

October 24, 2019

## Resolution Planning Requirements

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### Federal Reserve and FDIC Adopt Final Rule Revising Dodd-Frank Resolution Plan Requirements for Foreign and Domestic Banking Organizations

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#### SUMMARY

On October 10, 2019, the Board of Governors of the Federal Reserve System adopted a final rule revising the resolution planning requirements under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. On October 15, 2019, the Federal Deposit Insurance Corporation followed suit with a substantially identical final rule.<sup>1</sup> The final rule generally adopts, with a handful of modifications and clarifications described below, the proposal published by the Agencies in April of 2019. For further information on the proposed rule, please see our [April 29 Memorandum to Clients](#).<sup>2</sup> The final rule is intended to (i) address amendments to Dodd-Frank made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (“EGRRCPA”)<sup>3</sup> and (ii) incorporate lessons learned by the Agencies over the course of multiple resolution plan review cycles since the original resolution planning rule first became effective in 2011.<sup>4</sup>

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#### TAILORING OF RESOLUTION PLAN REQUIREMENTS

Consistent with the Proposed Rule, the Final Rule divides the Covered Companies<sup>5</sup> subject to the resolution plan filing requirement into three Resolution Plan Filing Groups, based on the Covered Company’s categorization under the broader tailoring framework for enhanced prudential standards,<sup>6</sup> as described in our [October 18 Memorandum to Clients](#). Figure 1 below summarizes the criteria for inclusion in each of the Resolution Plan Filing Groups, and indicates the associated plan filing frequency and level of required plan content. The initial assignment of Covered Companies into Resolution Plan Filing Groups will be determined as of October 1, 2020.<sup>7</sup>

Figure 1: Resolution Plan Filing Groups\*

Resolution Plan Filing Group	Tailoring Category	Relevant Banking Organizations	Tailoring Category Determined Based on Size <sup>±</sup>	Tailoring Category Determined Based on Size and Other Risk-Based Indicator(s) <sup>±</sup>	
				Size Threshold	Other Risk-Based Indicator Threshold(s)
Biennial	I	U.S. G-SIBs only	None	None	U.S. G-SIB status
Triennial Full	II	U.S. BHCs	≥\$700B total consolidated assets	≥\$100B total consolidated assets	≥\$75B cross-jurisdictional activity
		FBOs	≥\$700B combined U.S. assets	≥\$100B combined U.S. assets	≥\$75B cross-jurisdictional activity based on CUSO <sup>†</sup>
	III	U.S. BHCs	≥\$250B total consolidated assets	≥\$100B total consolidated assets	≥\$75B in: <ul style="list-style-type: none"> <li>• nonbank assets,</li> <li>• weighted short-term wholesale funding, or</li> <li>• off-balance sheet exposure</li> </ul>
		FBOs	≥\$250B combined U.S. assets	≥\$100B combined U.S. assets	≥\$75B in: <ul style="list-style-type: none"> <li>• nonbank assets,</li> <li>• weighted short-term wholesale funding, or</li> <li>• off-balance sheet exposure in each case based on CUSO</li> </ul>
Triennial Reduced	IV <sup>‡</sup> or None (FBOs only, based on global size)	FBOs	≥\$250B global consolidated assets	None	None
None	IV (U.S. BHCs only)	U.S. BHCs	≥\$100B total consolidated assets	None	None
	IV <sup>‡</sup> or None (FBOs only, based on global size)	FBOs	<\$250B global consolidated assets	None	None

\* Designated non-bank SIFIs would be categorized as biennial filers absent a joint determination by the Agencies to treat them as triennial full filers.

<sup>†</sup> The tailoring categories in this figure are listed in decreasing order of stringency. Under the categorization structure, a domestic banking organization or FBO would be assigned to the most stringent category for which it satisfies the applicable thresholds.

<sup>±</sup> Under the final tailoring rules, the risk-based indicator for cross-jurisdictional activity would be calculated for FBOs using a different approach than for domestic BHCs.

<sup>‡</sup> Each FBO identified in the Federal Reserve staff memorandum released with the final tailoring rules as potentially in Category IV has more than \$250 billion in global consolidated assets and would therefore be a Triennial Reduced Filer based on the Federal Reserve’s projections.

