FEDERAL RESERVE SYSTEM

Docket No. OP-[]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064-ZA38

Guidance for Resolution Plan Submissions of Foreign 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 foreign 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 foreign-based triennial full filers (specified firms or firms),[1] and the guidance, if finalized, would supersede the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*.[2] 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 dealing with stress events in the international and domestic banking systems, 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.

[1] Foreign-based Category II and III banking organizations.

[2] 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

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

ADDRESSES: Interested parties are encouraged to submit written comments jointly to both 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. 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.cfms 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-ZA38, 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. Include "RIN 3064-ZA38" on the subject line of the message.
- Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments-RIN 3064-ZA38, 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.

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I. Background

A. The Dodd-Frank Act and the Rule

Section 165(d) of the Dodd-Frank Act[3] 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

[3] 12 U.S.C. 5365(d).

or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers; (b) triennial full filers; and (c) triennial reduced filers.[4]

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.[5] 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.[6] Targeted resolution plans are required to include a subset of information contained in a full plan.[7] 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.[8] Public sections of resolution plans can be found on the agencies' websites.[9]

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

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[4] 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.
[5] 12 CFR 243.4(b) and 12 CFR 381.4(b).
[6] 12 CFR 243.5 and 12 CFR 381.5.
[7] 12 CFR 243.6(b) and 12 CFR 381.6(b).
[8] 12 CFR 243.11(c) and 12 CFR 381.11(c).
[9] The public sections of resolution plans submitted to the agencies are available at www.federalreserve.gov/supervisionreg/resolution-plans.htm and www.fdic.gov/regulations/reform/resplans/.

agencies believe that guidance can help focus the efforts of similarly situated covered companies 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),[10] which constitute the biennial filer group, and (b) certain large foreign banking organizations (FBOs) that are triennial full filers.[11] 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,[12] 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 foreign-based triennial full filers not already subject to resolution planning guidance 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. In addition, the agencies' review of 2021 targeted resolution plans submitted by foreign-based triennial full filers subject to the 2020 FBO Guidance revealed opportunities for improvements to the reliability and timeliness of the generation and provision of financial information as well as liquidity- and capital-related resolution capabilities necessary

[10] 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).
[11] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).
[12] https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220930a.htm.

to successfully executing these firms' U.S. resolution strategies. Resolution plans from the specified firms also generally lacked detail and clarity on how the firm's strategy and capabilities for a resolution under the Rule would be complementary to its home country global resolution strategy.

The proposed guidance also reflects the agencies' recent experience with UBS Group AG's acquisition of Credit Suisse Group AG (CS) and, with respect to specified firms with large subsidiary insured depository institutions (IDIs), the resolutions of Silicon Valley Bank (SVB), Signature Bank (SB), and First Republic Bank (First Republic). The agencies' experience with CS illustrates the complexities that can arise in the case of acute stress involving large cross-border firms and the importance of resolution planning and coordination with home country authorities. Like CS, many of the specified firms are foreign GSIBs with a large presence in the United States, and the agencies recognize the importance of maintaining a comprehensive understanding of the U.S. operations of large FBOs. 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 IDI may have serious adverse effects on financial stability in the United States.[13] The agencies' experience with these three banking organizations is particularly instructive in developing guidance to foreign-based triennial full filers that present a U.S. multiple point of entry (U.S. MPOE) resolution strategy and that have large subsidiary IDIs, to assist their progress in developing their resolution plans that comply with the statutory and regulatory requirements governing IDI resolution.

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[13] For example, the FDIC – with 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.

C. Resolution Plan Strategy

The specified firms have adopted one of two U.S. resolution strategies: a U.S. single point of entry (U.S. SPOE) or U.S. MPOE strategy. Under a U.S. SPOE approach, only the top-tier U.S. material entity holding company enters bankruptcy and all U.S. material entity subsidiaries remain operating as a going concern. The U.S. 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 subsidiaries separately enter bankruptcy (or another applicable resolution regime) or are wound down. The U.S. SPOE and U.S. 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. For their 2021 resolution plan submissions, some of the specified firms presented a U.S. SPOE strategy, but most of the specified firms presented a U.S. MPOE strategy.

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.

With respect to the specified firms, the Rule requires the firm's U.S. resolution plan to address subsidiaries, branches, and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part

in the United States.[14] To date, the resolution plans of specified filers that have presented a U.S. SPOE strategy have presumed entry of the top tier U.S. intermediate holding company (IHC) into bankruptcy, while its material entity subsidiaries remain open and operating. Each of the specified firms that has presented such an approach is required by the Board's Regulation YY to have a U.S. IHC under which all non-branch U.S. entities are organized.[15] The agencies note that some of the specified firms are not subject to the Regulation YY requirement to establish a U.S. IHC. The agencies are considering whether such a specified firm not subject to a U.S. IHC requirement could provide for the orderly resolution of its U.S. entities and operations utilizing a U.S. SPOE resolution without having a top-tier holding company which would be the only entity to enter resolution.

