



FEDERAL RESERVE SYSTEM

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FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY: Board of Governors of The Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC)

ACTION: Final guidance.

SUMMARY: The Board and the FDIC (together, the “Agencies”) are adopting this final guidance for the 2019 and subsequent resolution plan submissions by the eight largest, complex U.S. banking organizations (“Covered Companies” or “firms”). The final guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The final guidance, which is largely based on prior guidance issued to these Covered Companies, describes the Agencies’ expectations regarding a number of key vulnerabilities in plans for an orderly resolution under the U.S. Bankruptcy Code (i.e., capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and derivatives and trading activities). The final guidance also updates certain aspects of prior guidance based on the Agencies’ review of these firms’ most recent resolution plan submissions.

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I. Introduction

a. Background

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) and the jointly issued implementing regulation, 12 CFR part 243 and 12 CFR

part 381 (“the Rule”), requires certain financial companies to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code¹ in the event of material financial distress or failure.

Among other requirements, the Rule requires each financial company’s resolution plan to include a strategic analysis of the plan’s components, a description of the range of specific actions the company proposes to take in resolution, and a description of the company’s organizational structure, material entities, and interconnections and interdependencies. The Rule also requires that resolution plans include a confidential section that contains confidential supervisory and proprietary information submitted to the Agencies, and a section that the Agencies make available to the public. Public sections of resolution plans can be found on the Agencies’ websites.²

Objectives of the Resolution Planning Process

The goal of the Dodd-Frank Act resolution planning process is to help ensure that a firm’s failure would not have serious adverse effects on financial stability in the United States. Specifically, the resolution planning process requires firms to demonstrate that they have adequately assessed the challenges that their structure and business activities pose to resolution and that they have taken action to address those issues. Management should also consider resolvability as part of day-to-day decision making, particularly in connection with decisions related to structure, business activities, capital and liquidity allocation, and governance. In addition, firms are expected to maintain a meaningful set of options for selling operations and business lines to generate resources and to allow for restructuring under stress, including through the sale or wind down of discrete businesses that could further minimize the direct impact of distress or failure on the broader financial system. While these measures cannot guarantee that a firm’s resolution would be simple or smoothly executed, these preparations can help ensure that the firm could be resolved under bankruptcy without government support or imperiling the broader financial system.

¹ 11 U.S.C. 101 *et seq.*

² See the public sections of resolution plans submitted to the Agencies at www.federalreserve.gov/bankinfo/reg/resolutionplans.htm and www.fdic.gov/regulations/reform/resplans/

The guidance describes an iterative process aimed at strengthening the resolution planning capabilities of each financial institution. With respect to the eight largest, complex U.S. banking organizations (“Covered Companies” or “firms”),³ the Agencies have previously provided guidance and other feedback.⁴ In general, the feedback was intended to assist firms in their development of future resolution plan submissions and to provide additional clarity with respect to the expectations against which the Agencies will evaluate the resolution plan submissions. The Agencies reviewed the firms’ 2017 resolution plans and issued a letter to each firm indicating that it had taken important steps to enhance its resolvability and facilitate its orderly resolution in bankruptcy.⁵ As a result of those reviews and following the Agencies’ joint decisions in December 2017, the Agencies identified four areas where more work may need to be done to improve the resolvability of the firms.⁶ As described below, the Agencies have updated aspects of the prior guidance based on their review of the firms’ 2017 resolution plans,⁷ including two areas of the guidance regarding payment, clearing, and settlement services, and derivatives and trading activities.

While the capital and liquidity sections of the final guidance remain largely unchanged from the proposed guidance and the 2016 Guidance, the Agencies intend to provide additional information on resolution liquidity and internal loss absorbing capacity in the future. Accordingly, while certain concerns raised by commenters in connection with the proposed guidance have not resulted in changes to the capital and liquidity sections of the final guidance,

³ Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

⁴ This includes *Guidance for 2013 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012*; firm-specific feedback letters issued in August 2014 and April 2016; the February 2015 staff communication; and *Guidance for 2017 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Resolution Plans in July 2015*, including the frequently asked questions that were published in response to the Guidance for the 2017 resolution plan submissions (taken together, “prior guidance”).

⁵ See Letters dated December 19, 2017, from the Board and FDIC to Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company, *available at* <https://www.federalreserve.gov/supervisionreg/resolution-plans.htm>.

⁶ *Id.*

⁷ Currently, each firm’s resolution strategy is designed to have the parent company recapitalize and provide liquidity resources to its material entity subsidiaries prior to entering bankruptcy proceedings. This single point of entry (“SPOE”) strategy calls for material entities to be provided with sufficient capital and liquidity resources to allow them to avoid multiple competing insolvencies and maintain continuity of operations throughout resolution.

the Agencies will consider these comments as they determine what future actions should be taken in these areas. The Agencies expect that any future actions in these areas, whether guidance or rules, would be adopted through notice and comment procedures, which would provide an additional opportunity for public input. The Agencies further expect to collaborate in taking such actions in a manner consistent with the Board's TLAC rule.⁸ Until any such future actions are taken, the final guidance sets forth the Agencies' supervisory expectations regarding development of the firms' resolution strategies. As noted below and in the final guidance, the final guidance is not a regulation but represents the Agencies' supervisory expectations for how the firms' resolution plans should address key vulnerabilities in resolution.

b. Proposed Guidance

In July 2018, the Agencies invited public comment on proposed resolution plan guidance for the eight largest, most complex U.S. banking organizations, to apply beginning with the firms' July 1, 2019 resolution plan submissions.⁹ The proposed guidance described the Agencies' expectations in six substantive areas: capital, liquidity, governance mechanisms, operational, legal entity rationalization and separability, and derivatives and trading activities. The proposed guidance was largely consistent with the guidance provided by the Agencies in April 2016 to assist in the development of their 2017 resolution plans, *Guidance for 2017 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Resolution Plans in July 2015* ("2016 Guidance").¹⁰ Accordingly, the firms have already incorporated significant aspects of the proposed guidance into their resolution planning. The proposal updated the derivatives and trading activities, and payment, clearing, and settlement ("PCS") activities areas of the 2016 Guidance based on the Agencies' review of the Covered Companies' 2017 resolution plans. It also made minor clarifications to certain areas of the 2016 Guidance. In general, the proposed revisions to the guidance were intended to streamline the firms' submissions and to provide additional clarity. The proposed guidance was not meant to limit a firm's consideration of additional vulnerabilities or obstacles that might arise based on the

⁸ See 82 FR 8266.

⁹ 83 FR 32856.

¹⁰ Available at: <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160413a1.pdf> and at <https://www.fdic.gov/news/news/press/2016/pr16031b.pdf>

firm's particular structure, operations, or resolution strategy and that should be factored into the firm's submission.