Figure 2 below indicates the firms projected to fall within each Resolution Plan Filing Group.<sup>8</sup>

Figure 2: Resolution Plan Filing Groups II

<b>Biennial Filers</b>	<b>Triennial Full Filers</b>		<b>Triennial Reduced Filers</b>
<b>Category I</b>	<b>Category II</b>	<b>Category III</b>	<b>Other FBOs</b>
<b>Two-year cycle</b> <ul style="list-style-type: none"> <li>• Alternating full and targeted plans</li> </ul>	<b>Three-year cycle</b> <ul style="list-style-type: none"> <li>• Alternating full and targeted plans</li> </ul>		<b>Three-year cycle</b> <ul style="list-style-type: none"> <li>• Reduced plans</li> </ul>
Bank of America Bank of New York Mellon Citigroup Goldman Sachs JPMorgan Chase Morgan Stanley State Street Wells Fargo	Barclays Capital One Credit Suisse Deutsche Bank HSBC Mizuho MUFG Northern Trust PNC Financial Royal Bank of Canada Toronto-Dominion UBS US Bancorp		53 FBOs <i>See Annex I</i>

In his statement accompanying the adoption of the Final Rule, Federal Reserve Chairman Jerome Powell noted that the new tailored approach is intended “to better match resolution plan requirements to the risks of firms. The largest firms will continue to file plans every two years, as we’ve been doing recently, while firms with less systemic risk will file plans less frequently.”<sup>9</sup> As with the Proposed Rule, Governor Brainard voted against the Final Rule and in her statement expressed particular disagreement with the lengthening of the plan filing cycle for Covered Companies in Categories II and III, which under the Final Rule will be required to file a full resolution plan only once every six years.<sup>10</sup>

Stressing that “[u]nder the final rule, the underlying standards for reviewing resolution plans from the largest, most systemically important firms will not change,” FDIC Chairman Jelena McWilliams expressed support for the tailoring approach adopted, concluding that it “strikes an appropriate balance that ensures the largest banks provide the agencies with rigorous resolution plans on a timely basis, gives the firms and the agencies sufficient time to prepare and review plans, and reduces the substantial burden institutions face in developing plans.”<sup>11</sup> FDIC Director Martin Gruenberg registered the sole vote against FDIC adoption of the Final Rule, asserting the view that the revisions “would go beyond the requirements of [EGRRCPA] to weaken significantly the resolution plan framework for large banks with assets between \$700 billion and \$100 billion.”<sup>12</sup>

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As an additional resource, redline comparisons of the text of the Final Rule against (i) the [Proposed Rule](#) and (ii) the [original resolution plan rule](#) are linked to this memorandum.

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### KEY CHANGES MADE IN THE FINAL RULE

Although the Final Rule is largely consistent with the Proposed Rule, the Proposed Rule does include modifications and clarifications to the required timeframes for certain Covered Company requests and Agency actions. Thematically, the fixed timeframes adopted by the Final Rule for key procedural steps within a resolution planning cycle reflect an acknowledgment by the Agencies that the plan preparation process functions more effectively when Covered Companies are able to obtain full visibility into the required scope and content for a given submission at least one year prior to its due date. These finalized timeframes are summarized in the timeline included as Annex II and described in further detail in the bullet points that follow.

- ***Biennial Filers Made Ineligible to Request Waivers of Informational Content Requirements.*** The Proposed Rule would have permitted any Covered Company that has previously submitted a resolution plan to apply for a waiver of certain information content requirements of a full resolution plan.<sup>13</sup> Under the Final Rule, the firm-initiated waiver request process would be available only to triennial full filers and triennial reduced filers (in the unusual event such reduced filer is specifically required to file a full plan); biennial filers (*i.e.*, U.S. G-SIBs) would not be permitted to request such waivers in light of the additional risks that these firms present.<sup>14</sup> The Agencies would, however, retain the authority to jointly waive one or more resolution plan requirements on their own initiative for any firm, including any biennial filer.<sup>15</sup>
- ***Joint Agency Approval Required for Waiver of Informational Content.*** Under the Proposed Rule, a Covered Company's request to waive certain informational content would have been automatically *approved* if the Agencies did not *jointly deny* such request at least *nine months* prior to the due date of the relevant plan.<sup>16</sup> The Final Rule provides that, unless the Agencies *jointly approve* such a waiver request, the waiver request is automatically *denied* on the date that is *12 months* before the due date of the upcoming full plan. Under the Final Rule such waiver requests must be submitted at least *18 months* before the resolution plan submission deadline (as opposed to 15 months prior in the Proposed Rule) to continue to allow the Agencies at least six months to review the waiver request.<sup>17</sup>
- ***Fixed Timeline for Agency Feedback.*** The Final Rule provides that, absent extenuating circumstances (as jointly determined by the Agencies), the Agencies will jointly provide a Covered Company with notice of any deficiency or shortcoming identified by the Agencies and any other *firm-specific* feedback in response to a resolution plan no later than 12 months after the later of (i) the date on which the Covered Company submitted the resolution plan and (ii) the date by which the Covered Company was required to submit the Resolution Plan.<sup>18</sup> This deadline is intended to permit a Covered Company to have at least one year to consider any firm-specific feedback and implement associated changes before it is next required to submit a resolution plan.<sup>19</sup> Likewise, the Agencies have stated their intention to provide any future *general* guidance (in final form following a notice and comment period) at least one year before the next resolution plan deadline for any set of Covered Companies to which such general guidance is directed.<sup>20</sup>
- ***Requirement for Covered Companies to Establish Process to Identify Critical Operations.***
  - ***Identification Methodology.*** The Proposed Rule included a requirement that each biennial filer and triennial full filer establish and implement a process designed to identify their critical operations.<sup>21</sup> The Final Rule adopts this requirement, with the addition of the following new requirement applicable to triennial reduced filers: a triennial reduced filer that has an identified critical operation as of July 1, 2022 (the date of the first required plan submission for reduced filers) must establish and implement a process designed to identify its critical operations