Question 1: The agencies invite comment on all aspects of the utilization of a U.S. SPOE strategy under section 165(d) of the Dodd-Frank Act by a specified filer whether or not it is subject to the Regulation YY requirement to establish a U.S. IHC, including the feasibility of the U.S. SPOE strategy and the characteristics of the firm's U.S. entities and operations that would facilitate successful U.S. SPOE strategy execution.

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.[16] This proposed rule would improve the resolvability of these firms, and, in particular, their IDI

[14] 12 CFR 243.5(a)(2) and 12 CFR 381.5(a)(2).
[15] 12 CFR 252.153.
[16] This proposed rulemaking is published elsewhere in this *Federal Register* (LTD proposal).

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 foreign 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.[17]

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 a U.S. SPOE resolution strategy and a U.S. 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 a U.S. SPOE resolution strategy is generally based on the 2020 FBO Guidance or the associated proposal.[18] Successful execution of a U.S. 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

[17] 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.

[18] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 15449 (March 18, 2020) (2020 Proposed FBO Guidance).

resolution.

Some aspects of this proposal reflect expectations that were included in the 2020 Proposed FBO Guidance. For example, the proposal contains capital and liquidity pre-positioning expectations similar to the 2020 Proposed FBO Guidance, to better support U.S. SPOE strategies and in light of the LTD proposal. Although IDI subsidiaries of certain specified firms may be required under an LTD rule have outstanding a minimum amount of prepositioned LTD, firms with a U.S. SPOE strategy should have a framework for determining the amount and allocation of resources among the firm's material entities. Similarly, for specified firms that adopt a U.S. SPOE strategy, the agencies are proposing governance mechanisms and separability expectations similar to those contained in the 2020 Proposed FBO Guidance. Governance mechanisms increase the likelihood that the U.S. SPOE strategy would be implemented at a point in the stress continuum prior to the firm having exhausted all financial resources, increasing the likelihood that the bankruptcy reorganization would be successful. Separability provides additional optionality to firms' U.S. SPOE strategies.

The proposed guidance for firms that utilize a U.S. MPOE resolution strategy is based upon the 2020 FBO Guidance but tailored for a U.S. MPOE strategy. The agencies are, however, proposing to clarify their expectations for specified firms that utilize a U.S. 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 a U.S. SPOE strategy or a U.S. MPOE strategy.

A. Scope of Application

The agencies propose to apply the guidance to all foreign-based 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 foreign triennial full filers given issues identified in these firms' 2021 targeted resolution plans and considering lessons learned from recent events, including the agencies' experiences in connection with the events leading to UBS AG's

acquisition of Credit Suisse, following the intervention of the Swiss authorities.

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 2: 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. Group Resolution Plan

The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy that does not involve the placement of any U.S. material entities into resolution. However, by law, U.S. resolution planning requirements require relevant FBOs to contemplate their resolution under the Bankruptcy Code.

U.S. operations of an FBO are often highly interconnected with the broader, global operations of the financial institution. To clarify the interaction between U.S. and global resolution strategies, the proposal outlines expectations for specified firms to describe the impact of executing the firm's global, group-wide resolution plan on the firm's U.S. operations and detail the extent to which resolution planning under the Rule relies on different

assumptions, strategies, and capabilities from the global plan. A specified firm's broader resolvability framework is expected to consider the objectives of both the group-wide resolution strategy and the U.S. resolution strategy pursuant to the Rule, with complementary efforts to enhance resolvability across plans.

C. Capital

For specified firms with a U.S. SPOE resolution strategy, the agencies propose guidance substantially similar to the 2020 Proposed FBO 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 a U.S. MPOE resolution strategy, as a U.S. MPOE strategy assumes most material entities do not continue as going concerns upon entry into resolution.

Question 3: 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 a U.S. MPOE strategy in its resolution plan?

Question 4: 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?

D. Liquidity

For firms that adopt a U.S. SPOE resolution strategy, the agencies propose guidance substantially similar to the 2020 Proposed FBO 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 resolution strategy.

For firms that adopt a U.S. MPOE resolution strategy, the agencies propose that a firm should have the liquidity capabilities necessary to execute its 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 a U.S. MPOE resolution strategy? Are there circumstances under which it would be appropriate for a resolution plan that utilizes a U.S. MPOE strategy to include the movement of liquidity among U.S. material entities that are in resolution?

E. *Governance Mechanisms*

For firms using a U.S. SPOE resolution strategy, the agencies propose guidance that is substantially similar to the 2020 Proposed FBO 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 communicate and coordinate with the foreign parent regarding the provision of financial support and other key actions. The governance mechanisms section proposes expectations that firms have playbooks that describe the board and senior management actions of the U.S. non-branch material entities that would be necessary in order to execute the firm's U.S. resolution 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 both U.S. IHC and foreign parent governing bodies. The proposal also describes the expectations that firms identify and analyze potential legal challenges to planned U.S. IHC support mechanisms, and any defenses and mitigants to such challenges. To the extent the preferred global resolution strategy for the firm is a home country SPOE resolution, the governance mechanisms section proposes expectations that a firm design such mechanisms in a way that does not interfere with the execution of the global strategy.