The Agencies invited comments on all aspects of the proposed guidance. The Agencies also specifically requested comments on a number of issues, including whether the topics in the proposed guidance represent the key vulnerabilities of the Covered Companies in resolution, whether the proposed guidance was sufficiently clear, and whether the Agencies should consolidate all applicable guidance that covers expectations for resolution planning.

II. Overview of Comments

The Agencies received and reviewed six¹¹ comments on the proposed guidance. Commenters included various financial services trade associations, a financial market utility ("FMU"), a foreign banking organization ("FBO"), and several individuals. A number of commenters strongly supported efforts by the Agencies to consolidate existing resolution plan guidance. One commenter stated that consolidating prior guidance in one document would help streamline the resolution planning process while increasing clarity and transparency.

Various commenters urged the Agencies to acknowledge that an effective SPOE resolution strategy is a credible means of resolving a global systemically important bank ("GSIB") in an orderly manner. These commenters also requested that elements of the guidance unrelated to an SPOE strategy be eliminated so firms can focus on issues tailored to address an SPOE resolution. Further, these commenters stated that acknowledging SPOE as a credible resolution strategy should lead to a reconsideration of the FDIC's resolution plan requirements for certain insured depository institutions ("IDIs").¹² These commenters recommended that IDI plans be eliminated for firms adopting SPOE as a resolution strategy since SPOE focuses on the resolution of the parent holding company and not material subsidiaries. Commenters also suggested that the resolution planning process be further streamlined by adopting a two-year cycle for submission of resolution plans under Section 165(d) of the Dodd-Frank Act and for submission of IDI plans if IDI plan requirements were not eliminated for SPOE filers.

¹¹ The Board received two additional comments that were not directed to the FDIC.

¹² See FDIC, Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets, 77 Fed. Reg. 3075 (Jan. 23, 2012), codified at 12 CFR 360.10.

Commenters also suggested that the Agencies engage more proactively with non-U.S. regulators to improve efficiency of resolution planning and enhance information sharing, including with respect to reducing ex ante ring-fencing.

The Agencies received specific responses to questions raised in the proposed guidance related to key vulnerabilities, PCS services, and derivatives and trading activities. Two commenters agreed that the proposed guidance generally addresses the vulnerabilities of Covered Companies in resolution (although one of the commenters suggested that the guidance should be refined to more explicitly encourage an analysis of certain concentration risks).

PCS. One commenter recommended that the PCS analysis should be limited to matters relevant to the successful execution of a filer's particular resolution strategy and offered general topical themes and specific recommendations for clarifying the PCS guidance and streamlining the resolution planning process. Another commenter suggested that the final guidance should highlight more clearly the importance of firms' continued engagement with key external stakeholders, including FMUs and agent banks. Two commenters provided specific recommendations with respect to: the scope of PCS services that would be analyzed in resolution plans; the extent to which the PCS guidance should be consistent with the Financial Stability Board's ("FSB's") *Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution*, published in July 2017; distinctions between different types of providers of PCS services; the content that would be presented in FMU, agent bank, and PCS service provider playbooks; the extent to which contingency analysis would be discussed in resolution plans; and expectations concerning communication of potential impacts of contingency or alternative arrangements on key clients.

Derivatives. One commenter supported the elimination in the proposed guidance of the expectation for a dealer firm to provide separate active and passive wind-down analyses. However, the commenter requested that the Agencies further eliminate other aspects of the guidance that may retain elements of a passive wind-down analysis. The commenter also recommended that the Agencies should allow firms to tailor capabilities and analysis to those supporting a firm's SPOE resolution strategy and incorporate reasonable alternative assumptions consistent with a firm's resolution strategy. In addition, this commenter stated that the Agencies should limit the development of derivatives capabilities and related analyses to material entities,

eliminate modeling of operational costs at the level of specific derivatives activities, and clarify that “linked” non-derivatives trading positions should be defined by dealer firms in light of their overall business model and resolution strategies.

Capital and Liquidity. Commenters offered recommendations on resolution capital and liquidity that primarily covered four areas: (i) secured support agreements; (ii) tailoring liquidity flow assumptions; (iii) avoiding false positive resolution triggers; and (iv) other requests.

Qualified Financial Contract (“QFC”) Stay Rules. One commenter criticized the proposed guidance requesting that additional resolution plan information be provided for firms who do not adhere to the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol (or similar provisions of the U.S. protocol),¹³ including explaining the firm’s alternative method of complying with the QFC stay rules. The same commenter also recommended that the Agencies clarify the final guidance regarding the impact of bankruptcy claims status of guarantees of QFCs if a firm were to pursue the elevation alternative described in the guidance.

Foreign Banking Organizations. Two commenters provided recommendations with respect to enhancing the resolution planning process applicable to FBOs under Section 165(d) of the Dodd-Frank Act. The final guidance does not apply to FBOs, and the appropriate expectations for resolution plans of FBOs would be better considered in the context of guidance applicable to those firms. Accordingly, these comments are not addressed in this Supplementary Information section.

The comments received on the proposed guidance are further discussed below.

III. Final Guidance

After carefully considering the comments and conducting further analysis, the Agencies are issuing final guidance that includes certain modifications and clarifications to the proposed guidance. In particular, the PCS and the derivatives and trading activities sections of the final guidance contain several changes based on commenters’ suggestions, while retaining the same

¹³ U.S. protocol has the same meaning as it does at 12 CFR 252.85(a). See also 12 CFR 382.5(a) (including a substantively identical definition).

key principles embodied in the proposed guidance. These principles include: (i) streamlining the firms' submissions; (ii) facilitating continuity of PCS services in resolution; and (iii) helping ensure that a firm's derivatives and trading activities can be stabilized and de-risked during resolution without causing significant market disruption that could cause risks to the financial stability of the United States. In addition, the final guidance consolidates all prior resolution planning guidance for the firms in one document and clarifies that any prior guidance not included in the final guidance has been superseded. These changes are discussed in more detail below.

The final guidance is intended to assist firms in mitigating risks to the financial stability of the United States that could arise from their material financial distress or failure, consistent with Section 165 of the Dodd-Frank Act.

a. Consolidation of Prior Guidance

Commenters favored consolidating and making public the relevant aspects of all existing guidance into a single document. One commenter provided a list of examples of how prior guidance could be consolidated and recommended principles for the Agencies to follow. Accordingly, the final guidance includes a new section regarding the format, assumptions, and structure of resolution plans, which includes the aspects of previous guidance that remain applicable to resolution planning. In addition, because commenters found the Agencies' previously issued Frequently Asked Questions ("FAQs") to the guidance to be helpful, those FAQs that remain relevant have been appended to the final guidance. To the extent not incorporated in or appended to the final guidance, prior guidance¹⁴ is superseded.