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sufficiently in advance of its next triennial reduced submission on July 1, 2025 to include the required information pertaining to critical operations. Consistent with the Proposed Rule, for all Covered Companies subject to the obligation to establish a critical operations identification process, such process must consider the nature, size, complexity and scope of the Covered Company's operations and include a methodology to identify and assess (i) the markets and activities in which the Covered Company participates or has operations; (ii) the significance of those markets and activities with respect to U.S. financial stability; and (iii) the significance of the Covered Company as a provider or other participant in those markets and activities.<sup>22</sup>

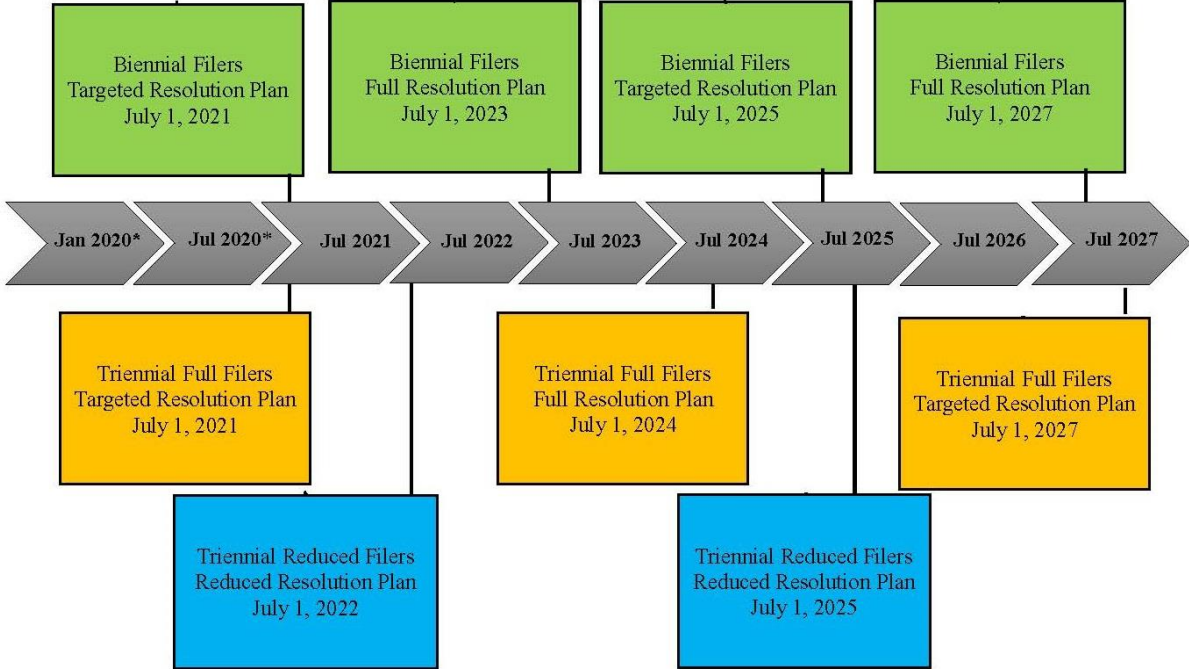
- **Limited Near-Term Exemption for FBO Triennial Filers.** With respect to the targeted plan submissions due on July 1, 2021, an FBO triennial full filer that does not have an identified critical operation as of February 1, 2020 (*i.e.*, the date that is 17 months before the submission deadline) benefits from a one-time exemption from the obligation that will otherwise apply to triennial full filers (absent a waiver) to establish and implement a process and methodology to identify their critical operations.<sup>23</sup>
- **Waiver of Requirement to Institute Identification Methodology.** The Final Rule permits a Covered Company that has previously submitted a resolution plan and that is without any identified critical operations to request a waiver of the requirement to establish and maintain a process and methodology to identify its critical operations. Such a waiver request must be submitted at least 18 months (or 17 months in the case of July 1, 2021 submissions) before the date of the next resolution plan submission,<sup>24</sup> and is automatically denied if the Agencies do not jointly approve the request at least 12 months in advance of the upcoming submission deadline.<sup>25</sup> If such waiver request is granted, the Final Rule states that it will remain effective not only for the resolution plan submission immediately following the waiver request, but also for any resolution plan submitted thereafter until, but not including, the Covered Company's next full resolution plan submission.<sup>26</sup>
- **Other Modifications and Clarifications.**
  - **Material Changes.** A Covered Company must describe in the executive summary of its resolution plan any "material change" it has experienced since its prior plan submission.<sup>27</sup> Under the Final Rule, material change means any event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on: (1) the resolvability of the Covered Company; (2) the Covered Company's resolution strategy; or (3) how the Covered Company's resolution strategy is implemented. Such changes include but are not limited to: (i) the identification of a new critical operation or core business line; (ii) the identification of a new material entity or the de-identification of a material entity; (iii) significant increases or decreases in the business, operations, or funding or interconnections of a material entity; or (iv) changes in the primary regulatory authorities of a material entity or the Covered company on a consolidated basis.<sup>28</sup> The Final Rule adds the explicit requirement that a Covered Company affirmatively state in its resolution plan (whether full, targeted, or reduced) that no material change has occurred since its prior resolution plan submission if the executive summary does not identify any material changes.<sup>29</sup>
  - **Extraordinary Events.** During the time period between resolution plan submissions, a Covered Company must provide notice to the Agencies of any "extraordinary event" that occurs no later than 45 days after the event. In a definition that the preamble to the Final Rule indicates is meant to create a high bar for such notifications, an "extraordinary event" includes any material merger, acquisition of assets, or similar transaction or fundamental change to the Covered Company's resolution strategy.<sup>30</sup> The Final Rule clarifies that a notice related to an extraordinary event must describe the event and explain how the event affects the resolvability of the Covered Company.
  - **Identification of Critical Operations by the Agencies.** Under the Final Rule, the Agencies retain the authority to jointly identify an operation of a Covered Company as critical, and have committed to review, at least every six years, the operations of filers (including the existing set of identified critical operations) for the purpose of refining, and confirming the appropriateness of, the identifications previously made.<sup>31</sup> The Final Rule specifies that a Covered Company will be