For firms that adopt a U.S. MPOE resolution strategy, the agencies propose adopting governance mechanisms expectations to ensure communication and coordination between the governing body of the U.S. operations and the foreign parent for the purpose of facilitating preparations for an orderly resolution.

Question 6: Are the governance mechanisms expectations regarding communications and triggers for firms that utilize a U.S. MPOE strategy appropriate and clear? Are there other governance-related expectations that should be extended to resolution plans utilizing a U.S.

MPOE resolution strategy?

F. Operational

The development and maintenance of operational capabilities is important to support and enable execution of a firm's 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 a U.S. SPOE resolution strategy, the agencies propose adopting portions of the operational expectations of the 2020 FBO Guidance and SR letter 14-1,[19] with modifications that reflect the specific characteristics and complexities of the specified firms. Like the 2020 FBO Guidance, the proposal contains expectations on payment, clearing and settlement activities, managing, identifying and valuing collateral, and shared and outsourced services. For firms that utilize a U.S. MPOE resolution strategy, the agencies propose adopting expectations based on SR letter 14-1 and the 2020 FBO 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.

Question 7: Does the proposed guidance sufficiently address FBOs that plan to utilize a U.S. SPOE strategy that may not be required to comply with U.S. qualified financial contract resolution stay regulations? How should FBOs that are not "regulated entities" under ISDA's Resolution Stay Protocol demonstrate that their SPOE resolution strategies will be feasible despite the lack of a stay on cross defaults to the parent company? What guidance should the agencies provide with respect to how the SPOE strategy of such a firm should address the potential effects of early termination of the firm's qualified financial contracts?

G. *Legal Entity Rationalization & Separability*

[19] 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.

For specified firms that utilize a U.S. SPOE resolution strategy, the agencies propose substantively adopting the 2020 FBO Guidance regarding legal entity rationalization and guidance that is substantially similar to the 2020 FBO Proposed Guidance regarding 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 the U.S. 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 of U.S. operations 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 U.S. 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 a U.S. MPOE resolution strategy, the proposed guidance would clarify that the firms should have legal entity structures that support their U.S. 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 a U.S. MPOE resolution strategy?

H. Insured Depository Institution (IDI) Resolution[20]

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).[21] 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.[22] 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) instead of remaining in the receivership created on the failure date.[23] 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

[20] 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.
[21] *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).
[22] *See* 12 U.S.C. 1823(c)(4)(G).
[23] *See generally* https://www.fdic.gov/resources/resolutions/bank-failures/ for background about the resolution of IDIs by the FDIC.

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 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 4 bidders.[24] 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.[25]

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 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.[26] Generally, a BDI would continue the failed bank's operations according to business plans and budgets approved by the

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[24] *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.

[25] 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.

[26] 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.

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.[27] 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 a U.S. 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, 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 a U.S. 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

[27] 12 U.S.C. 1821(n)(10).

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?*

I. Derivatives and Trading Activities

The agencies request comment on whether to provide guidance on derivatives and trading activities for specified firms that utilize a U.S. SPOE resolution strategy. Although most of 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, particularly for firms with large U.S. broker-dealers. The agencies also are considering the resolution challenges that may be posed by transactions that originate from and may be managed in the U.S. but are booked outside of the U.S. If the agencies were to provide guidance on derivatives and trading activities, the agencies likely would adopt aspects of the 2020 Proposed FBO

Guidance. The agencies do not anticipate providing derivatives and trading activities guidance to specified firms that utilize a U.S. MPOE resolution strategy.

Question 11: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize a U.S. 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 2020 Proposed FBO Guidance? What other derivatives and trading activities-related expectations would reasonably enhance resolution plans that utilize a U.S. SPOE resolution strategy?

Question 12: Should the agencies provide resolution plan guidance on derivatives and trading activities for specified firms that utilize a U.S. 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?

Question 13: Should any resolution plan guidance the agencies provide to the specified firms on derivatives and trading activities take a different approach to transactions that originate in the U.S. but are booked outside of the U.S. and transactions that originate and are booked in the U.S.?

J. Branches

U.S. branches of FBOs can play a critical role in a firm's U.S. operations and may present unique issues in a resolution of a specified firm’s U.S. entities and operations. The agencies propose guidance that is similar to the 2020 FBO Guidance regarding branches. Under the proposal, specified firms would be expected to show how branches would continue to facilitate the firm's FMU access for identified critical operations and to meet funding needs.

The proposal also outlines expectations that the specified firms analyze the effects on the firm's FMU access and identified critical operations of the cessation of operations of any U.S. branch that is a material entity.

K. 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 2020 FBO 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 a U.S. 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 of its U.S. operations, including consideration of the likelihood of the diminution the firm's liquidity and capital levels prior to bankruptcy.

Question 14: 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 15: 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 FBOs 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. FBOs 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.[28] As shown in the table, the Triennial Full filing types would be estimated more granularly according to SPOE and MPOE

[28] 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.

resolution strategies.

