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Resolution Planning Guidance for Triennial Full Filers

The Federal Reserve and FDIC Finalize Resolution Planning Guidance for Large U.S. and Non-U.S. Banks Known as “Triennial Full Filers”

SUMMARY

The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation have issued final joint guidance for Dodd-Frank Act section 165(d) resolution plans filed by triennial full filers (the “Guidance”).¹ The Guidance consolidates all prior resolution planning guidance for these filers, and the FBO Guidance supersedes the agencies’ 2020 resolution planning guidance for a subset of the foreign triennial full filers.

The Guidance largely adopts the agencies’ proposed guidance published in September 2023, with targeted modifications and clarifications.² The Guidance describes the agencies’ supervisory expectations on how a triennial full filer’s resolution plan should address a number of key areas of potential vulnerabilities, depending on whether the filer has chosen a single point of entry (“SPOE”) or a multiple point of entry (“MPOE”) strategy. For both domestic and foreign filers, these key areas include capital, liquidity, governance mechanisms, operational capabilities, legal entity rationalization and insured depository institution resolution. For foreign filers, these areas also include the interaction with the filer’s group resolution plan, the continuation of U.S. branches and the separability of U.S. operations.

The agencies emphasized that the Guidance does not have the force and effect of law but rather “outlines the agencies’ supervisory expectations and priorities and articulates the agencies’ general views regarding appropriate resolution planning practices for the specified firms.”³ Furthermore, the Guidance is not intended to override the obligation of a filer to respond in its next resolution plan submission to pending items of individual feedback or any deficiencies identified by the agencies in that filer’s prior resolution plan submission.

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The agencies extended the triennial full filers' next resolution plan submission deadline from March 31, 2025 to October 1, 2025 to allow the filers time to consider the Guidance.

BACKGROUND

Section 165(d) of the Dodd-Frank Act requires each covered financial company to submit to the Federal Reserve and the FDIC (collectively, the “Agencies”) a plan for the firm’s rapid and orderly resolution in the event of its material financial distress or failure.⁴ The resolution planning rule jointly issued by the Agencies (the “Rule”)⁵ establishes three categories of filers: (a) biennial filers (U.S. G-SIBs); (b) triennial full filers (Category II and Category III banking organizations); and (c) triennial reduced filers (all other filers).⁶ Biennial filers and triennial full filers alternate between submitting full plans and targeted plans (on either a two-year or three-year cycle), while triennial reduced filers submit reduced plans that address material changes since the previous filing. For further detailed information on the Rule and the requirements for resolution plans, please refer to our previous [Memoranda to Clients on April 29, 2019](#) and [October 24, 2019](#).⁷

Recognizing that the implementation of the Rule has been an iterative process,⁸ the Agencies have previously issued guidance—which complements the Rule—for subsets of filers. For example, the Agencies issued guidance applicable to U.S. G-SIBs in 2019 (the “G-SIB Guidance”)⁹ and to certain foreign triennial full filers in 2020 (the “2020 FBO Guidance”),¹⁰ the latter of which is now superseded by the FBO Guidance.¹¹

In explaining its rationale for issuing the Guidance, the Agencies noted significant inconsistencies in submitted resolution plans among domestic triennial full filers and those foreign triennial full filers that had not received guidance from the Agencies, including “inconsistencies in the amount and nature of information they provided on critical informational elements” and “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.”¹² Moreover, the Agencies acknowledged that their recent experience with the U.S. regional bank failures and the acquisition of Credit Suisse Group AG by UBS Group AG informed the development of the Guidance.

THE GUIDANCE

A. Overview

Although all covered companies subject to the Rule have adopted either an SPOE or an MPOE resolution strategy,¹³ the Guidance expressly notes that the Agencies do not prescribe a specific resolution strategy for any banking organization. The Guidance also acknowledges that resolution strategies other than SPOE and MPOE may exist, and noted that a filer may voluntarily change its preferred strategy in the future.¹⁴ In an SPOE strategy, only the top tier bank holding company (in the case of foreign filers, the top tier U.S. material entity holding company) enters resolution through a bankruptcy proceeding, while subsidiaries that

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are material entities are recapitalized or otherwise continue operating as the firm is resolved.¹⁵ In contrast, in an MPOE strategy, the top tier bank holding company files for bankruptcy and the FDIC-insured bank subsidiary enters resolution under the Federal Deposit Insurance Act of 1950 (the “FDIA”) (in the case of foreign filers, multiple U.S. material entities enter separate resolution proceedings), while other subsidiaries also enter applicable resolution regimes or are wound down.¹⁶

The Agencies’ supervisory expectations on key areas of potential vulnerabilities in resolution planning depend on a firm’s status as a domestic or foreign filer and on whether the filer adopts an SPOE or an MPOE resolution strategy.