required to treat an operation as an identified critical operation in a given plan only if the Agencies make their joint identification at least 12 months before the resolution plan submission date.<sup>32</sup> To align this notice deadline to the upcoming plan submissions due on July 1, 2021, the Agencies state in the preamble to the Final Rule that they “will endeavor to complete their first joint review under the final rule of the operations of covered companies at least 12 months prior to the 2021 resolution plan submission date ” (*i.e.*, by July 1, 2020).<sup>33</sup>

Covered Companies may submit a request to the Agencies to reconsider any new or past joint Agency identification of a critical operation. In order for it to be answered by one year in advance of a plan submission deadline, a request for reconsideration of an Agency identification of a critical operation must be submitted at least 18 months in advance of the upcoming resolution plan deadline (as opposed to 270 days in the Proposed Rule). The Final Rule provides that the Agencies will complete their reconsideration no later than 12 months in advance of the Covered Company’s upcoming plan deadline (as opposed to 180 days in the Proposed Rule).<sup>34</sup> The Agencies may jointly request additional information regarding any such request, in which case they must complete their reconsideration by (i) 90 days after receipt of all additional information or (ii) 12 months before the date by which the Covered Company is required to submit its next resolution plan, whichever is later.<sup>35</sup>

- **Timing of Targeted Information Requests.** The Final Rule clarifies that the Agencies will specify the targeted information required to be included in a given targeted plan no less than 12 months in advance of such plan’s due date. Such targeted information requests will relate to key areas of focus, questions, and issues that must also be addressed alongside other required information in the Covered Company’s targeted resolution plan.<sup>36</sup>
- **Agencies’ Authority to Require a Full Resolution Plan Submission.** The Final Rule provides that the Agencies retain the discretion to require a Covered Company to provide a full resolution plan instead of a targeted or reduced resolution plan, so long as the Agencies provide written notice of such determination no later than 12 months before the date by which the Covered Company is required to submit the resolution plan. In the event the Agencies exercise this authority, the fact that a full plan was submitted does not alter the type of resolution plan the Covered Company will be required to submit in subsequent years.<sup>37</sup> For example, if the Agencies require a Covered Company to submit a full resolution plan in place of the regularly scheduled targeted plan, the Covered Company’s next resolution plan submission will also be a full resolution plan.
- **Moving Submission Dates.** Under the Final Rule, the Agencies will provide at least 12 months’ notice prior to requiring an off-cycle submission—*i.e.*, a submission on a date other than the regularly scheduled submission (as opposed to 180 days in the Proposed Rule).<sup>38</sup> If the Agencies act to require an off-cycle submission, the Covered Company’s next resolution plan submission date after the off-cycle submission will be determined by reference to the date on which that off-cycle plan was submitted. For example, if the Agencies were to move a triennial full filer’s submission date from July 1, 2027 to July 1, 2026, the Covered Company’s following resolution plan submission date would be three years later on July 1, 2029.<sup>39</sup>
- **Effective Date and Transition Period.** The Final Rule will become effective 60 days after publication in the *Federal Register*. The following graphic illustrates the finalized filing cycles for each Resolution Plan Filing Group:<sup>40</sup>

Figure 4: Resolution Plan Submission Dates



\* In accordance with the agencies' feedback letters dated December 20, 2018 and March 29, 2019, certain firms are to provide to the agencies submissions in connection with their previously-submitted resolution plans.

