- Licenses and memberships to all exchanges and value transfer networks, including FMUs;
- Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
- Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
- Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

*Shared and Outsourced Services.* The firm should maintain robust arrangements to support the continuity of shared and outsourced services that support any identified critical operations or are material to the execution of the resolution strategy, including appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency

arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or are material to the execution of the resolution strategy. Examples may include personnel, facilities, systems, data warehouses, and intellectual property. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

The firm should: (A) maintain an identification of all shared services that support identified critical operations or are material to the execution of the resolution strategy; and (B) mitigate identified continuity risks through establishment of SLAs for all shared services supporting identified critical operations or are material to the execution of the resolution strategy. SLAs should fully describe the services provided and incorporate appropriate terms and conditions to: (A) prevent automatic termination upon certain resolution-related events; and (B) achieve continued provision of such services during resolution.

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the resolution strategy. Any of these services that cannot be promptly substituted should be identified in a firm's Plan. The firm should: (A) evaluate the agreements governing these services to determine whether there are any that could be terminated despite continued performance upon the parent's bankruptcy filing; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of such services through resolution. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

## ***VI. Legal Entity Rationalization & Separability***

## **Legal Entity Rationalization**

### SPOE

*Legal Entity Rationalization Criteria (LER Criteria).* A firm should develop and implement legal entity rationalization criteria that support the firm's preferred resolution strategy and minimize risk to U.S. financial stability in the event of the firm's failure. LER Criteria should consider the best alignment of legal entities and business lines to improve the firm's resolvability under different market conditions. LER Criteria should govern the firm's corporate structure and arrangements between legal entities in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time. Specifically, application of the criteria should:

- (A) Facilitate the recapitalization and liquidity support of material entities, as required by the firm's resolution strategy. Such criteria should include clean lines of ownership, minimal use of multiple intermediate holding companies, and clean funding pathways between the parent and material operating entities;
  - (B) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution of the firm, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;
  - (C) Adequately protect the subsidiary insured depository institutions from risks arising from the activities of any nonbank subsidiaries of the firm (other than those that are subsidiaries of an insured depository institution); and
- Minimize complexity that could impede an orderly resolution and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing its structure and operations on a continuous basis.

### MPOE

*Legal Entity Structure.* A firm should maintain a legal entity structure that supports the firm's preferred resolution strategy and minimizes risk to U.S. financial stability in the event of the firm's failure. The firm should consider factors such as business activities; banking group structures and booking models and practices; and potential sales, transfers, or wind-downs during resolution. The Plan should describe how the firm's legal entity structure aligns core business lines and any identified critical operations with the firm's material entities to support the firm's resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI's subsidiary during resolution, including for the provision of shared services, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants.

The firm's corporate structure and arrangements among legal entities should be considered and maintained in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

### **Separability**

#### SPOE

*Separability.* The firm should identify discrete operations that could be sold or transferred in resolution, with the objective of providing optionality in resolution under different market conditions.

A firm's separability options should be actionable, and impediments to their execution and projected mitigation strategies should be identified in advance. Relevant impediments could

include, for example, legal and regulatory preconditions, interconnectivity among the firm's operations, tax consequences, market conditions, and other considerations. To be actionable, divestiture options should be executable within a reasonable period of time.

In developing their options, firms should also consider potential consequences for U.S. financial stability of executing each option, taking into consideration impacts on counterparties, creditors, clients, depositors, and markets for specific assets.

Firms should have a comprehensive understanding of the entire organization and certain baseline capabilities. That understanding should include the operational and financial linkages among a firm's business lines, material entities, and identified critical operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

The level of detail and analysis should vary based on the firm's risk profile and scope of operations. A separability analysis should address the following elements:

- *Divestiture Options*: the options in the Plan should be actionable and comprehensive, and should include:
  - Options contemplating the sale, transfer, or disposal of significant assets, portfolios, legal entities or business lines.
  - Options that may permanently change the firm's structure or business strategy.
- *Execution Plan*: for each divestiture option listed, the separability analysis should describe the steps necessary to execute the option. Among other considerations, the description should include:
  - The identity and position of the senior management officials of the company who are primarily responsible for overseeing execution of the separability option.