Consistent with recommendations made by the commenters, the Agencies have updated the final guidance to maintain certain key concepts contained in prior firm-specific feedback letters. For example, the final guidance deletes the cross-reference to SR 14-1¹⁵ as the Agencies believe the relevant elements and associated capabilities contained in SR 14-1 have been consolidated into the final guidance. In addition, the final guidance clarifies the content of a

¹⁴ See footnote 5.

¹⁵ SR Letter 14-1, "Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies - Supplemental Guidance on Consolidated Supervision Framework for Large Financial Institutions" (Jan. 24, 2014).

firm's external communications strategy contained in the firm's governance playbooks and the scope of actionable implementation plans to ensure continuity of shared services. The final guidance also provides that firms discuss compliance with the QFC stay rules (as defined below) and the potential impact of such compliance on a firm's resolution strategy. Additionally, as recommended by a commenter, certain FAQs that are no longer meaningful or relevant have not been consolidated and are excluded, such as FAQ LIQ 7.

A number of comments were directed at streamlining the resolution plan submission process. These comments included suggestions to formalize a two-year submission cycle and to allow firms to provide updates to quantitative analyses, while relying on references to previously submitted material where capabilities remain unchanged. Implementation of the changes proposed by these comments would require changes to the Rule. Accordingly, these comments would be better considered in connection with a future rulemaking proposal. The Agencies note, however, that the Rule provides that firms may incorporate by reference certain informational elements from previously submitted resolution plans to the extent such information remains accurate.

One commenter noted that, to the extent filers have adequately addressed deficiencies and shortcomings identified in prior firm-specific feedback, the Agencies should explicitly provide in the final guidance that the expectations set forth in that feedback do not continue to alter the expectations in the final guidance. This commenter noted that the final guidance should govern where it contains expectations similar to, or that directly supersede, expectations in prior feedback letters or similar communications. As stated above, prior guidance not incorporated in or appended to the final guidance is superseded. The Agencies note that in the future, firm-specific weaknesses and applicable remediation will continue to be addressed in firm-specific feedback communications in a manner that is consistent with applicable guidance.

The Agencies note that commenters described certain expectations that are set forth in the guidance as "requirements." The Agencies are clarifying that the final guidance does not have the force and effect of law. Rather, the final guidance outlines the Agencies' supervisory

expectations and priorities for the firms' resolution plans and articulates the Agencies' general views regarding appropriate practices for each subject area covered by the final guidance.¹⁶

b. Single Point of Entry (SPOE) Resolution Strategy

Some commenters suggested that the Agencies acknowledge the SPOE strategy as a credible means of resolving a GSIB in an orderly manner. Commenters cited SPOE as a basis for eliminating various aspects of the Guidance they contend are relevant to non-SPOE resolution strategies.

The Agencies do not prescribe specific resolution strategies for any firm, nor do the Agencies identify a preferred strategy. Firms may submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms, but must address the key vulnerabilities and support the underlying assumptions required to successfully execute their chosen resolution strategy. The final guidance is not intended to favor one strategy or another. It is flexible enough to allow firms to address the resolution obstacles that are relevant to their chosen strategy.

The Agencies have acknowledged the significant progress U.S. GSIBs have made in addressing key vulnerabilities and mitigants associated with SPOE. While significant progress has been made, like any resolution strategy for large bank holding companies, SPOE is untested and there remain inherent challenges and uncertainties associated with the resolution of a systemically important financial institution under any specific resolution strategy. In light of this uncertainty, the final guidance provides that the firms should develop and maintain capabilities to address situations where their selected strategy presents vulnerabilities.

Some commenters offered recommendations about IDI Plan requirements for filers that have adopted SPOE in their 165(d) Plans.¹⁷ IDI Plans are outside of the scope of the guidance and have a unique objective from Title I ensuring least-cost resolution to the Deposit Insurance

¹⁶ See generally, Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018) at <https://www.federalreserve.gov/supervisionreg/srletters/sr1805a1.pdf>.

¹⁷ One commenter stated that the FDIC should finalize its public notice using SPOE as the strategy for resolution of GSIBs under Title II of the Dodd-Frank Act. Because Title II of the Dodd-Frank Act is outside the scope of this guidance, the FDIC does not address such comment at this time.

Fund in an IDI receivership. The FDIC plans to address proposed IDI Plan requirements through an advanced notice of public rulemaking in 2019.

c. Engagement with non-U.S. Regulators

Certain commenters recommended the Agencies engage more proactively with non-U.S. regulators to improve the efficiency of resolution planning requirements. Additionally, certain commenters recommended the Agencies enhance information-sharing across jurisdictions in a manner that would expand and clarify the type of information that firms may share with cooperating regulatory authorities.

The Agencies acknowledge that engagement with non-U.S. regulators is critical. The Agencies already engage proactively with non-U.S. regulators related to resolution planning, and have established frameworks and information-sharing arrangements for effective cross-border resolution cooperation with counterparts in key foreign jurisdictions. This includes leading, as home authority Co-Chairs, the work of firm-specific cross-border Crisis Management Groups (“CMGs”) for U.S. GSIBs as well as entering into firm-specific cooperation agreements with CMG members. In furtherance of its resolution authority responsibilities, the FDIC also has concluded bilateral Resolution Memoranda of Understanding with foreign authorities that address cooperation and information sharing for cross-border resolution planning and crisis management preparedness.

In addition, the Agencies work on a bilateral and multilateral basis on cross-border resolution planning matters with authorities from other jurisdictions that regulate GSIBs, including by participating in joint working groups and interagency financial regulatory dialogues (such as the Joint U.S.-European Union Financial Regulatory Forum and the U.S.-UK Financial Regulatory Working Group) and by contributing to the development and ongoing implementation of standards for cross-border resolution by the FSB’s Resolution Steering Group and its committees, including implementing the *Key Attributes of Effective Resolution Regimes*

for Financial Institutions.¹⁸ The Agencies will continue to coordinate with non-U.S. regulators regarding resolution matters.

d. Capital and Liquidity

Like the proposed guidance, the capital and liquidity sections (Sections II and Section III) of the final guidance remain materially unchanged from the 2016 Guidance, including the expectations to model resolution capital and liquidity needs for each material entity and to hold and pre-position sufficient resources to meet those needs. The only change to the capital section is to eliminate a superfluous reference to creditor challenge mitigation. The proposed guidance carried forward an unintentional reference to creditor challenge in the Resolution Capital Adequacy and Positioning (“RCAP”) discussion, which if left unedited suggests that pre-positioning of intercompany debt that is indirectly issued to a parent through one or more intermediate entities needs to be structured in a manner that “mitigates uncertainty related to potential creditor challenge.” The need to address creditor challenges is addressed in the Pre-Bankruptcy Parent Support section of the guidance. The relevant point regarding the firm’s structuring of the internal debt is that it should “ensure that the entity can be recapitalized.”