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

FR QQ	*Estimated number of respondents*	*Estimated annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
		Board Burdens		
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
Current Total				*42,446*
Proposed				
Triennial Full:				
FBO SPOE*	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3		5,513	16,539
Proposed Total				*58,052*
		FDIC Burdens		
Current				
Triennial Full:				
Complex Foreign	0	1	9,777	0
Foreign and Domestic	7	1	4,667	32,669
Current Total				*32,669*
Proposed				
Triennial Full:				
FBO SPOE*	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,513	11,026
Proposed Total				*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 Foreign 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).[29] 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.[30] 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 foreign financial companies required to submit Plans regarding development of their respective U.S. strategies to assist their further development of a Plan for their 2024 and subsequent Plan submissions. Specifically, the guidance applies to any foreign-based covered company that is subject to Category II or III standards according to their combined U.S. operations in accordance with the Board's tailoring rule (specified firms).[31] This guidance supersedes the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*.[32]

The Plan for a specified firm would address a scenario where its U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide

[29] Resolution Plans Required, 76 FR 67323 (November 1, 2011).
[30] Resolution Plans Required, 84 FR 59194 (November 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.
[31] Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).
[32] 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

sufficient financial support for the continuation of U.S. operations, and at least the top tier U.S. IHC files for bankruptcy under Title 11, United States Code. Under such a scenario, the Plan should provide for the orderly resolution of the specified firm's U.S. material entities and operations.

In general, this document is organized around a number of key challenges in resolution (interaction with group resolution plan; capital; liquidity; governance mechanisms; operational; branches; 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 U.S. single point of entry (U.S. SPOE) resolution strategy for its Plan and expectations for a specified firm that utilizes a U.S. multiple point of entry (U.S. MPOE) resolution strategy for its Plan.[33] 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.

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[33] The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution. However, because support from the foreign parent in stress cannot be ensured, the Rule provides that the U.S. resolution plan for specified firms should specifically address a scenario where the U.S. operations experience material financial distress, and the Plan should not assume that the specified firm takes resolution actions outside the United States that would eliminate the need for any U.S. subsidiaries to enter resolution proceedings.

II. Interaction with Group Resolution Plan

U.S. SPOE & U.S. MPOE

Recognizing that the preferred resolution outcome for the specified firms is often a successful SPOE home country resolution, a specified firm's Plan should describe the impact of executing the global resolution plan on U.S. operations. This description should include a discussion of the expected resolution strategy for the firm's U.S. entities and operations under the global resolution plan. In addition, a specified firm's resolvability work in the United States should consider both the objectives of the firm's group-wide resolution strategy and the Rule. Efforts to enhance the resolvability of U.S. operations and entities should be as complementary as practicable to the group-wide resolution strategy, while complying with the Rule. To the extent that the Plan relies on different assumptions, strategies, and capabilities, such as those used to project liquidity needs in resolution, from those necessary to execute the global strategy, the Plan should include a description of such differences.

III. Capital

U.S. SPOE

The firm should have the capital capabilities necessary to execute its U.S. 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 U.S. non-branch material entities[34] could be resolved in an orderly manner, the firm's U.S. IHC should have an adequate amount of loss-absorbing capacity to execute its U.S. resolution strategy.

[34] The terms ''material entities,'' ''identified critical operations,'' and ''core business lines'' have the same meaning as in the Rule. The term ''U.S. material entity'' means any subsidiary, branch, or agency that is a material entity and is domiciled in the United States. The term ''U.S. non-branch material entity'' means a material entity organized or incorporated in the U.S. including, in all cases, the U.S. IHC. The term ''U.S. IHC subsidiaries'' means all U.S. non-branch material entities other than the U.S. IHC.

Thus, a firm's U.S. IHC 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 the U.S. IHC on a consolidated basis (IHC LAC).[35]

Proceeds from a firm's U.S. IHC LAC should be appropriately positioned between the U.S. IHC and the subsidiaries of the U.S. IHC that are material entities (U.S. IHC subsidiaries), consistent with any applicable rules requiring prepositioned resources at U.S. 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 IHC LAC should balance the certainty associated with pre-positioning internal LAC directly at U.S. IHC subsidiaries with the flexibility provided by holding recapitalization resources at the U.S. IHC (contributable resources) to meet unanticipated losses at the U.S. IHC subsidiaries. That balance should take account of both pre-positioning at U.S. IHC subsidiaries and holding resources at the U.S. IHC, and the obstacles associated with each. With respect to material entities that are not subject to pre-positioning requirements, the firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary. The Plan should describe the positioning of internal LAC among the U.S. IHC and the U.S. IHC subsidiaries, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned internal LAC at a U.S. IHC subsidiary is in the form of intercompany debt and there are one or more entities between the lender and the borrower, the firm should structure the instruments so as to ensure that the U.S. IHC subsidiary

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[35] Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (January 24, 2017); LTD proposal.

can be recapitalized.

Resolution Capital Execution Need (RCEN). To the extent necessitated by the firm's U.S. resolution strategy, U.S. non-branch material entities need to be recapitalized to a level that allows for an orderly resolution. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC bankruptcy filing (RCEN). The firm's positioning of IHC LAC should be able to support the RCEN estimates.