**FUTURE DEVELOPMENTS**

Having established the procedural framework for future resolution planning cycles under section 165(d) of Dodd-Frank, the Agencies signaled in the adopting release accompanying the Final Rule (the “*Adopting Release*”) that they intend to turn their attention in the coming months to proposing for public comment a set of guidance that will supplant the guidance (the “*FBO Guidance*”) that was published in March 2017 for specific application to four large FBOs supervised within the Federal Reserve’s Large Institution Supervision Coordinating Committee (“*LISCC*”) framework (*i.e.*, Barclays, Credit Suisse, Deutsche Bank and UBS). The Adopting Release states that the Agencies “intend to consolidate and request public comment in the near future on all aspects of the FBO guidance, including the informational content expectations and the subset of firms to which it is directed.”<sup>41</sup> In undertaking this revision and consolidation of the FBO Guidance through a public notice and comment process, the Agencies would be following a pattern established with the December 2018 finalization of the resolution plan guidance applicable to U.S. G-SIBs.<sup>42</sup> What remains to be seen is whether such revised FBO guidance would be intended to apply solely to the four FBOs that were subject to the original FBO Guidance, or whether it would be extended to a broader set of FBOs within the group of triennial full filers. To satisfy the commitment expressed in the Adopting Release to finalize all general guidance via a notice and comment process at least one year prior to the applicable filing deadline for the firms subject to the guidance, any such revised FBO guidance would need to be finalized by July 1, 2020, which would require the publication of the proposed guidance several months in advance of that date.

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Notably, the adopting release refers to specific plans to update the FBO Guidance only—there is no mention of specific plans to issue guidance applicable to domestic firms in the triennial full filer group, though any such domestically focused proposal would be subject to similar timing constraints associated with notice and comment. Of relevance to the targeted plans due to be filed by the U.S. G-SIBs on July 1, 2021, the Agencies have previously indicated an intention to release a further public proposal dealing with the capital and liquidity pre-positioning framework applicable to these Category 1 biennial filers.<sup>43</sup>

Under a topically related but legally distinct set of authorities, the FDIC has expressed its intention to issue a formal Notice of Proposed Rulemaking on proposed revisions to its resolution planning requirements for insured depository institutions (an “*IDI Plan NPR*”). A future IDI Plan NPR would reflect consideration of public comments received on the Advance Notice of Proposed Rulemaking (the “*IDI Plan ANPR*”) that the FDIC issued on this topic in April 2019.<sup>44</sup> Importantly, as stressed by FDIC Chair McWilliams in her statement at the FDIC’s October 15 meeting to adopt the section 165(d) resolution plan Final Rule, the resolution planning requirements under section 165(d) and the FDIC’s IDI Plan Rule are “separate requirements with different purposes and goals.”<sup>45</sup> Consequently, despite the fact that the Final Rule issued under section 165(d) establishes \$250 billion as the asset threshold below which firms will generally be exempt from the plan filing requirement (unless they otherwise trigger a specified threshold for a risk-based indicator and are above \$100 billion in size), there is no guarantee that the \$250 billion threshold will be adopted in the different context of applying a revised IDI plan filing requirement. Indeed, Chairman McWilliams specifically noted in her remarks that the large IDI subsidiaries of firms that have become exempt from section 165(d) filing obligations by virtue of having less than \$250 billion in consolidated assets “may still be subject to resolution planning requirements subject to the FDIC’s forthcoming amendments to the ‘IDI Rule’ for large insured depository institutions.”<sup>46</sup>