Although the Agencies received a number of written comments on resolution capital and liquidity, the commenters noted that the Agencies intend to issue information addressing issues relating to intra-group liquidity and internal loss absorbing capacity in resolution. These commenters therefore did not presume that the intra-group liquidity and internal loss-absorbing capacity recommendations would be addressed in this guidance. The Agencies have reviewed and considered the commenters’ recommendations, and have responded to specific recommendations below, but have not adopted any modifications in the final guidance in response to those recommendations. The Agencies will continue to consider these comments as they assess the additional information they intend to provide in these areas.

Commenters offered recommendations on resolution capital and liquidity that primarily covered four areas: (i) secured support agreements; (ii) tailoring liquidity flow assumptions; (iii) avoiding false positive resolution triggers; and (iv) other requests. Ultimately, the result of these

¹⁸ “Key Attributes of Effective Resolution Regimes for Financial Institutions” (October 15, 2014), http://www.fsb.org/wp-content/uploads/r_141015.pdf

recommendations would be to allow firms to, among other things, reduce the amount of resolution liquidity and capital resources (e.g., Resolution Liquidity Adequacy and Positioning (“RLAP”) and RCAP) that would otherwise be positioned at a material entity.

Secured Support Agreements. Commenters recommended that as a result of the development (and adoption) of support agreements by filers, the Agencies should reconsider the pre-positioning expectations and legal entity friction assumptions (e.g., ring fencing of surplus liquidity) articulated in the Agencies’ prior guidance. Commenters noted the design objectives and intended benefits of secured support agreements for addressing the Agencies’ expectation that firms balance the flexibility provided by holding contributable resources at support providers with the certainty provided by pre-positioning resources at material subsidiaries. The legally binding features and enforceability of the secured support agreements, commenters asserted, maximize the firm’s ability to direct capital and liquidity where and when it is needed, while maintaining a degree of certainty that contributable resources will be available to the material entities when needed. Similarly, commenters suggested that the Agencies should engage with non-U.S. regulators to establish support agreements as a key tool for meeting the capital and liquidity needs of material subsidiaries of a U.S. GSIB in a resolution scenario. Commenters believe that secured support agreements are complementary to the objectives of internal total loss-absorbing capacity (“TLAC”) and other gone-concern standards designed to provide host authorities comfort that non-locally positioned resources—or surplus resources moved out of a local material entity—will be available to the local material entity if and when needed in resolution.

The Agencies continue to consider the merits and limitations of secured support agreements. A successful SPOE resolution requires a balancing of the tradeoffs between the certainty provided by locally pre-positioned resources and the flexibility provided by a pool of globally available resources. A key objective of pre-positioning of resolution resources (e.g., pre-positioned internal TLAC) is to delay the need for host authorities to take self-protective actions that disrupt the group SPOE resolution. However, over-calibration of pre-positioned internal TLAC can prove self-defeating, if excess resources are trapped in local jurisdictions when they are needed elsewhere within the group. The Agencies acknowledge that balancing these trade-offs successfully will require shared understandings between home and host

authorities, and firms, about the expected allocation during a group resolution of resources held at the parent or other support entity.

However, secured support agreements remain an imperfect substitute for the certainty (and transparency) provided by pre-positioned resources. First, the Agencies note that secured support agreements are untested. While secured support agreements may offer a measure of assurance that available contributable resources within the firm will be allocated in a pre-determined manner, on their own, the agreements do not provide the same certainty as pre-positioned resources. More pre-positioned resources increase host comfort and cross-border cooperation during a group resolution because the host is in control of a known and quantifiable amount of emergency capital and liquidity, and not dependent on the potential delivery of contributable resources. Second, the availability and sufficiency of contributable resources for group resolution purposes may be unclear.

The Agencies' resolution resource estimation and positioning expectations, including many of the assumptions that restrict the flow of liquidity among affiliates for resolution planning purposes, support the broader goal of increasing host authority confidence through straightforward assumptions about the movement of liquidity within groups and transparency of resolution resource needs and resource locations. For example, enhancing clarity with respect to the size, location, and composition of pre-positioned resources, can provide authorities with the necessary comfort that resources are not being double-counted, and that they can be reasonably relied on to be available locally, when needed. The Agencies acknowledge that engagement with non-U.S. regulators is critical because the effectiveness of secured support agreements could be reduced if they do not provide key host regulators a sufficient level of comfort during stress. To that end, the Agencies will continue to coordinate with the non-U.S. regulators regarding resolution matters, including developments in the resolution capabilities of U.S. GSIBs and in existing secured support agreements.

Tailoring Liquidity Flow Assumptions. Commenters recommended that firms be permitted to make more idiosyncratic assumptions about flows of liquidity in their resolution

planning liquidity estimates and methodologies for RLAP.¹⁹ More specifically, commenters argued for the relaxation of various enumerated assumptions, which they assert reflect unrealistic assumptions about the generation of liquidity and the flows of liquidity between affiliates. Commenters further asserted that these restrictive assumptions are rendered less realistic and less necessary in light of the secured support agreements' framework for ensuring the timely allocation of resolution resources. The Agencies continue to evaluate the liquidity guidance for opportunities to enhance the efficiency of the resolution planning process.

Avoiding False Positive Resolution Triggers. One commenter requested that the Agencies clarify whether firms are permitted to tailor their resolution planning capital and liquidity estimates and methodologies based on specific factual circumstances concerning their material entities, as well as modify these assumptions during an actual stress scenario. According to the commenter, expressly providing firms with the ability to tailor and modify these estimates and methodologies would serve as a safeguard against premature bankruptcy filings.

The guidance provides firms with the flexibility to tailor their RLEN and Resolution Capital Execution Need ("RCEN") methodologies. For the purposes of the resolution plan submissions, firms should assume conditions consistent with the DFAST Severely Adverse scenario.²⁰ In an actual stress environment, however, methodologies for estimating RLEN and RCEN should have the flexibility to incorporate actual stress conditions that may deviate from the DFAST Severely Adverse scenario. Firms' capabilities to calibrate and alter assumptions in their RLEN and RCEN methodologies to reflect actual stress conditions is a meaningful safeguard against false positive resolution triggers.

Other Requests. Commenters also sought modification of certain definitional issues. More specifically, commenters suggested that forthcoming guidance reconsider two additional aspects of the resolution planning capital and liquidity standards: (i) whether firms can turn off restrictive market access assumptions post-recapitalization and (ii) whether investment grade status can substitute for the level of recapitalization necessary to achieve market confidence in

¹⁹ For Resolution Liquidity Execution Need ("RLEN"), the Agencies' guidance does not prescribe specific modeling assumptions for intra-affiliate flows.