- **Domestic Guidance.** The Domestic Guidance notes that no domestic triennial full filer has filed a resolution plan reflecting an SPOE strategy, but nevertheless includes the Agencies’ supervisory expectations for filers that adopt an SPOE resolution strategy. This guidance is largely based on the G-SIB Guidance, with modifications to reflect “specific characteristics of and potential risks posed by” the potential failure of Category II and Category III domestic banking organizations.¹⁷ The Agencies’ expectations for domestic triennial full filers that adopt an MPOE resolution strategy incorporate certain aspects of the G-SIB Guidance that the Agencies view as applicable to these filers, while omitting aspects of the G-SIB Guidance that the Agencies explain would not be pertinent to an MPOE resolution strategy.¹⁸
- **FBO Guidance.** The FBO Guidance for filers that adopt either a U.S. SPOE or a U.S. MPOE resolution strategy is largely based on the Agencies’ 2020 FBO Guidance, but with more extensive adjustments, including the inclusion of several supervisory expectations that were specifically considered and rejected when the 2020 FBO Guidance was adopted.

Notably, filers using an MPOE resolution strategy are not expected to address a number of key areas of potential vulnerabilities identified by the Agencies for SPOE filers, such as the key elements of the capital and liquidity requirements and those relating to governance mechanisms, and certain elements relating to legal entity rationalization. One commenter suggested that this disparity “favors” the MPOE resolution strategy.¹⁹ Commenters had also “questioned whether the agencies were expecting or encouraging firms to adopt an SPOE resolution strategy” and also stated that the “calibration of an IDI’s internal [long-term debt requirement under a proposed rule released concurrently with the proposed guidance] could lead banking organizations using an MPOE resolution strategy to adopt an SPOE resolution strategy.”²⁰ However, the Agencies noted that “[h]aving simpler expectations relative to SPOE guidance does not necessarily mean a firm adopting an MPOE strategy will encounter fewer challenges developing its resolution plan.”²¹ In particular, the supervisory expectations relating to resolution of an insured depository institution (“IDI”) subsidiary apply only to filers adopting an MPOE resolution strategy.

B. Key Areas for Both Domestic and Foreign Filers

1. Capital

SPOE. The Guidance notes a filer adopting an SPOE strategy is expected to have adequate capital to execute its resolution strategy. This includes having an adequate amount of loss-absorbing capacity, including long-term debt, to ensure that “material entities”²² could be recapitalized and continue to operate while the parent company (or U.S. intermediate holding company (“IHC”)) is in bankruptcy.²³ The use of

external loss-absorbing capacity should be complemented by internal sources of loss-absorbing capacity. After pre-positioning any required long-term debt at IDI subsidiaries, a filer should balance pre-positioning loss-absorbing capacity at material entities with holding loss-absorbing capacity at the parent (or U.S. IHC) in order to assist in recapitalizing material entities on an as-needed basis.²⁴ The resolution plan should describe the positioning of resources within the filer (or among the U.S. IHC and its subsidiaries) (“RCAP”), along with analysis supporting such positioning.

The filer should also have a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing—a “resolution capital execution need” or “RCEN.”²⁵ The Guidance offers assumptions to include in the RCEN, including that “[t]he 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,” “should be calibrated such that recapitalized material entities will have sufficient capital to maintain market confidence as required under the preferred resolution strategy” and should be independently reviewed.²⁶ For domestic filers, the Guidance notes the RCEN estimates should be incorporated into the filer’s governance framework to ensure that the filer would file for bankruptcy at a time that enables execution of the resolution strategy.²⁷

Despite comments that the RCAP requirement (or expectation), as applied to foreign triennial filers, should be removed because it would be duplicative of existing requirements, such as the internal total loss absorbing capacity (“TLAC”) requirement established by the Federal Reserve’s Enhanced Prudential Standards,²⁸ the Agencies pointed to the differing functions of internal TLAC and RCAP—*i.e.*, positioning capital within an IHC versus positioning capital at the IHC’s subsidiaries—and pointed to the experiences of March 2023 to justify their decision to state an expectation that a foreign banking organization (“FBO”) utilizing an SPOE strategy should maintain both.²⁹ This analysis stands in contrast to the Agencies’ analysis in adopting the 2020 FBO Guidance.