- An estimated time frame for implementation.
  - A description of any impediments to execution of the option and mitigation strategies to address those impediments.
  - A description of the assumptions underpinning the option.
  - A plan describing the methods and forms of communication with internal, external, and regulatory stakeholders.
- *Impact Assessment:* the separability analysis should holistically consider and describe the expected impact of individual divestiture options. This should include the following for each divestiture option:
    - A financial impact assessment that describes the impact of executing the option on the firm's capital, liquidity, and balance sheet.
    - A business impact assessment that describes the effect of executing the option on business lines and material entities, including reputational impact.
    - An identified critical operation impact assessment that describes how execution of the option may affect the provision of any identified critical operation.
    - An operational impact assessment and contingency plan that explains how operations can be maintained if the option is implemented; such an analysis should address internal operations (for example, shared services, IT requirements, and human resources) and access to market infrastructure (for example, clearing and settlement facilities and payment systems).

Further, the firm should have, and be able to demonstrate, the capability to populate in a timely manner a data room with information pertinent to a potential divestiture of the business (including, but not limited to, carve-out financial statements, valuation analysis, and a legal risk

assessment).

Within the Plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts support meeting the separability-related guidance above. The Plan should also provide the separability analysis noted above. Finally, the Plan should include a description of the firm's legal entity rationalization governance process.

#### MPOE

A Plan should include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution that may be executed in a reasonable period of time. For each option, supporting analysis should include: an execution plan that includes an estimated time frame for implementation, a description of any impediments to execution of the option, and mitigation strategies to address those impediments; a description of the assumptions underpinning the option; a financial impact assessment that describes the impact of executing the option; and an identified critical operation impact assessment that describes how execution of the option may affect the provision of any identified critical operation. Information systems should be robust enough to produce the required data and information needed to execute the options.

#### ***VII. Insured Depository Institution (IDI) Resolution***

If the Plan includes a strategy that contemplates the separate resolution of a U.S. IDI that is a material entity, the Plan should demonstrate how this could be achieved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States while also complying with the statutory and regulatory requirements governing IDI resolution. More specifically,



- If the strategy is other than payout liquidation (e.g., a bridge depository institution (BDI)), the Plan should provide information supporting the feasibility of this strategy. Under the FDI Act, the FDIC generally would complete a least-cost analysis when resolving a failed bank at the time of entry into resolution. A Plan may use an approach such as one of the following in lieu of performing a complete least-cost analysis to demonstrate the feasibility of the proposed strategy.<sup>46</sup>
  - A Plan may demonstrate that a strategy involving an all-deposit BDI would be permissible under the least-cost test of the FDI Act by presenting an analysis which shows that the strategy results in no loss to the Deposit Insurance Fund (DIF) by demonstrating that the incremental estimated cost to the DIF by having the BDI assume all uninsured deposits is offset by the preservation of franchise value connected to the uninsured deposits after accounting for the amount of any loss-absorbing debt instruments and other liabilities subordinate to the depositor class that would be left behind in the receivership.
  - A Plan may demonstrate the feasibility of a strategy involving a BDI that assumes all insured deposits and a portion of uninsured deposits by providing an advance dividend to uninsured depositors for a portion of their deposit claim, as well as the basis for that dividend, and pursuant to which a loss to the DIF occurs, by presenting an analysis comparing the cost of the proposed strategy to the cost of payout liquidation and demonstrating:
    - The incremental estimated cost to the DIF created by the BDI's assumption of the portion of uninsured deposits assumed is offset by the

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<sup>46</sup> See 12 U.S.C. 1823(c)(4)(A)(ii) and 1821(n)(2)(A).

franchise value preserved by maintaining the assumed uninsured deposits, after accounting for the amount of any long-term debt and other liabilities subordinate to the depositor class that would be left behind in the receivership;<sup>47</sup> and

- The loss to the DIF under the proposed strategy (including the amounts paid by the DIF for more favorable treatment, relative to a payout liquidation, of a portion of uninsured deposits) is less than or equal to the loss to the DIF that would be incurred through a payout liquidation of the IDI; and
  - The deposit payout process for any uninsured deposits that remain in the receivership may be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- If the Plan’s strategy envisions a payout liquidation for the IDI, with or without use of a Deposit Insurance National Bank or a paying agent, the Plan should demonstrate how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- In all cases, the Plan should show that implementation of the resolution, including the impact on depositors whose accounts are not transferred in whole or in part to the BDI, would not create the risk of serious adverse effects on U.S. financial stability.