²⁰ See final guidance, Section VIII, Guidance Assumption 4.

stabilization for material entities not subject to “well-capitalized” standards or bank regulatory capital regimes. The two requests relate to definitional issues addressed in existing FAQs and would primarily impact a firm’s assumptions regarding resolution capital and liquidity resource need estimates. Therefore, the Agencies will continue to consider these recommendations when they provide additional information in these areas in the future.

e. Operational: Payment, Clearing, and Settlement Activities

The Agencies received a number of comment letters regarding the proposed PCS guidance. Commenters generally recommended certain modifications and clarifications to the proposed guidance in order to streamline the resolution plan submissions and to provide further clarity. The Agencies have modified the final guidance to address certain matters raised by the commenters consistent with the Agencies’ overall objective of facilitating continuity of PCS services in resolution.

i. PCS Terminology

The Agencies received several comments regarding the scope of the proposed guidance and requesting clarity and/or modification of certain terms and PCS-related concepts, such as “PCS services providers,” “key clients,” “critical PCS services,” and the scope of direct and indirect PCS activities. These clarifications in the final guidance also address several related comments, which are discussed in further detail below.

Providers of PCS Services: Under the final guidance, 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 also is a provider if it provides clients with PCS services through the firm’s own operations (e.g., payment services or custody services). One commenter recommended that a firm’s contingency plans should cover its relationships with the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”), real-time gross settlement (“RTGS”) systems, and nostro-agents in the identification of key PCS providers. The Agencies note that the guidance is not prescriptive regarding the inclusion of specific providers and that a firm retains the discretion to identify SWIFT, RTGS, and/or certain nostro-agents as key PCS providers.

The Agencies note that, to the extent a firm addresses all items noted in the final PCS guidance section on Content Related to Users and/or Providers of PCS Services in other areas of the firm's submission (e.g., the discussion of material entities and/or critical operations in its resolution plan), the firm may include a specific cross-reference to that PCS content accordingly, and a separate playbook need not be provided.

Key Client Identification: Some commenters requested that the guidance either adopt a more limited scope for the concept of key clients or clarify that a provider of PCS services may identify and describe its key clients by category or in a manner consistent with the services it provides. Commenters argued that consideration of a wider scope of key clients could be burdensome to administer and result in a list of key clients that may fluctuate over time. In response to these comments, the final guidance clarifies that firms should identify clients as key from the firm's perspective, rather than from the client's perspective. The final guidance further clarifies that a firm is expected to use both quantitative and qualitative criteria to identify key clients. Qualitative criteria may include categories of clients associated with PCS activities and business lines,²¹ while quantitative criteria may include transaction volume/value, market value of exposures, market value of assets under custody, usage of PCS services, and availability/usage of intraday credit or liquidity. Commenters were also concerned that the list of key clients could fluctuate over time. The Agencies recognize that information provided in a firm's resolution plan, including a list of key clients, may change with each submission. Some commenters requested that the scope of key clients should be limited to GSIBs, arguing that such limitation would be more consistent with the limited scope of the FSB's July 2017 *Guidance on Continuity of Access To Financial Market Infrastructures (FMI) for a Firm in Resolution*, including the corresponding Annex, which provides a list of information requirements relevant to facilitating continuity of access (together, the "FSB FMI Guidance"). The Agencies have not limited the scope of key clients to GSIBs, since key clients may include entities other than GSIBs, and continuity of access to services provided to all key clients supports a key objective of the guidance.

²¹ Commenters also suggested that a firm should consider the degree of interconnectedness among its clients and evaluate concentration risk from its perspective as a provider of PCS services (including where a firm is the sole provider or one of only a few providers for a particular service). The Agencies note that a firm may consider interconnectedness or concentration risk presented by a particular client as qualitative criteria when identifying key clients.

PCS Services: Commenters argued that a concept of critical PCS services that depended on the criticality of PCS services to a particular client would be impractical and difficult to administer. Commenters also argued that a concept of critical PCS services that hinged on the criticality of such services to a particular client would be an overly-broad standard. The final guidance replaces references to “critical PCS services” with “PCS services,” focuses on key clients, and clarifies that a firm should identify clients, FMUs, and agent banks as key from its perspective rather than its clients’ perspective. Further, the final guidance modifies the definition of client by deleting the reference to “reliance upon continued access” such that a client is defined as “*an individual or entity, including affiliates of the firm, to whom the firm provides PCS services.*” As noted above, firms are expected to identify clients as key from the firm’s perspective using both quantitative and qualitative criteria and have flexibility to tailor their identification methodologies and criteria. These clarifications are not expected to result in consideration of any additional PCS services provided by the firm.

Direct and Indirect Relationships: With respect to the scope of PCS providers, certain commenters sought to narrow the concept to those instances in which a firm that has a direct relationship with an FMU or agent bank provides indirect access to an FMU or agent bank through its membership or contractual relationship. The Agencies have not limited this concept, as continuity of PCS activities in resolution remains essential both with respect to the provision of PCS services to a firm’s affiliates and where the firm is a provider of PCS services through its own operations.

In addition, one commenter stated that firms should be expected to understand which of an FMU’s tools are most likely to be utilized in resolution, and to differentiate mitigating actions from adverse actions. The Agencies note that the guidance provides firms with discretion to identify such tools and contingency arrangements in their resolution plan submissions, including whether the arrangements are likely to be used by a PCS provider in resolution.

One commenter also focused on the need, to the extent possible, for firms to update contracts with agent banks to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of critical outsourced services during resolution. The Agencies note that this comment is addressed under the Shared and Outsourced Services section of the final guidance. Notwithstanding the foregoing, the Agencies understand that in

certain cases, PCS providers may not be permitted to provide continued access by an entity that has not met either its financial or contractual obligations. In addition, one commenter noted that firms should consider including continuity of access to key FMUs and key agent banks in their legal entity rationalization (“LER”) criteria. In order to enhance resolvability, firms have included continuity of critical operations in their LER criteria and certain firms also considered mitigation of continuity risk regarding FMU access in applying their LER criteria. The final guidance provides all firms with the flexibility, as appropriate, to consider continuity of access to key FMUs and key agent banks.

ii. Playbooks for Continued Access to PCS Services

The provision of PCS services by firms, FMUs, and agent banks is an essential component of the U.S. financial system, and maintaining the continuity of PCS services is important for the orderly resolution of firms. Prior guidance from the Agencies indicated that a firm’s resolution plan submission should describe arrangements to facilitate continued access to PCS services through the firm’s resolution. Firms have developed capabilities to identify and consider the risks associated with continuity of access to PCS services in resolution, including playbooks for key FMUs and key agent banks that describe potential adverse actions and possible contingency arrangements.

Some commenters suggested that filers could update certain discussions in the PCS playbooks for material changes only and not resubmit the complete discussion as part of the resolution plan submission. The Agencies acknowledge that the Rule generally allows for incorporation by reference of previously submitted information that remains accurate. However, certain PCS-related content may be more likely to change between submissions (such as provider rulebooks, key clients, volume and value of activity, exposure quantifications, and key PCS providers) and therefore would be expected to be provided in each submission. To the extent that certain updated information may be addressed in other sections of the firm’s submission, the firm may include a specific cross-reference to that content in the appropriate playbook.