MPOE. The Guidance notes that guidance on capital maintenance will not apply to filers adopting an MPOE strategy.

2. Liquidity

SPOE. For filers adopting an SPOE strategy, the Guidance recommends the use of two models for (1) estimating and maintaining sufficient liquidity at material entities—referred to as “resolution liquidity adequacy and positioning” or “RLAP”—and (2) estimating the liquidity needed to successfully execute the resolution strategy and to stabilize the surviving material entities after the parent (or U.S. IHC) has filed for bankruptcy—the “resolution liquidity execution need” or “RLEN.” With respect to RLAP, the model should ensure that the material entity can employ sufficient liquidity to meet any deficits. In particular, the parent company (or U.S. IHC) should hold sufficient high-quality liquid assets (“HQLA”) to cover the sum of all standalone net liquidity deficits of each material entity.³⁰ Assumptions to be embedded in the RLAP model include using the filer’s internal liquidity stress test assumptions; treating inter-affiliate exposures in the

same manner as third-party exposures; and not assuming that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.³¹ Additionally, the Guidance notes that U.S. IHCs should calculate the liquidity position with respect to its foreign parent, branches and agencies, and other affiliates separately from its liquidity position with respect to third parties.³²

With respect to RLEN, the Guidance notes that the RLEN estimate of required liquidity after a domestic filer's bankruptcy filing "should be incorporated into the [filer's] governance framework to ensure that the [filer] files for bankruptcy in a timely way, i.e., prior to the [filer's] HQLA falling below the RLEN estimate."³³ For both types of filers, the RLEN methodology should, among other items, estimate minimum operating liquidity necessary to operate material entities; provide daily cash flow forecasts broken down by each material entity to support peak funding needs to stabilize each entity under resolution; and provide a breakdown of inter-affiliate transactions that may affect minimum operating liquidity or daily cash flow.³⁴ Forecasts of minimum operating liquidity and peak funding needs should be sufficient to allow for material entities to operate through resolution, in a manner consistent with regulatory requirements and market expectations.

MPOE. The Guidance does not express an expectation that filers adopting an MPOE strategy will use RLAP and RLEN models. Instead, a plan "should include analysis and projections of a range of liquidity needs during resolution, including intraday" and "reflect likely failure and resolution scenarios."³⁵

3. Governance Mechanisms

SPOE. Filers adopting an SPOE strategy should identify the governance mechanisms that would ensure that a plan is carried out at the appropriate time, including the use of governance playbooks and pre-action triggers (*i.e.*, the identification of events necessitating pre-planned courses of action). These triggers should incorporate capital and liquidity metrics and the filer's methodologies for forecasting liquidity and capital needs in successfully carrying out an SPOE strategy.³⁶ Domestic filers should identify triggers requiring (1) escalation of information to senior management and the board, (2) recapitalization of subsidiaries prior to a parent filing for bankruptcy and (3) the execution of a bankruptcy filing.³⁷ Foreign filers should identify governance mechanisms that would ensure coordination between the governing bodies of their U.S. operations and their foreign parent.

For both domestic and foreign filers, governance playbooks should include, among other items, a discussion of the filer's proposed communications strategy; the board's fiduciary responsibilities; and how the plan would satisfy those responsibilities, potential conflicts of interest, and any employee retention policies.³⁸ Domestic filers should provide a detailed legal analysis of how they would address potential legal challenges to providing material entities with capital and liquidity support prior to the parent's bankruptcy filing, as well as claims that would prevent or delay recapitalizations.³⁹ Furthermore, domestic filers "should consider," among other things, whether to adopt a "contractually binding mechanism" with clearly defined

triggers, perfected security interests and other provisions to compel or automate the provision of liquidity and capital to material entities in the period prior to the parent company's bankruptcy filing.⁴⁰ Foreign filers should similarly address applicable non-U.S. law and cross-border legal challenges, and potential legal challenges to providing capital and liquidity support, including any 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.⁴¹ The FBO Guidance does not refer to consideration of a contractually binding mechanism.

MPOE. The guidance on governance mechanisms, including contractually binding mechanisms, does not apply to domestic filers adopting an MPOE strategy. Foreign filers, as noted above, are expected to identify the governance mechanisms that would ensure communication and coordination occurs between the governing bodies of their U.S. operations and their foreign parent, in order to facilitate an orderly resolution.