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,[36] consistent with the firm's resolution strategy for its U.S. operations. The RCEN methodology should be calibrated such that recapitalized U.S. IHC subsidiaries will have sufficient capital to maintain market confidence as required under the U.S 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. U.S. IHC subsidiaries 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.

<u>U.S. MPOE</u>

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

[36] The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.

IV. Liquidity

U.S. SPOE

The firm should have the liquidity capabilities necessary to execute its U.S resolution strategy, including those described below. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at—or readily available from the U.S. IHC to—U.S. IHC subsidiaries, and a methodology for estimating the liquidity needed to successfully execute the U.S. resolution strategy, as described below.

Capabilities. A firm is expected to have a comprehensive understanding of funding sources, uses, and risks at material entities and identified critical operations, including how funding sources may be affected under stress. For example, a firm should have and describe its capabilities to:

(A) Evaluate the funding requirements necessary to perform identified critical operations, including shared and outsourced services and access to financial market utilities (FMUs);[37]

(B) Monitor liquidity reserves and relevant custodial arrangements by jurisdiction and material entity;[38]

(C) Routinely test funding and liquidity outflows and inflows for U.S. non-branch material entities at the legal entity level under a range of adverse stress scenarios, taking into account the effect on intra-day, overnight, and term funding flows between affiliates and across jurisdictions;

(D) Assess existing and potential restrictions on the transfer of liquidity between U.S. non-

[37] 12 CFR 252.156(g)(3).
[38] 12 CFR 252.156(g)(2).

branch material entities;[39] and

(E) Develop contingency strategies to maintain funding for U.S. non-branch material entities and identified critical operations in the event of a disruption in the specified firm's current funding model.[40]

Resolution Liquidity Adequacy and Positioning (RLAP). With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each U.S. non-branch material entity—*i.e.,* the high-quality liquid assets (HQLA) at the U.S. non-branch 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 of the U.S. IHC and risk of each U.S. IHC subsidiary. The model should balance the reduction in frictions associated with holding liquidity directly at the U.S. IHC subsidiary with the flexibility provided by holding HQLA at the U.S. IHC or at a U.S. IHC subsidiary available to meet unanticipated outflows at other U.S. IHC subsidiaries.[41] The firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary.

The model[42] should ensure that on a consolidated basis the U.S. IHC holds sufficient HQLA to cover net liquidity outflows of the U.S. non-branch material entities. The model should also measure the stand-alone net liquidity positions of each U.S. non-branch material entity. The stand-alone net liquidity position of each U.S. non-branch material entity (HQLA

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[39] Id.
[40] 12 CFR 252.156(e).
[41] To the extent HQLA is held at the U.S. IHC or at a U.S. IHC subsidiary, the model must consider whether such funds are freely available. To be freely available, the HQLA must be free of legal, regulatory, contractual, and other restrictions on the ability of the material entity to liquidate, sell, or transfer the asset.
[42] "Model" refers to the set of calculations required by Regulation YY that estimate the U.S. IHC's liquidity position.

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 a non-U.S. affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at any U.S. IHC subsidiary that is a depository institution could be moved to meet net liquidity deficits at an affiliate, or to augment U.S. IHC resources, consistent with Regulation W.

Additionally, the RLAP methodology should take into account for each of the U.S. IHC, U.S. IHC subsidiaries, and any branch that is a material entity (A) the daily contractual mismatches between their respective inflows and outflows; (B) their respective daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) their respective daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

In calculating its RLAP estimate, the U.S. IHC should calculate its liquidity position with respect to its foreign parent, branches and agencies, and other affiliates (together, affiliates) separately from its liquidity position with respect to third parties, and should not offset inflows from affiliated parties against outflows to external parties. In addition, a U.S. IHC should use cash-flow sources from its affiliates to offset cash-flow needs of its affiliates only to the extent that the term of the cash-flow source from its affiliates is the same as, or shorter than, the term of the cash-flow need of its affiliates.[43]

Resolution Liquidity Execution Need (RLEN). The firm should have a methodology for estimating the liquidity needed after the U.S. IHC's bankruptcy filing to stabilize any surviving U.S. IHC subsidiaries and to allow those entities to operate post-filing, in accordance with the

[43] The U.S. IHC should calculate its cash-flow sources from its affiliates consistent with the net internal stressed cash-flow need calculation in § 252.157(c)(2)(iv) of Regulation YY.

U.S. strategy.

The firm's RLEN methodology should:

A. Estimate the minimum operating liquidity (MOL) needed at each U.S. IHC subsidiary that is a material entity to ensure those entities could continue to operate, to the extent relied upon in the U.S. resolution strategy, after implementation of the U.S. resolution strategy and/or to support a wind-down strategy;
B. Provide daily cash flow forecasts by U.S. IHC subsidiary 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 for the U.S. IHC subsidiaries; and
D. Estimate the minimum amount of liquidity required at each U.S. IHC subsidiary to meet the MOL and peak needs noted above, which would inform the provision of financial resources from the foreign parent to the U.S. IHC, or if the foreign parent is unable or unwilling to provide such financial support, any preparatory resolution-related actions.