In addition, the Agencies have clarified the expectations for playbook content for both users and providers of PCS services. Firms are expected to provide a playbook for each key FMU and key agent bank that addresses financial and operational considerations that would

assist the firm in maintaining continued access to PCS services for itself and its clients during stress and in resolution.

Form and Content: Some commenters suggested that playbooks for agent bank relationships might be different than those produced for FMUs, and as a result, analysis in playbooks for agent banks generally would be different from the analysis for FMUs in terms of content, organization, and level of detail. Another commenter suggested that firms should consider discussing whether contingency arrangements and/or analyses in playbooks would change depending on which entity enters into resolution. The final guidance sets out the expectations for PCS playbooks for FMUs and agent banks, and allows flexibility for a firm to tailor the contents of its PCS playbooks to the specific relationships of the firms with its key FMUs and key agent banks. Together with financial resources, a firm should consider operational resources (including critical services, MIS reporting, communications, and internal and external contacts) that would be needed to respond to adverse actions and execute any contingency arrangements.

Some commenters suggested that separate playbooks should not be expected for a firm's role as provider of PCS services. If the firm is both a user and provider of PCS services, content related to user and provider of PCS services may be provided in the same playbook, with appropriate and specific cross-references to other sections. Where a firm is a provider of PCS services through the firm's own operations, the firm is expected to produce a playbook for the material entities that provide those services, addressing each of the items described in the section on Content related to Provider of PCS Services.

Mapping: The final guidance specifies that each playbook should identify and map the PCS services provided by each material entity and critical operation to its key clients, and describe the scale and manner in which each provides PCS services and any related credit or liquidity offered in connection with such services.

Commenters focused on the issue of identification and mapping key clients to the firm's PCS activities. Comments concerning identification of key clients were discussed in connection with the definition of "key client." The Agencies expect a firm to map each of its key clients to the firm's key FMUs and key agent banks. The Agencies note that a firm is expected to track PCS activities, map them to the relevant material entities and core business lines, and track

customers and counterparties for PCS activities, including values and volumes of various transaction types, and used and unused capacity for all lines of credit. Firms are expected to report on the individual key clients to whom the firm provides PCS services. Some commenters argued that this mapping of key clients would require the development of new information and monitoring systems. However, based on the Agencies' engagement with firms, the Agencies have observed that firms already have the capability to identify and report these relationships on an individual basis.

Funding and Liquidity Analysis: Commenters recommended that PCS playbooks be consistent with the expectations in other parts of the final guidance, and that any PCS-related liquidity expectations should be factors incorporated into a filer's overall resolution liquidity models. Another commenter noted that firms should clarify further the extent to which they would rely on committed credit lines as liquidity resources in resolution. The final guidance clarifies that firms are expected to include a discussion of liquidity sources and uses of funds in business as usual ("BAU"), in stress, and in the resolution period. The final guidance is not prescriptive, and each firm is expected to determine the relevant PCS-related liquidity analysis that is specific to its PCS activities. There is no expectation for such liquidity analysis to include stress-testing or multiple scenario analysis. To the extent that specific FMU and agent bank information is provided, firms may include the information in the relevant FMU and agent bank playbooks or provide appropriate, specific cross-references to other sections of the resolution plan in the playbook.

Key Client Contingency Arrangements: Some commenters argued that if a filer's resolution strategy is designed to maintain client access to key FMUs and key agent banks, then contingency analysis regarding client loss of access to PCS services is not relevant to the successful execution of a firm's particular resolution strategy and should not be expected to be included in a firm's resolution plan submission. The Agencies consider the need to address contingencies (e.g., the potential for loss of access to PCS services, FMUs, or agent banks) as supplemental to those in the firm's preferred resolution strategy, and maintain that the preparation of a loss of access contingency analysis is appropriate as the successful execution of a firm's preferred resolution strategy is not guaranteed. To minimize disruption to the provision of PCS services to clients, a filer should describe the potential range of contingency

arrangements that the firm may take, including the viability of transferring client activity and related assets, as well as any alternative arrangements that would allow the firm's key clients continued access to critical PCS services, in the event the firm could no longer provide such access.

Commenters also noted that filers should have flexibility to provide analysis that recognizes the different types and scope of PCS services offered by each PCS provider. The Agencies note that the guidance distinguishes between FMUs and agent banks and is not prescriptive, providing firms with discretion under the existing guidance to tailor analysis consistent with varied types of PCS services and PCS providers.

Commenters also indicated that a filer is not in the best position to understand the financial and operational impacts to its key clients, and suggested that any contingency arrangements for clients should be at a higher level and not be provided on a per-client basis. The Agencies are clarifying that the discussion of potential financial and operational impacts to key clients is from the perspective of the filer, and not from the clients' perspectives. The Agencies note that the final guidance is not prescriptive and that firms have the discretion to tailor the discussion to client impacts specific to the PCS services provided.²²

Loss of Access: Several commenters requested additional clarity around loss of access to an FMU or agent bank, and the potential financial and operational impacts to a filer's material entities and key clients. The final guidance maintains that a firm is not expected to incorporate a scenario in which it loses FMU or agent bank access into its preferred resolution strategy or into its RLEN/RCEN analysis. In support of maintaining the continuity of PCS services, each playbook should provide analysis of the financial and operational impacts to the filer's material entities and key clients due to adverse actions that may be taken by an FMU or agent bank, and contingency actions that may be taken by the filer. Each playbook also should include considerations of any substitutes and/or any possible alternative arrangements, if available, that

²² Examples of financial and operational impacts to key clients may include considerations such as intraday or uncommitted credit lines that a firm provides to key clients, settlement volumes/value, or market value of the activity that is processed for its key clients. To the extent certain key client relationships or PCS services to key clients are unique, firms are expected to address potential contingency arrangements for those instances on an individual client basis.

would allow the firm and its key clients to maintain continued access to PCS services in resolution.²³

Client Communication: One commenter suggested that firms engage with users and clients and communicate the range of risk management actions and requirements that may be imposed on a user when a firm is in resolution, setting out a common set of expectations and processes across users to the extent possible. The Agencies recognize the importance of firms' engagement and communication with clients and the final guidance allows firms to determine the method, form, and timing of such engagement and communication with clients. Firms are best positioned to make decisions regarding common expectations and processes across users because the facts and circumstances of client relationships vary, which in turn informs the specific content in the playbooks.