4. Operational

a. Payments, Clearing and Settlements ("PCS")

SPOE. SPOE filers should demonstrate their capabilities for maintaining continued access to PCS services through the maintenance of a framework that:

- identifies key clients, financial market utilities ("FMUs") and agent banks using both quantitative and qualitative criteria;
- maps material entities, critical operations, core business lines and key clients to both key FMUs and agent banks; and
- develops a playbook for each key FMU and agent bank that reflects the filer's role(s) as a user and/or provider of PCS services.⁴²

The Guidance provides that the framework implemented by each filer should consider direct relationships (e.g., the filer's direct membership in an FMU, the filer's contractual relationship with an agent bank, or the extent to which the filer provides key clients with critical PCS services through its own operations as a provider of PCS services) as well as indirect relationships (e.g., the filer providing its client with access to the relevant FMU or agent bank through the filer's own membership in, or relationship with, that FMU or agent bank).⁴³

SPOE filers are expected to develop, for each key FMU and agent bank, a playbook addressing financial considerations and operational details that would assist the filer and its clients in maintaining continued access to PCS services in the period leading up to, and including, the filer's resolution.⁴⁴ Each playbook should provide an analysis of the financial and operational impact to the filer's material entities and key clients that would stem from a potential loss of access to the FMU or agent bank,⁴⁵ as well as any possible alternative arrangements that would enable the filer and its key clients to maintain access to PCS services in resolution.⁴⁶ However, filers are not expected to incorporate a scenario in which they lose FMU or agent bank access into their preferred resolution strategy or their RLEN and RCEN estimates.⁴⁷ Filers should

continue to engage with key FMUs, agent banks and clients, and the playbooks should reflect any feedback received during such ongoing outreach.⁴⁸

MPOE. MPOE filers are generally expected to have and describe capabilities to understand, for each material entity, the obligations and exposures associated with the filer’s PCS activities, including contractual obligations and commitments; financial exposures; and the potential effects of adverse actions by FMUs, agents, other third parties and service providers on the filer’s resolution strategies. MPOE filers are also expected to develop contingency arrangements to address those adverse actions, and determine the impact of these arrangements on the liquidity needs and operational capabilities required to achieve their resolution strategies. If the MPOE strategy assumes the establishment of a bridge depository institution (“BDI”) in connection with the resolution of an IDI subsidiary, these arrangements are expected to take into account the needs of that BDI. However, there is no express expectation that MPOE satisfy the playbook and PCS framework expectations applicable to SPOE filers.

b. Managing, Identifying and Valuing Collateral

SPOE. An SPOE filer is expected to maintain capabilities to manage, identify and value the collateral that it receives from, and posts to, external parties and affiliates. Such capabilities include both the ability to track contractual terms affecting the filer’s rights with respect to collateral posted and received, as well as detailed information regarding the movement and treatment of that collateral. The filer should also have a “comprehensive collateral management policy” to govern its approach to collateral across the firm.⁴⁹

MPOE. MPOE filers are expected to be able to manage, identify and value, at a CUSIP level, the collateral that it receives from, and posts to, both external counterparties and affiliates.

c. Management Information Systems (“MIS”) Capabilities

SPOE. An SPOE filer should have robust MIS capabilities to produce, among other data: monthly financial statements for each material entity; external and inter-affiliate credit exposures, both on- and off-balance sheet; gross and net risk positions with internal and external counterparties; guarantees, cross holdings, financial commitments and other transactions between material entities; information on key third-party contracts; licenses and memberships to all exchanges and value transfer networks, including FMUs; key management and support personnel; and agreements and other legal documents related to property, including facilities, technology systems, software and intellectual property rights.⁵⁰

MPOE. MPOE filers are subject to similar expectations, to the extent necessary to carry out their resolution strategies.

d. Shared and Outsourced Services

SPOE. SPOE filers are expected to maintain a “fully actionable implementation plan to ensure the continuity of shared services” that support their core business lines and critical operations.⁵¹ This plan should include contractual arrangements with external and internal providers of services that provide for continuity,

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notwithstanding the bankruptcy filing of the parent entity; contingency plans for the continuity or replacement of critical shared and outsourced services; arrangements to retain key personnel; and maintenance of centralized information regarding these services.

MPOE. MPOE filers are subject to similar expectations, to the extent necessary to carry out their resolution strategies.

e. Qualified Financial Contracts

SPOE. Although the Agencies determined that the derivatives activities of the filers covered by the Guidance did not justify the imposition of all the supervisory expectations applicable to the largest covered financial companies, plans filed by SPOE filers are expected to address the impact of early termination of qualified financial contracts on the filer's resolution strategy.

MPOE. MPOE filers are not subject to specific expectations with respect to qualified financial contracts.