The MOL estimates should capture U.S. IHC subsidiaries' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that U.S. IHC subsidiaries could operate without disruption during the resolution.

The peak funding needs estimates should be projected for each U.S. IHC subsidiary and cover the length of time the firm expects it would take to stabilize that U.S. IHC subsidiary. 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 U.S. IHC subsidiaries could operate through resolution 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 for the U.S. IHC subsidiaries.

For nonsurviving U.S. IHC subsidiaries, the firm should provide analysis and an explanation of how the material entity's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For example, if a U.S. IHC subsidiary that is a broker-dealer is assumed to fail and enter resolution under the Securities Investor Protection Act, the firm should provide an analysis of the potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution.

U.S. MPOE

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy. A Plan with a U.S. 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 X, Format and Structure of Plans; Assumptions.

V. Governance Mechanisms

U.S. SPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occurs between the boards of the U.S. IHC or a U.S. subsidiary and the foreign parent to facilitate the provision of financial support, or if not forthcoming, any preparatory resolution-related actions to facilitate an orderly resolution.

Playbooks, Foreign Parent Support, and Triggers. Governance playbooks should detail the

board and senior management actions of U.S. non-branch material entities that would be needed under the firm's U.S. resolution strategy. The governance playbooks should also include a discussion of: (A) the firm's proposed U.S. communications strategy, both internal and external; [44] (B) the fiduciary responsibilities of the applicable board(s) of directors or other similar governing bodies 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; (D) any employee retention policy; and (E) any other limitations on the authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for each entity whose governing body would need to act under the firm's U.S. resolution strategy.

In order to meet liquidity needs at the U.S. non-branch material entities, the firm may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed and as informed by the firm's RLEN estimates and liquidity positioning. To the extent the preferred global resolution strategy for the firm is a home country SPOE resolution, the mechanism should be designed so as to not interfere with the execution of that strategy. The Plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent. The sufficiency of the liquidity should be informed by the firm's RLAP and RLEN estimates for the U.S. non-branch material entities. Additionally, the Plan should

[44] External communications include those with U.S. and foreign authorities and other external stakeholders.

include analysis of the potential challenges to the planned foreign parent support mechanism and associated mitigants. Where applicable, the analysis should discuss applicable non-U.S. law and cross-border legal challenges (*e.g.,* challenges related to enforcing contracts governed by foreign law). The analysis should identify the mitigant(s) to such challenges that the firm considers most effective.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy.

i. Triggers should identify when and under what conditions the U.S. material entities would transition from business-as-usual conditions to a stress period.

ii. Triggers should also take into consideration changes in the foreign parent's condition from business-as-usual conditions through resolution.

(B) The escalation of information to and discussions with the appropriate governing bodies to confirm whether the governing bodies are able and willing to provide financial resources to support U.S. operations.

i. Triggers should be based on the firm's methodology for forecasting the liquidity and capital needed to facilitate the U.S. strategy. For example, triggers may be established that reflect U.S. non-branch material entities' financial resources

approaching RCEN/RLEN estimates, with corresponding actions to confirm the foreign parent's financial capability and willingness to provide sufficient support.

Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to provide for communication, coordination, and confirmation of the provision of resources from the foreign parent.

Support Within the United States. If the Plan provides for the provision of capital and liquidity by a U.S. material entity (*e.g.,* the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing (Support), the Plan should also include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to providing the 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 U.S. 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.

Furthermore, the Plan should describe key motions to be filed at the initiation of any bankruptcy proceeding related to (as appropriate) asset sales and other non-routine matters.

U.S. MPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occurs between the governing body of the U.S. operations (for example, the boards of the U.S. IHC or a U.S. subsidiary) and the foreign parent to facilitate any preparatory resolution-related actions to facilitate an orderly resolution. The Plan should also detail the board and senior management actions of U.S. material entities that would be needed under the firm's U.S. resolution strategy.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for the escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy. The triggers should:

A. Identify when and under what conditions the U.S. material entities would transition from business-as-usual conditions to a stress period.
B. Take into consideration changes in the foreign parent's condition from business-as-usual conditions through resolution.

VI. Operational

U.S. 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,[45] or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution under its U.S. resolution strategy through a framework to support such access by:

- Identifying clients,[46] FMUs, and agent banks as key from the firm's perspective for the firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative (volume and value)[47] and qualitative criteria;
- Mapping U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank essential to an orderly resolution under its U.S. resolution strategy that reflects 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 in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (*e.g.,* a firm's provision of clients with access to the relevant FMU or agent bank through the firm' membership in or relationship with that FMU or agent bank, or a firm's U.S. affiliate and branch

[45] 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).

[46] 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.

[47] 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.

provision of U.S. material entities and key clients of the firm's U.S. operations with access to an FMU or agent bank). The framework also should address the potential impact of any disruption to, curtailment of, or termination of such direct and indirect relationships on the firm's U.S. material entities, identified critical operations, and core business lines, as well as any corresponding impact on key clients of the firm's U.S. operations.