The final guidance specifies that a firm should communicate to its key clients the potential impacts of implementation of any identified contingency arrangements or alternatives, and that playbooks should describe the firm's methodology for determining whether additional communication should be provided to some or all key clients (e.g., due to the client's BAU usage of that access and/or related intraday credit or liquidity), and the expected timing and form of such communication. A firm is expected to consider the benefits of client communications in multiple forms (e.g., verbal, written, and electronic), and at multiple times (e.g., in BAU, stress events, and some point in advance of taking contingency actions) in order to provide adequate notice to key clients of the action and the potential impact on the client of that action. Firms should consider the benefits of tailoring client communications to different segments of clients in form, timing, or both, and providing sample client contracts or agreements containing provisions related to the firm's provision of intraday credit or liquidity in its resolution plan submission.²⁴

iii. Other PCS Comments (FSB FMI Guidance, International Coordination, and Agency Communication)

²³ Impact analysis in the final guidance is consistent with the FSB FMI Guidance regarding impact analysis of discontinuity of access that complements mitigation measures for dealing with a termination or suspension of access to FMI services. See FSB FMI Guidance, Section 2.5 (p. 17), and Annex, Items # 17 and 18 (p. 27).

²⁴ In their most recent resolution plan submissions, all of the firms addressed the issue of client communications and provided descriptions of planned or existing client communications, with some firms submitting specific samples of such communication.

Consistency with FSB FMI Guidance: Commenters recommended greater consistency with the FSB FMI Guidance. The final guidance remains consistent with the FSB FMI Guidance, focusing on the identification of providers, mapping of contractual relationships, continuity analysis (e.g., adverse actions and contingency arrangements), communications, and discontinuity of access. Another commenter suggested that the Agencies should consider coordinating with firms' foreign resolution authorities with respect to content and the submission process for resolution-related reporting templates. The Agencies recognize that international coordination in resolution-related matters is important, and will continue to work with domestic and international counterparts through various forums, including CMGs. The final guidance is also consistent with FSB FMI Guidance in this respect, as it broadly addresses all information aspects contained in the FSB FMI Guidance, including those informational requirements specified in the FSB Annex. In addition, the final guidance provides a firm with the flexibility to provide playbooks that are tailored to the circumstances relevant to that firm and therefore does not adopt standardized resolution-related reporting templates.

Agency Communication: One commenter suggested that the Agencies engage ex ante with key market stakeholders, including PCS providers both in BAU and leading up to and during a firm's resolution. The Agencies proactively engage with firms and PCS providers through various forums including CMGs. As this comment is not applicable to the content contained in a firm's plan submissions, the Agencies did not make any modification to final guidance in response to this comment.

f. Legal Entity Rationalization and Separability

One commenter argued that the cost-benefit analysis does not justify requiring filers to maintain active virtual data rooms for each object of sale identified in their separability analysis. In order to reduce the burden on the firms, the Agencies have modified the Guidance to provide that firms should have the capability to populate a data room with information pertinent to a potential divestiture in a timely manner, rather than maintain an active data room. The Agencies expect to test this capability by asking firms to produce selected sale-related materials within a certain timeframe as part of future resolution plan reviews.

g. Derivatives and Trading Activities

The Agencies received a number of comments on Section VII (Derivatives and Trading Activities) of the proposed guidance. Commenters supported the proposed elimination of the active and passive wind-down scenario analyses and rating agency playbooks, but recommended certain modifications and clarifications to the proposed guidance in order to streamline the resolution plan submissions and provide further clarity.

After reviewing the comments on the proposed guidance, the Agencies have adopted final guidance that includes several adjustments and clarifications to address matters raised by the commenters. For example, commenters argued that having a dealer firm provide information on compression strategies that it would not expect to use in resolution would have limited regulatory purpose and distract resources away from developing other capabilities and analyses. The final guidance clarifies that this expectation only applies when a dealer firm expects to rely upon compression strategies for executing its preferred strategy. Commenters suggested a dealer firm should not have to model the operational costs necessary to execute its derivatives strategy by separating out and specifying costs at the level of specific derivatives activities, as a firm would have included those costs in the material entity cost analyses provided as part of its resolution plan. The final guidance clarifies that a dealer firm may choose not to model its operational costs for executing its derivatives strategy at the level of specific derivatives activities; however, a firm's cost analyses should provide operational cost estimates at a more granular level than the material entity level (e.g., business line level within a material entity, subject to wind-down).

The Agencies also have made a number of changes to clarify the scope, intent, and terminology of the final guidance. For example, commenters recommended the Agencies confirm that the term "material derivatives entities" means a dealer firm's material entities that engage in derivatives activities. The final guidance confirms the definition of the term. Commenters suggested that a dealer firm should be expected only to incorporate capital and liquidity needs associated with derivatives activities into its RCEN and RLEN estimates with respect to its material entities. The final guidance includes this clarification. Commenters urged the Agencies to clarify that dealer firms may define linked non-derivatives trading positions based on their overall business and resolution strategy. The final guidance includes this clarification.

Some commenters recommended the Agencies adjust certain expectations that are not specified in the proposed guidance. The Agencies have determined not to modify the guidance in these instances. For example, commenters suggested the Agencies eliminate certain remnants of the passive wind-down analysis (e.g., potential residual portfolio analysis under a scenario involving the sale of a line of business). The Agencies do not expect a dealer firm to include a separate wind-down or run-off analysis in its plan. Instead, a dealer firm is expected to assess the risk profile of any derivatives portfolios that would be included in the sale of a line of business and analyze the potential counterparty and market impacts of non-performance on these contracts upon the stability of U.S. financial markets. Commenters advocated for allowing a dealer firm to assume that inter-affiliate transactions may be unwound at lower costs than transactions with external counterparties. The Agencies confirm that the guidance would permit a dealer firm to make such an assumption as long as the firm provides adequate support for that assumption. Commenters recommended dealer firms should not be expected to replicate detailed information in their resolution plans to the extent that a firm is required to make the information available to regulators pursuant to other regulatory requirements or that information is provided elsewhere in the firm's resolution plan. The Agencies clarify that, consistent with the Rule, a dealer firm may cross-reference or incorporate by reference information that the firm has provided in its current plan submission in another section or has previously provided in a specific section of a past resolution plan submission. However, consistent with the Rule, the Agencies expect a dealer firm to submit all relevant information as part of a formal plan submission.

Commenters suggested tailoring certain capability expectations and resolution-specific assumptions in the guidance. The Agencies developed those expectations and resolution-specific assumptions in order to facilitate a dealer firm's planning and preparedness for an orderly resolution. A dealer firm's capabilities should demonstrate flexibility to account for alternative outcomes and permit sensitivity analysis, as it is difficult to predict precisely how a firm's untested resolution strategy may operate in an actual resolution scenario. As a result, the Agencies have not revised the guidance to include certain modifications recommended by commenters. For instance, commenters suggested the Agencies eliminate the expectation to provide timely transparency into management of risk transfers between material entities and non-material entities. The Agencies maintain expectations related to risk transfers between affiliates, as material exposures could exist outside material entities. In addition, commenters argued that a

dealer firm that adopts an SPOE strategy should not be expected to demonstrate its capabilities with respect to the management of risk transfers between material entities that survive under its preferred resolution strategy. The Agencies maintain the expectations related to risk transfers between material entities, including surviving entities, because those capabilities would help facilitate a dealer firm's planning and preparedness for alternative outcomes that may arise in the context of an actual resolution.