5. Legal Entity Rationalization (“LER”)

SPOE. An SPOE filer is expected to adopt LER criteria that govern the filer's corporate structure in light of the filer's resolution plan. The LER criteria should “include clean lines of ownership, minimal use of multiple intermediate holding companies [for domestic filers], and clean funding pathways between the parent and material operating entities”; minimize complexity and risk to IDI subsidiaries; and facilitate the sale or wind-down of discrete operations.⁵²

MPOE. Filers adopting an MPOE strategy are expected to maintain a legal structure that supports an orderly resolution, but are not subject to the specific expectations applicable to SPOE filers.

6. IDI Resolution

SPOE. The supervisory expectations relating to resolution of an IDI subsidiary do not apply to filers adopting an SPOE resolution strategy.⁵³ However, a filer that adopts an SPOE strategy in its section 165(d) resolution plan may be required to develop an “identified strategy” in its IDI resolution plan for the resolution of its covered insured depository institution (“CIDI”) subsidiary based on a failure scenario. In effect, this means that even a CIDI that is a subsidiary of a company that has submitted a credible section 165(d) resolution plan reflecting an SPOE strategy, in which the CIDI does not fail, is required to develop a strategy that addresses the CIDI's failure for purposes of the IDI resolution plan.

MPOE. If a filer that owns a U.S. IDI adopts an MPOE strategy, the filer would also be expected to demonstrate how the IDI could be resolved in a manner consistent with the objective to “substantially mitigate [the] serious adverse effects of the firm's failure on financial stability in the United States”⁵⁴ while also complying with the FDIA's requirements for failed bank resolutions.

Under the Rule, a filer must identify and mitigate any impediments to the execution of its resolution strategy,⁵⁵ including applicable legal impediments. In the case of a failed IDI, the FDIC is required to satisfy

the “least cost” requirement – *i.e.*, that the resolution option used is the least costly to the Deposit Insurance Fund (the “DIF”) of all possible methods – unless a systemic risk determination is made.⁵⁶ The Guidance notes that “[p]rior resolution plans that have addressed the resolution of the IDIs in MPOE strategies have sometimes included resolution mechanics that are not consistent with the [FDIA].”⁵⁷ As a result, the proposed guidance included an expectation that an MPOE filer would “explain how [the resolution of its IDI subsidiary] could be achieved . . . while also complying with the statutory and regulatory requirements governing IDI resolution.”⁵⁸ Commenters expressed concern that the Guidance would require the filer to conduct a complete “least-cost” analysis of the proposed resolution strategy.⁵⁹

The Guidance explicitly states that filers are not expected to conduct a least-cost analysis.⁶⁰ However, filers are expected to demonstrate that the proposed strategy, whether involving the establishment of a bridge, the payment or transfer of uninsured deposits or other elements, complies with the law by comparing the estimated costs to the DIF of the filer’s proposed resolution strategy to a straight liquidation of the failed IDI. The Guidance includes specific suggestions as to issues that should be addressed in the context of different strategies. The plan should also provide reasonable and well-supported assumptions, based on observable market inputs, to support valuations used in the analysis. If the strategy involves the establishment of a BDI, the plan should also describe a feasible exit strategy that aligns with the requirements established by the FDIA.

C. Additional Key Areas Relevant to Foreign Filers

The FBO Guidance includes additional areas of guidance applicable to foreign filers only: (1) the relationship between the filer’s resolution plan and home resolution plan; (2) the continuation of U.S. branches; and (3) the separability of U.S. operations.

As the Agencies recognize that the preferred resolution outcome for foreign filers is often an SPOE resolution in the foreign filer’s home country, a foreign filer’s resolution plan should, based on information available to the filer, describe “(i) the impact of executing the global resolution plan on U.S. operations, (ii) the extent of the specified filer’s reliance on U.S. operations for execution of the global resolution plan, (iii) the extent of the specified filer’s reliance on home country entities and operations for execution of the [resolution plan], and (iv) any capabilities relied on to execute the U.S. resolution strategy that are different from those necessary to execute the global strategy.”⁶¹ The Agencies retained this expectation, despite commenters noting that, in many jurisdictions, the resolution plan is developed by the regulator rather than the financial institution, and that the financial institution may not have access to the information required to satisfy this expectation.