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 key clients of the firm's U.S. operations in maintaining continued access to PCS services in the period leading up to and including the firm's resolution under its U.S. resolution strategy. Each playbook should provide analysis of the financial and operational impact to the firm's U.S. material entities and key clients of the firm's U.S. operations 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 U.S. material entities, identified critical operations and core business lines, and key clients of the firm's U.S. operations, while the firm is in resolution under its U.S. resolution strategy. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients of the firm's U.S. operations, 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:

- Descriptions of the firm's relationship as a user, including through indirect access, with

the key FMU or key agent bank and the identification and mapping of PCS services to the firm's U.S. 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 under its U.S. resolution strategy,[48] the operational and financial impact of such actions on the firm's U.S. material entities, identified critical operations, and core business lines, 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 U.S. material entity.
  - PCS Liquidity Sources: These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and prefunded amounts of key clients of the firm's U.S. operations 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 all currencies relevant to the firm's participation, including placements of firm liquidity at central banks, key FMUs, and key agent banks.
  - PCS Liquidity Uses: These may include margin and prefunding by the firm and

[48] Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

key clients of the firm's U.S. operations, 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.[49] Individual key FMU and key agent bank playbooks should include:

- Identification and mapping of PCS services to the firm's U.S. 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 of the firm's U.S. operations to whom the firm's U.S. material entities, identified critical operations, and core business lines provide 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 key clients of the firm's U.S. operations, including the viability of transferring activity and any related assets of key clients of the firm's U.S. operations, as well as any alternative arrangements that would allow the key clients of the firm's U.S. operations 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

[49] Where a firm is a provider of PCS services through the firm's own operations in the United States, the firm is expected to produce a playbook for the U.S. 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 of the firm's U.S. operations to maintain continued access to PCS services.

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 of the firm's U.S. operations, 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 of the firm's U.S. operations 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 funds for such obligations in all relevant currencies of key clients of the firm's U.S. operations; (ii) delaying or restricting PCS activity of key clients of the firm's U.S. operations; and (iii) restricting, imposing conditions upon (*e.g.,* requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients of the firm's U.S. operations; and
- Descriptions of how the firm will communicate to key clients of the firm's U.S. operations 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 of the firm's U.S. operations (*e.g.,* due to BAU usage of that access and/or related intraday credit or liquidity of the key client of the firm's U.S. operations), and the expected timing and form of such communication.

Capabilities. The firm is expected to have and describe capabilities to understand, for each U.S. 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) U.S. material entity and, (ii) with respect to customers, counterparties, and agents and service providers, by location and jurisdiction:
    - PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines; [50]
    - 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; [51]
    - Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and[52]
    - Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external);[53]
- 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 U.S. operations and customers and counterparties of those U.S. operations;[54]
- Develop contingency arrangements in the event of such adverse actions;[55] 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

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[50] 12 CFR 243.5(e)(12) and 12 CFR 381.5(e)(12).
[51] *Id.*
[52] 12 CFR 252.156(g).
[53] 12 CFR 243.5(f)(l)(i) and 12 CFR 381.5(f)(1)(i).
[54] 12 CFR 252.156(e).
[55] *Id.*

capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post 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;
- 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.[56]

In addition, as of the conclusion of any business day, the firm should be able to:

- Identify the legal entity and geographic jurisdiction where counterparty collateral is held;
- Document all netting and re-hypothecation arrangements with affiliates and external parties, by legal entity; and

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[56] The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

- Track and manage collateral requirements associated with counterparty credit risk exposures between affiliates, including foreign branches.

At least on a quarterly basis, the firm should be able to:

- Review the material terms and provisions of International Swaps and Derivatives Association Master Agreements and the Credit Support Annexes, such as termination events, for triggers that may be breached as a result of changes in market conditions;
- Identify legal and operational differences and potential challenges in managing collateral within specific jurisdictions, agreement types, counterparty types, collateral forms, or other distinguishing characteristics; and
- Forecast changes in collateral requirements and cash and non-cash collateral flows under a variety of stress scenarios.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) 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 U.S. 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;
- 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[57] 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.

If a material entity provides shared services that support identified critical operations or core business lines, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations or core business lines is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should (A) maintain an identification of all shared services that support identified critical operations or core business lines; (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

[57] "Shared services that support identified critical operations" or "critical shared services" are those that support identified critical operations conducted in whole or in material part in the United States.

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.[58] The firm should also store SLAs in a central repository or repositories located in or immediately accessible from the U.S. at all times, including in resolution (and subject to enforceable access arrangements) in a searchable format. 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 U.S. resolution strategy) in such entities sufficient to cover contract costs, consistent with the U.S. resolution strategy. The firm should demonstrate that such working capital is held in a manner that ensures its availability for its intended purpose.