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ANNEX I<sup>1</sup>

Foreign banking organizations that would be triennial reduced filers		
Agricultural Bank of China	Australia and New Zealand Banking Group	Banco Bradesco
Banco De Sabadell	Banco Do Brasil	Banco Santander
Bank of China	Bank of Communications	Bank of Montreal
Bank of Nova Scotia	Bayerische Landesbank	BBVA Compass
BNP Paribas	BPCE Group	Caisse Federale de Credit Mutuel
Canadian Imperial Bank of Commerce	China Construction Bank Corporation	China Merchants Bank
CITIC Group Corporation	Commerzbank	Commonwealth Bank of Australia
Cooperative Rabobank	Credit Agricole Corporate and Investment Bank	DNB Bank
DZ Bank	Erste Group Bank AG	Hana Financial Group
Industrial and Commercial Bank of China	Industrial Bank of Korea	Intesa Sanpaolo
Itau Unibanco	KB Financial Group	KBC Bank
Landesbank Baden-Weurttemberg	Lloyds Banking Group	National Agricultural Cooperative Federation
National Australia Bank	Nordea Group	Norinchukin Bank
Oversea-Chinese Banking Corporation	Shinhan Bank	Skandinaviska Enskilda Banken
Societe Generale	Standard Chartered Bank	State Bank of India
Sumitomo Mitsui Financial Group	Sumitomo Mitsui Trust Holdings	Svenska Handelsbanken
Swedbank	UniCredit Bank	United Overseas Bank
Westpac Banking Corporation	Woori Bank	

<sup>1</sup> This figure is adapted from the Presentation Materials for Resolution Plan Requirements for Foreign and Domestic Banking Organizations, presented at the Board's open meeting held on October 10, 2019.

ANNEX II

Finalized Timeframes for Certain Company Requests and Agency Actions

	-18 mo.	-12 mo.	Submission Deadline	+12 mo.	+12 mo. + 90 days (or other period)	
<b>Waiver Request</b>	Triennial filers (but <b>not</b> biennial filers) may submit a request for waiver of certain informational content required in a full plan	Agencies must jointly approve request or it is automatically denied				
<b>Critical Operations (CO) Identification</b>	A Covered Company without any identified COs may submit a request for waiver of the requirement to institute and maintain a CO identification methodology*	Agencies must jointly approve request or it is automatically denied				
		Agencies must provide notice of any new Agency-identified CO to be addressed in upcoming plan				
	A Covered Company may submit a request for de-identification of an Agency-identified CO†	Agencies must provide notice regarding outcome of request±				
		Covered Company may submit a notice of de-identification of a Company-identified CO that has not also been jointly identified by the Agencies				
<b>Other Agency Notice</b>		Agencies must specify targeted information requests for upcoming targeted plans				
		Agencies may notify firm of a requirement to provide full resolution plan, in place of targeted / reduced plan				
		Agencies may notify firm of a requirement to make an off-cycle plan submission 12 months prior to newly specified deadline				
<b>Agency Feedback</b>			Agencies must provide firm-specific feedback, any notice of deficiency / shortcoming‡	In response to a deficiency notice, Covered Company must submit revised plan within 90 days (or a shorter or longer period set by the Agencies)		

\* For submissions due on July 1, 2021, a request may be submitted 17 months prior to filing deadline (i.e., February 1, 2020).

† A Covered Company may submit a request to de-identify an Agency-identified CO less than 18 months before the plan submission deadline; however, the Agencies may, in their discretion, defer consideration of such request until after the submission of that resolution plan, with the result that the Covered Company must include the CO in that resolution plan and the Agencies will complete their consideration of such request at least 12 months before the next plan submission deadline (e.g., if a biennial filer submits such a request 14 months before July 1, 2021, the Agencies may defer consideration of that request and provide a response no later than July 1, 2022).

± If the Agencies request additional information, they must complete their reconsideration by (i) 90 days after receipt of such information or (ii) 12 months before the plan submission deadline, whichever is later.

‡ Feedback must be provided 12 months after the later of (i) the date on which the Covered Company submitted the resolution plan and (ii) the date on which the Covered Company was required to submit the resolution plan.