For any U.S. branch that is a material entity, the resolution plan should also describe how that branch would continue to facilitate FMU access for critical operations and meet funding needs.⁶² Conversely, the resolution plan should also describe how the cessation of any material U.S. branch would affect the filer’s

FMU access and critical operations, and how critical operations could be transferred to a U.S. IHC subsidiary.⁶³

In addition, a foreign filer should identify discrete or significant U.S. operations that could be sold or transferred in a resolution. 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.⁶⁴

D. Timeline and Frequency of Resolution Plan Submissions

The Rule requires triennial full filers to submit their resolution plans on or before July 1 of each year in which a resolution plan is due.⁶⁵ As proposed, the Guidance required triennial full filers to submit their resolution plans by July 1, 2024.⁶⁶ On January 17, 2024, the Agencies extended the submission deadline to March 31, 2025.⁶⁷ In connection with the adoption of the Guidance, the Agencies further extended the deadline for triennial full filers to October 1, 2025.⁶⁸ The first subsequent targeted resolution plan is due on or before July 1, 2028, with future resolutions—alternating between full and targeted resolution plans—due every three years after that.⁶⁹

Furthermore, the Guidance clarifies that, when a firm becomes a triennial full filer, the applicable guidance will apply to the firm's next resolution plan submission with a submission date that is at least 12 months after the time the firm becomes a triennial full filer.⁷⁰ Under the Guidance, if a firm ceases to be a Category II or Category III banking organization, then the Guidance would no longer apply to that firm.⁷¹

IMPLICATIONS

A. Interaction with the IDI Final Rule

The Guidance follows the FDIC's release in June 2024 of a separate final rule (the "IDI Final Rule")⁷² that significantly modified the FDIC's previous IDI resolution planning rule issued in 2012. The Guidance differs in significant respects from the IDI Final Rule, notwithstanding requests by commenters to conform the Guidance and the IDI Final Rule to reduce the combined compliance burden. The Agencies explained that the purposes of Section 165(d) and the IDI Final Rule are different: the Guidance provides direction as to how a covered company may demonstrate its compliance with its statutory obligation under section 165(d) of the Dodd-Frank Act to develop a resolution plan allowing for its rapid and orderly resolution, whereas the IDI Final Rule assists the FDIC in preparing to manage the resolution of a covered IDI.⁷³ This difference in purpose results in the inconsistent treatment of IDI resolution as between the section 165(d) resolution plan and the IDI resolution plan discussed above.

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For further information on the IDI Final Rule, please refer to our previous [Memorandum to Clients on June 26, 2024](#).

B. Uncertainty in Connection with Pending Rulemaking

Furthermore, it is unclear how aspects of the Guidance will ultimately interact with the Agencies' other proposed rules, such as the Capital Proposal⁷⁴ and LTD Proposal,⁷⁵ which have not yet been finalized. For example, in its discussion of RCAP, the Guidance includes expectations that the positioning of capital resources should be consistent with rules requiring pre-positioned resources in the form of long-term debt, including new requirements resulting from the LTD Proposal.⁷⁶ One commenter suggested that including such expectations before finalizing the Capital Proposal and the LTD Proposal is premature, as such new requirements may impact firms' capital planning.⁷⁷ Notably, FDIC Vice Chairman Travis Hill has suggested that the Agencies may wish to "revisit [the G]uidance in the future, depending on whether and how the [LTD Proposal] is finalized."⁷⁸ Nevertheless, in the releases accompanying the Guidance, the Agencies observed that "the finalization of a requirement to maintain a specified amount of LTD would not affect this guidance in any material way," and that any "final LTD rule will address the manner in which its requirements will be implemented."⁷⁹