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 upon commencement of any resolution despite continued performance, 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 the current state of how the early

[58] The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the U.S.

termination of qualified financial contracts could impact the resolution of the firm's operations, including potential termination of any contracts that are not subject to contractual or regulatory stays of cross-default rights. Specifically, the Plan is expected to reflect the firm's progress regarding contractual stays in qualified financial contracts as of the date the firm submits its Plan or as of a specified earlier date. A firm that has adhered to the International Swaps and Derivatives Association's (ISDA) 2018 U.S. Resolution Stay Protocol or its antecedent, ISDA's 2015 Universal Resolution Stay Protocol (together, the Protocols) should discuss the extent of the firm's adherence to the Protocols in its Plan (and may also discuss the impact on U.S. operations of the firm's adherence to ISDA's 2016 Jurisdictional Modular Protocol on its non-U.S. operations). A Plan should also explain the firm's processes for entering bilateral contracts with third-party entities that do not adhere to the Protocols and provide examples of the contractual language that is used under those circumstances.

U.S. MPOE

Payment, Clearing, and Settlement (PCS) Capabilities. Firms are expected to have and describe capabilities to understand, for each U.S. 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) U.S. 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's U.S. operations and customers and counterparties of those U.S. operations;
    - 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 of their U.S operations 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 the U.S. non-branch material entities receive 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 U.S. legal entity basis (including any U.S. branch) 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 U.S. resolution strategy. The firm should have the capabilities to produce the following types of information, as appropriate for its U.S. 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 U.S. 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 U.S. 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. If a material entity provides shared services that support identified critical operations,[59] or are material to the execution of the U.S.

[59] This should be interpreted to include data access and intellectual property rights.

resolution strategy, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations, or are material to the execution of the U.S. resolution strategy, is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should (A) maintain an identification of all shared services that support identified critical operations or are material to the execution of the U.S. 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 U.S. 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.[60]

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the U.S. 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 upon commencement of any resolution despite continued performance; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued

[60] The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the United States.

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.

VII. Branches

<u>U.S. SPOE & U.S. MPOE</u>

Continuity of Operations. If the Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the Plan should support that assumption.

For any U.S. branch that is a material entity, the Plan should describe and demonstrate how the branch would continue to facilitate FMU access for identified critical operations and meet funding needs. For such a U.S. branch, the Plan should describe how it would meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements.[61] In addition, the Plan should describe how such a U.S. branch's third-party creditors would be protected such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations.

Impact of the Cessation of Operations. The Plan should provide an analysis of the impact of the cessation of operations of any U.S. branch that is a material entity on the firm's FMU access and identified critical operations, even if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how identified critical operations could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support identified critical operations provided

[61] Firms should take into consideration historical practice, by applicable regulators, regarding asset maintenance requirements imposed during stress.

by any U.S. branch that is a material entity, and mitigants that could address such obstacles in a timely manner.

VIII. Legal Entity Rationalization & Separability

Legal Entity Rationalization

U.S. SPOE

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

Specifically, application of the criteria should:

(A) Ensure that the allocation of activities across the firm's U.S. branches and U.S. nonbranch material entities support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution;

(B) Facilitate the recapitalization and liquidity support of U.S. IHC subsidiaries, as required by the firm's U.S. resolution strategy. Such criteria should include clean lines of ownership and clean funding pathways between the foreign parent, the U.S. IHC, and U.S. IHC subsidiaries;

(C) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution in the

United States, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(D) Adequately protect U.S. subsidiary insured depository institutions from risks arising from the activities of any nonbank U.S. subsidiaries (other than those that are subsidiaries of an insured depository institution); and

(E) Minimize complexity that could impede an orderly resolution in the United States and minimize redundant and dormant entities.

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

U.S. MPOE

Legal Entity Structure. A firm should maintain a legal entity structure that supports the firm's U.S. resolution strategy and minimizes risk to U.S. financial stability in the event of the resolution of the firm’s U.S. operations. 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 U.S. legal entity structure aligns core business lines and any identified critical operations with the firm’s material entities to support the firm’s U.S. resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI’s subsidiary during resolution of its U.S. entities, 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 U.S. 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

U.S. SPOE

Separability. The firm should identify discrete U.S. 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 projected mitigation strategies should be identified in advance. Firms should 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. The level of detail and analysis should vary based on a firm's risk profile and scope of operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

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 identified separability options (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.

U.S. MPOE

A Plan should include options for the sale, transfer, or disposal of U.S. 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.

IX. 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.[62]
    - 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

[62] *See* 12 U.S.C. 1823(c)(4)(A)(ii) and 12 U.S.C. 1821(n)(2)(A).

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 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;[63]
    - 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

[63] *See* 12 U.S.C. 1821(d)(11).

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, 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.

X. Format and Structure of Plans; Assumptions

U.S. SPOE & U.S. 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 U.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.[64] 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 U.S. 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.
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 a U.S. MPOE strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress of the U.S. operations.[65] In

[64] 12 CFR 243.4(a)(4)(ii) and 12 CFR 381.4(a)(4)(ii).
[65] 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.

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 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 U.S. 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 conducted in whole or material part in the United States.
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.
7. 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 U.S. resolution strategy if specific actions in a non-U.S. jurisdiction were not taken, delayed, or forgone, as relevant.

XI. Public Section

U.S. SPOE & U.S. MPOE

The purpose of the public section is to inform the public's understanding of the firm's U.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.

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