Regardless of the IDI resolution strategy chosen, the Plan should assume asset valuations consistent with the severely adverse stress economic scenario and the IDI’s condition as a failed institution, as referenced in “*Guidance regarding Assumptions*,” Items 4 and 7 below. The Plan,

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<sup>47</sup> See 12 U.S.C. 1821(d)(11).

in light of such conditions, should explain the process for determining asset or business franchise values, including providing detailed supporting descriptions such as references to historical pricing, benchmarks, or recognized models; evidence supporting client attrition rates; and other relevant information.

With respect to exit from IDI resolution proceedings, a Plan could support the feasibility of an asset liquidation or BDI exit strategy by, for example, describing an actionable process, based on historical precedent or otherwise supportable projections, that winds down certain businesses, includes the sale of assets and deposits to multiple acquirers, or culminates in a capital markets transaction, such as an initial public offering or a private placement of securities.

### ***VIII. Format and Structure of Plans; Assumptions***

SPOE & MPOE

*Format of Plan.*

**Executive Summary.** The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

**Narrative.** The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for an orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative).

**Appendices.** The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in

appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

**Public Section.** The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

**Other Informational Requirements.** The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

*Guidance Regarding Assumptions.*

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.
2. The firm must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.<sup>48</sup> The firm should not submit a Plan that assumes the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act.
3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.
4. The resolution strategy may be based on an idiosyncratic event or action, including a series of compounding events. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

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<sup>48</sup> 12 CFR 243.4(a)(4)(ii) and 12 CFR 381.4(a)(4)(ii).

5. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (i.e., the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer.).
6. For a firm that adopts an MPOE strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress.<sup>49</sup> In particular, the Plan should consider the likelihood that there would be a diminution of the firm's liquidity buffer in the stress period prior to filing for bankruptcy from high unexpected outflows of deposits and increased liquidity requirements from counterparties. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the covered company or its material legal entity subsidiaries prior to the final recognition of losses, the demonstration and description of material financial distress may also include depletion of capital. Therefore, the Plan should also consider the likelihood of the depletion of capital.
7. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.
8. The Plan should support any assumptions that the firm will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy. To the extent the firm assumes use of the Discount Window and/or other borrowings, the Plan should support that assumption with a discussion of the operational

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<sup>49</sup> See Section 11(c)(5) of the FDI Act, codified at 11 U.S.C. 1821(c)(5), which details grounds for appointing the FDIC as conservator or receiver of an IDI.

testing conducted to facilitate access in a stress environment, placement of collateral, and the amount of funding accessible to the firm. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

*Financial Statements and Projections.* The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the resolution strategy. It should also include statements of projected sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan must clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

*Material Entities.* Material entities should encompass those entities, including foreign offices and branches, which are significant to the maintenance of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

1. Any U.S.-based or non-U.S. affiliates, including any branches, that are significant to the activities of an identified critical operation.
2. Subsidiaries or foreign offices whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.
3. Subsidiaries or foreign offices that provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.
4. Subsidiaries or foreign offices that are engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.
5. Subsidiaries or foreign offices engaged in asset custody or asset management that are significant to the activities of an identified critical operation.
6. Subsidiaries or foreign offices holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the preferred strategy, and explain how the Plan addresses the actions and forbearances. Describe the consequences for the covered company's resolution strategy if specific actions in a non-U.S. jurisdiction were not taken, delayed, or forgone, as relevant.

## ***IX. Public Section***

### **SPOE & MPOE**

The purpose of the public section is to inform the public's understanding of the firm's resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy).

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the agencies have identified in prior plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the Plan is not binding on a bankruptcy court or other resolution authority and that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.



**Ann E. Misback,**  
*Secretary of the Board.*

Federal Deposit Insurance Corporation.  
By order of the Board of Directors.  
Dated at Washington, DC, on [date].

**James P. Sheesley,**  
*Assistant Executive Secretary.*

**BILLING CODE 6210-01-P; 6714-01-P**