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ENDNOTES

- 1 Federal Reserve & FDIC, *Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers* (released July 30, 2024) (“Domestic Guidance”), available at <https://www.fdic.gov/system/files/2024-07/fr-guidance-for-resolution-plan-submissions-of-domestic-triennial-full-filers.pdf>; Federal Reserve & FDIC, *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers* (released July 30, 2024) (“FBO Guidance”), available at <https://www.fdic.gov/system/files/2024-07/fr-guidance-for-resolution-plan-submissions-of-foreign-triennial-full-filers.pdf>.
- 2 Federal Reserve & FDIC, *Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers*, 88 Fed. Reg. 64626 (Sept. 19, 2023) (“Domestic Proposed Guidance”), available at <https://www.fdic.gov/sites/default/files/2024-03/2023-08-29-notice-dis-c-fr-domestic.pdf>; Federal Reserve & FDIC, *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers*, 88 Fed. Reg. 64641 (“Foreign Proposed Guidance”) (Sept. 19, 2023), available at <https://www.fdic.gov/sites/default/files/2024-03/2023-08-29-notice-dis-c-fr-foreign.pdf>.
- 3 Domestic Guidance at 52; FBO Guidance at 66.
- 4 12 U.S.C. § 5365(d).
- 5 12 C.F.R. pts. 243, 381.
- 6 Designated non-bank SIFIs would be categorized as biennial filers absent a joint determination by the Agencies to treat them as triennial full filers. 12 C.F.R. § 243.4(a)(1)(ii). In addition, the Agencies have the authority to require a covered company that would otherwise be a triennial reduced filer to submit a full filing. 12 C.F.R. § 243.4(d)(5).
- 7 Memorandum to Clients, *Resolution Planning Requirements: Federal Reserve and FDIC Adopt Final Rule Revising Dodd-Frank Resolution Plan Requirements for Foreign and Domestic Banking Organizations* (Oct. 24, 2019), available at <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/SC-Publication-Agencies-Adopt-Final-Rule-Revising-Resolution-Plan-Requirements.pdf>; Memorandum to Clients, *Resolution Planning Requirements: Federal Reserve and FDIC Propose Revisions to Dodd-Frank Resolution Plan Requirements for Foreign and Domestic Banking Organizations; FDIC Seeks Input on Future Approach to Insured Depository Institution Resolution Plans* (Apr. 29, 2019), available at <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/SC-Publication-Resolution-Plan-Requirements.pdf>.
- 8 Domestic Proposed Guidance at 64627.
- 9 See Federal Reserve & FDIC, *Final Guidance for the 2019*, 84 Fed. Reg. 1438 (Feb. 4, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-02-04/pdf/2019-00800.pdf>.
- 10 More specifically, the guidance applied to any FBO that is subject to Category II standards, according to its combined U.S. operations, and that is required to form an intermediate holding company. Federal Reserve & FDIC, *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies*, 85 Fed. Reg. 83557, 83571 (Dec. 22, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-12-22/pdf/2020-28155.pdf>.
- 11 FBO Guidance at 1.
- 12 Domestic Proposed Guidance at 64627; Foreign Proposed Guidance at 64642.
- 13 Domestic Guidance at 6; FBO Guidance at 7. With respect to foreign filers, references to SPOE and MPOE resolution strategies in the Guidance refer to U.S. SPOE and U.S. MPOE resolution strategies.
- 14 Domestic Guidance at 7-8; FBO Guidance at 8, 10-11. The Agencies cite the voluntary nature of any change in strategy as a basis for declining to provide any extensions of time or other relief to a filer whose plan reflects a new resolution strategy for the first time.

ENDNOTES (CONTINUED)

- 15 Domestic Guidance at 6; FBO Guidance at 7. In practice, even in an SPOE strategy, one or more material entities may enter into resolution proceedings, while others would be recapitalized to continue as going concerns or to complete a solvent wind-down or other strategy.
- 16 Domestic Guidance at 6-7; FBO Guidance at 7.
- 17 Domestic Guidance at 12, 57.
- 18 *Id.*
- 19 Domestic Guidance at 49; FBO Guidance at 16, 62.
- 20 Domestic Guidance at 7, 9; FBO Guidance at 7, 10.
- 21 Domestic Guidance at 50; FBO Guidance at 63-64.
- 22 “Material entity” means a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line. 12 C.F.R. § 243.2. Additionally, for FBOs, a “U.S. material entity” means any subsidiary, branch or agency that is a material entity and is domiciled in the United States, and “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. FBO Guidance at 77, n.9. For purposes of this Memorandum and for ease of reference, “material entity” may also refer to a “U.S. material entity” or “U.S. non-branch material entity” in the context of the FBO Guidance.
- 23 Domestic Guidance at 60; FBO Guidance at 77-79.
- 24 Domestic Guidance at 61; FBO Guidance at 77-78.
- 25 Domestic Guidance at 61; FBO Guidance at 78-79.
- 26 Domestic Guidance at 62; FBO Guidance at 78-79.
- 27 Domestic Guidance at 61.
- 28 12 C.F.R. § 252.165.
- 29 FBO Guidance at 28-29.
- 30 Domestic Guidance at 63; FBO Guidance at 81.
- 31 Domestic Guidance at 63; FBO Guidance at 81-82.
- 32 FBO Guidance at 82.
- 33 Domestic Guidance at 64.
- 34 Domestic Guidance at 64; FBO Guidance at 83.
- 35 Domestic Guidance at 65; FBO Guidance at 84.
- 36 Domestic Guidance at 65; FBO Guidance at 84-85.
- 37 Domestic Guidance at 66.
- 38 *Id.*
- 39 *Id.* at 67.
- 40 Domestic Guidance at 67. The FBO Guidance does not contain explicit references to contractually binding mechanisms. However, it does set forth an expectation that foreign triennial filers will develop “mitigants to the potential challenges to the planned Support,” which should apparently include “an adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress to ensure that there is sufficient time to prepare for resolution-related actions.” FBO Guidance at 88, 35.
- 41 Foreign Guidance at 85, 87.