## ENDNOTES

- 1 See Federal Reserve and FDIC, *Resolution Plans Required* (October 10, 2019), available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plan-rule-fr-notice-20191010.pdf> (the “Adopting Release”).
- 2 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* (April 29, 2019), available at <https://www.sullcrom.com/resolution-planning-requirements>.
- 3 See Pub. L. No. 115-174 (2018), available at <https://www.congress.gov/115/bills/s2155/BILLS-115s2155enr.pdf>. For further discussion of the EGRRCPA, see our Memorandum to Clients, *Financial Services Regulatory Reform Legislation: “Economic Growth, Regulatory Relief, and Consumer Protection Act” Is Enacted* (May 24, 2018), available at <https://www.sullcrom.com/financial-services-regulatory-reform-legislation-economic-growth-regulatory-relief-and-consumer-protection-act-is-enacted>.
- 4 Federal Reserve and FDIC, *Notice of proposed rulemaking* (May 14, 2019) at 1, available at <https://www.govinfo.gov/content/pkg/FR-2019-05-14/pdf/2019-08478.pdf> (the “NPR”).
- 5 Under the Final Rule, the following types of companies are “Covered Companies,” required to file a resolution plan with the Agencies: (i) Any U.S. G-SIB; (ii) any U.S. bank holding company that has \$250 billion or more in total consolidated assets; (iii) any foreign banking organization that has \$250 billion or more in total consolidated assets globally; (iv) any Category II or Category III banking organization (as defined in the final tailoring rules), to the extent not captured in the categories above; and (v) any nonbank financial company that has been designated by the Financial Stability Oversight Council as a systemically important firm. See Final Rule at §\_\_\_\_.2.
- 6 Federal Reserve Staff, *Notice of proposed joint rulemaking regarding resolution plans* (April 1, 2019) at 3–4, available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plans-board-memo-20190408.pdf>. For a more complete description of the tailoring framework under the Final Rules adopted by the U.S. banking agencies, please see our Memorandum to Clients, *Regulatory Tailoring for Large Domestic and Foreign Banking Organizations: Banking Agencies Finalize Significant Revisions to the Application of Enhanced Prudential Standards and Capital and Liquidity Requirements to Large U.S. and Foreign Banking Organizations* (October 18, 2019), available at <https://www.sullcrom.com/banking-agencies-finalize-tailoring-of-enhanced-prudential-standards-and-capital-and-liquidity-requirements>.
- 7 Adopting Release at 74.
- 8 This figure is adapted from the Presentation Materials for Resolution Plan Requirements for Foreign and Domestic Banking Organizations, presented at the Board’s open meeting held on October 10, 2019, available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plan-visuals-20191010.pdf>.
- 9 Jerome H. Powell, Chairman of the Federal Reserve, *Opening Statement on Final Rules to Tailor Enhanced Prudential Standards and Resolution Plan Requirements for Large Domestic and Foreign Banks* (October 10, 2019), available at <https://www.federalreserve.gov/newsevents/pressreleases/powell-opening-statement-20191010.htm>.
- 10 Governor Lael Brainard, *Statement on Tailoring Rule, Resolution Plan Rule, and Assessment Proposal for Large Banking Organizations* (October 10, 2019), available at <https://www.federalreserve.gov/newsevents/pressreleases/brainard-statement-20191010.htm>; Brainard, *Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks* (April 8, 2019), available at <https://www.federalreserve.gov/newsevents/pressreleases/3B1F641BEB4A485B994EBC38165F0F3B.htm>.

## ENDNOTES (CONTINUED)

- 11 Chairman Jelena McWilliams, *Statement on Final Rule: Amendments to 12 C.F.R. Part 381* (October 15, 2019), available at <https://www.fdic.gov/news/news/speeches/spoct1519c.pdf> (“*McWilliams Statement*”).
- 12 Director Martin J. Gruenberg, *Statement on Final Rule: Title I Resolution Plans* (October 15, 2019), available at <https://www.fdic.gov/news/news/speeches/spoct1519b.pdf>.
- 13 NPR at 29; Proposed Rule at § \_\_\_\_ .4(d)(6)(ii).
- 14 Adopting Release at 48; Final Rule at § \_\_\_\_ .4(d)(6)(ii). The Agencies note, however, that waiver requests will generally have limited application to triennial reduced filers, as such requests do not apply to reduced resolution plans, or to any full resolution plan required of a newly covered triennial reduced filer. The waiver request process could apply, however, in a case where the Agencies act to require a triennial reduced filer to submit a full resolution plan with at least 18 months’ prior notice. Adopting Release at 48, n.34.
- 15 Adopting Release at 48; Final Rule at § \_\_\_\_ .4(d)(6)(i).
- 16 NPR at 29; Proposed Rule at § \_\_\_\_ .4(d)(6)(ii)(D).
- 17 Adopting Release at 52; Final Rule at § \_\_\_\_ .4(d)(6)(ii)(C); Proposed Rule at § \_\_\_\_ .4(d)(6)(ii)(C). The Agencies may approve or deny a waiver request in whole or in part, and approved waiver requests are effective for only the full resolution plan that immediately follows submission of the waiver request. Adopting Release at 49; Final Rule at § \_\_\_\_ .4(d)(6)(ii)(D)-(E).
- 18 Adopting Release at 40; Final Rule at § \_\_\_\_ .8(f).
- 19 Adopting Release at 40.
- 20 Adopting Release at 41. As noted in the Supplementary Information, the existing general guidance (such as the guidance published by the Agencies on February 4, 2019) is not modified by the Final Rule, nor is it incorporated into the Final Rule (as such guidance sets forth non-binding expectations rather than rule-based requirements).
- 21 NPR at 39; Proposed Rule at § \_\_\_\_ .3(a)(1).
- 22 Adopting Release at 61; Final Rule at § \_\_\_\_ .3(a). The fact that the obligation of a triennial reduced filer to institute a process to identify critical operations will only begin to apply with respect to plans due July 1, 2025 (*i.e.*, the next set of plans *after* July 1, 2022) will provide the Agencies the opportunity to complete their first joint review of critical operations, and provide triennial reduced filers the opportunity to request reconsideration of any currently identified critical operation. Adopting Release at 61.
- 23 Adopting Release at 64; Final Rule at § \_\_\_\_ .3(a)(3). Relatedly, the methodology for identifying critical operations has been revised to remove the requirement that the methodology be designed to identify and assess the “economic functions” engaged in by the Covered Company. Adopting Release at 64; Final Rule at § \_\_\_\_ .3(a)(1)(ii); Proposed Rule at § \_\_\_\_ .3(a)(1)(ii)(1).
- 24 In contrast to 15 months under the Proposed Rule.
- 25 As opposed to nine months in the Proposed Rule. Adopting Release at 62; Final Rule at § \_\_\_\_ .3(a)(2)(ii); Proposed Rule at § \_\_\_\_ .3(a)(2)(ii)–(iii).
- 26 Final Rule at § \_\_\_\_ .3(a)(2)(iv).
- 27 Final Rule at § \_\_\_\_ .5(b)(2).
- 28 Final Rule at § \_\_\_\_ .5(b)(2).
- 29 See, *e.g.*, Adopting Release at 43, 54, 57; Final Rule at §§ \_\_\_\_ .5(b)(2), \_\_\_\_ .6(b)(3), \_\_\_\_ .7(a)(1).
- 30 Adopting Release at 42; Final Rule at § \_\_\_\_ .4(d)(4).