ENDNOTES (CONTINUED)

- 42 Domestic Guidance at 69-70; FBO Guidance at 89.
- 43 Domestic Guidance at 70; FBO Guidance at 89-90.
- 44 Domestic Guidance at 70; FBO Guidance at 90. The Guidance sets out detailed expectations for the content of playbooks, depending on whether the filer is a user or a provider of PCS services (or both).
- 45 Domestic Guidance at 70; FBO Guidance at 90.
- 46 Domestic Guidance at 70; FBO Guidance at 90.
- 47 Domestic Guidance at 71; FBO Guidance at 90.
- 48 Domestic Guidance at 71; FBO Guidance at 90-91.
- 49 Domestic Guidance at 75; FBO Guidance at 96.
- 50 Domestic Guidance at 76-77; FBO Guidance at 96-98.
- 51 Domestic Guidance at 77; FBO Guidance at 98.
- 52 Domestic Guidance at 84; FBO Guidance at 107-108.
- 53 See page 13 of this Memorandum for a discussion of the interactions of the Guidance with the IDI Final Rule.
- 54 Domestic Guidance at 86; FBO Guidance at 111.
- 55 12 C.F.R. § 243.5(c)(3).
- 56 12 U.S.C. 1823(c)(4)(A). See Domestic Guidance at 34; FBO Guidance at 47.
- 57 Domestic Guidance at 34; FBO Guidance at 47.
- 58 Proposed Guidance at 64639; Foreign Proposed Guidance at 64657.
- 59 Prior to the amendments to the IDI Resolution Planning Rule approved in June, that rule required that a filer “[d]escribe how the strategies for the separation of the CIDI and its subsidiaries from its parent company’s organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.” 12 C.F.R. § 360.10(c)(2)(vii). This requirement raised significant difficulties for filers, and was modified in the recent amendments to “focus on ensuring that the FDIC has the building blocks and capabilities it needs to undertake the least-cost test in resolution in the event of failure of a group A CIDI,” rather than requiring the filer to attempt a least-cost analysis independently. See 89 Fed. Reg. 56623.
- 60 Domestic Guidance at 85; FBO Guidance at 110.
- 61 FBO Guidance at 76-77.
- 62 *Id.* at 106.
- 63 *Id.* at 106.
- 64 *Id.* at 110.
- 65 12 C.F.R. § 243.4(b)(3); 12 C.F.R. § 381.4(b)(3).
- 66 Joint Press Release, Federal Reserve & FDIC, *Agencies extend resolution plan submission deadline for some large financial institutions* (Jan. 17, 2024), available at <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240117a.htm> and <https://www.fdic.gov/news/press-releases/2024/pr24002.html>.
- 67 *Id.*

ENDNOTES (CONTINUED)

- 68 Domestic Guidance at 6; FBO Guidance at 6.
- 69 Domestic Guidance at 6; FBO Guidance at 6.
- 70 Domestic Guidance at 19; FBO Guidance at 24.
- 71 Domestic Guidance at 59; FBO Guidance at 75.
- 72 12 C.F.R. pt. 360.
- 73 Domestic Guidance at 35-36; FBO Guidance at 47-48.
- 73 Domestic Proposed Guidance at 64627; Foreign Proposed Guidance at 64642.
- 73 12 C.F.R. § 360.10.
- 74 OCC, Federal Reserve & FDIC, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg. 64028 (Sept. 18, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-09-18/pdf/2023-19200.pdf>.
- 75 OCC, Federal Reserve & FDIC, *Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions*, 88 Fed. Reg. 64524 (Sept. 19, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-09-19/pdf/2023-19265.pdf>.
- 76 Domestic Guidance at 60; FBO Guidance at 77-78.
- 77 Domestic Guidance at 14; FBO Guidance at 20.
- 78 FDIC, *Statement by Vice Chairman Travis Hill on the Final Title I Resolution Planning Guidance for Triennial Full Filers* (Jul. 30, 2024), available at https://www.fdic.gov/news/speeches/2024/statement-vice-chairman-travis-hill-final-title-i-resolution-planning-guidance#footnote5_oMv3bikQhGrw.
- 79 Domestic Guidance at 10; FBO Guidance at 10.

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