## ENDNOTES (CONTINUED)

- 31 Adopting Release at 66; Final Rule at §\_\_\_\_.3(b).
- 32 As opposed to 180 days under the Proposed Rule. Adopting Release at 66; Final Rule at §\_\_\_\_.3(b)(2); Proposed Rule at §\_\_\_\_.3(b)(2).
- 33 Adopting Release at 66.
- 34 Final Rule at §\_\_\_\_.3(c)(2); Proposed Rule at §\_\_\_\_.3(c)(2)(ii).
- 35 Final Rule at §\_\_\_\_.3(c)(2).
- 36 Final Rule at §\_\_\_\_.6(c).
- 37 Final Rule at §\_\_\_\_.4(d)(5).
- 38 Adopting Release at 37; Final Rule at §\_\_\_\_.4(d)(2); Proposed Rule at §\_\_\_\_.4(d)(2).
- 39 Adopting Release at 37, n.28.
- 40 This figure is adapted from the Presentation Materials for Resolution Plan Requirements for Foreign and Domestic Banking Organizations, presented at the Board’s open meeting held on October 10, 2019. The Final Rule clarifies that full resolution plans historically submitted under the original resolution plan rule by firms that continue to be Covered Companies under the Final Rule and would be triennial reduced filers under the Final Rule would be “grandfathered” for purposes of determining compliance with the requirement that a triennial reduced filer’s initial submission be a full resolution plan. Adopting Release at 58. Additionally, under the Proposed Rule the resolution plan to be submitted by triennial full filers on July 1, 2021 would have been a full resolution plan. Under the Final Rule, however, the resolution plan required to be submitted by triennial full filers on July 1, 2021 will be a targeted resolution plan.
- 41 Adopting Release at 41.
- 42 Board of Governors of the Federal Reserve System and FDIC, *Guidance for 2019 165(d) Resolution Plan Submissions by Domestic Covered Companies that Submitted Resolution Plans in July 2017*, 84 Fed. Reg. 1438 (February 4, 2019). For more information, please see our Memorandum to Clients, *Final Resolution Planning Guidance for U.S. G-SIBs: Federal Reserve and FDIC Issue Final Guidance for Future Resolution Plan Submissions by the Eight U.S. Globally Systemically Important Banks* (December 26, 2018), available at <https://www.sullcrom.com/files/upload/SC-Publication-Final-Resolution-Planning-Guidance-for-US-G-SIBs.pdf>.
- 43 See 84 Fed. Reg. at 1439 (“The Agencies expect that any future actions in these areas [capital and liquidity], whether guidance or rules, would be adopted through notice and comment procedures, which would provide an additional opportunity for public input.”). The Agencies also note that they “further expect to collaborate in taking such actions in a manner consistent with the [Federal Reserve’s] TLAC rule.” *Id.*
- 44 FDIC, *Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets*, 84 Fed. Reg. 16620 (April 22, 2019). For more information, please see Section H of our Memorandum to Clients, *Final Resolution Planning Guidance for U.S. G-SIBs*.
- 45 McWilliams Statement at 2. Authority cited for the original IDI Rule includes: 12 U.S.C. §§ 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357. The Agencies chose not to modify the 165(d) resolution plan Final Rule in response to comments recommending that firms be permitted to incorporate by reference information included in an IDI plan submission. However, the Agencies did note that, as the FDIC works to amend the IDI Rule, it will “seek to reduce unnecessary duplication” between the IDI Rule and the Final Rule. Adopting Release at 14.
- 46 McWilliams Statement at 2.

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