Commenters advocated for allowing a dealer firm to present reasonable alternative assumptions on counterparty behavior in relation to early exits and break clauses if the assumed actions would benefit both parties. To establish a baseline, the Agencies expect a dealer firm to assume that counterparties will exercise any contractual termination rights, if exercising that right would economically benefit the counterparty. A dealer firm may perform additional sensitivity analysis around the baseline assumption by assessing the impact from alternative assumptions regarding counterparty actions that could deviate from the baseline assumption. Commenters argued that a dealer firm should be permitted to assume it could enter into or unwind bilateral inter-affiliate transactions in resolution, even if they are not strictly "risk-reducing" to both parties, as long as the firm provides a reasonable justification. The final guidance maintains this constraint related to market risk exposure, but clarifies that a firm may assume it could enter into or unwind inter-affiliate trades in resolution as long as those trades do not materially increase credit exposure to any participating entity. The Agencies believe that this provides firms with sufficient flexibility with respect to inter-affiliate trades in resolution. Commenters suggested a dealer firm should not be constrained to a 12–24 month timeline for its stabilization and resolution periods. The Agencies continue to believe that the timeline to be reasonable for unwinding a dealer firm's derivatives portfolios, based on the firms' preferred wind-down strategy in their past submissions; therefore, that expectation remains unchanged.

The Agencies received comments related to the scope of derivatives portfolios defined in the guidance. After considering multiple relevant factors, the Agencies have not modified the guidance in these instances. For example, commenters recommended that the final guidance apply the capabilities specified in the Portfolio Segmentation and Forecasting section only to material entities of a dealer firm. While a dealer firm's capabilities may be commensurate with the size, scope, and complexity of its derivatives portfolio, the Agencies maintain that a dealer

firm should have the capability to identify and report basic metrics on all of its derivatives positions, if only to confirm the portion of the firm's exposures exist outside its material entities. The final guidance further clarifies that a dealer firm's firm-wide derivatives portfolio should represent the vast majority (for example, 95 percent) of a dealer firm's derivatives transactions measured by the notional and gross market value of the firm's total derivatives transactions. Commenters also suggested that the potential residual portfolio analysis should consider only the derivatives transactions of a dealer firm's material entities. The Agencies expect a dealer firm to include the derivatives portfolios of both material and non-material entities in its potential residual portfolio analysis, as the composition of the firm's potential residual portfolio may be impacted by exposures in non-material entities.

h. Cross References to Supervisory Letters

Some commenters advocated eliminating the cross-references contained in the Board's SR letter 14-1 (which covers both recovery and resolution preparedness) and SR letter 14-8 (which is limited to recovery),²⁵ directly incorporating the relevant expectations in the guidance, and rescinding the SR letters. Commenters maintained that recovery planning guidance should remain separate from resolution planning guidance.

The Agencies have omitted the cross-references, which is consistent with the aim of consolidating expectations for resolution plan submissions. In the case of SR 14-8, the relevant resolution plan expectations have been incorporated into the Separability section of the guidance. In the case of SR 14-1, the resolution-related expectations and associated capabilities contained in SR 14-1 are also addressed by the final guidance. The Board will continue to rely on SR letters 14-1 and 14-8 for assessing firms' recovery planning.

i. Additional Comments

i. QFC stay rules

One commenter expressed that by requiring the production of additional plan content related to a firm's method of complying with the QFC stay rules only from those firms that do

²⁵ SR Letter 14-8, "Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies" (Sept. 25, 2014).

not adhere to the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol (“ISDA Protocol”), the guidance may have the effect of discouraging such firms from complying with the QFC stay rules through any means other than ISDA Protocol adherence.

The QFC stay rules seek to improve the resolvability of U.S. GSIBs by mitigating the risk of potentially destabilizing closeouts of QFCs that could occur upon the entry of a GSIB or one or more of its affiliates into resolution. In connection with promulgating the QFC stay rules, the Agencies have recognized that the ability to comply with the QFC stay rules by adhering to the ISDA Protocol may be a desirable alternative to implementing the rules’ restrictions on a counterparty-by-counterparty basis. Through their consideration of the ISDA Protocol in connection with promulgating the QFC stay rules, the Agencies have already assessed whether adherence to the ISDA Protocol addresses the risks that can arise from QFC closeouts. For firms that choose to adhere to the ISDA Protocol through other means, any additional plan content they provide can assist the Agencies in understanding how a firm’s chosen alternative compliance method addresses these risks.

Notably, prior to the effective date of the QFC stay rules, all eight U.S. GSIBs elected to adhere to the ISDA Protocol and incur any fees associated with adhering to the ISDA Protocol. Therefore, as long as the U.S. GSIBs continue to adhere, the Agencies will not expect these firms to submit additional plan content related to compliance with the QFC stay rules through a method other than adherence to the ISDA Protocol.

ii. Bankruptcy Claims

The Agencies recognize that a firm’s compliance with the ISDA Protocol may have an effect on various creditor constituencies, and that actions taken by these constituencies may have an effect on the prospect of the firm conducting an orderly resolution under the U.S. Bankruptcy Code. One commenter suggested that the Agencies provide additional guidance on the material impact on their resolution plans and communications plans with respect to all unsecured claimants, as well as depositors of an insured depository institution, that could arise from a firm choosing to satisfy the ISDA Protocol’s stay conditions for credit enhancements (i.e., a parent company acting as a guarantor of its subsidiary’s QFCs) by pursuing the elevation alternative wherein the firm files a motion with the bankruptcy court asking that QFC counterparties’ claims

receive administrative priority status. The guidance expressly recommends that firms both address legal issues associated with the implementation of the ISDA Protocol,²⁶ and also develop external communications strategies.²⁷

This commenter also stated that, specifically in relation to the elevation alternative and QFC counterparties' claims in bankruptcy, the proposed guidance failed to address two vulnerabilities associated with those claims receiving administrative priority under Section 507 of Bankruptcy Code. First, the commenter asserted that a firm that elects in its resolution plan to pursue the elevation alternative may be exposed to civil liability to bondholders both immediately as a consequence of incorporating such a strategy into its plan, and in the future if the strategy is actually implemented through a bankruptcy court granting the firm's motion. The commenter asserted that a firm pursuing the elevation alternative may be required to make disclosures under Section 10(b) if the Securities Act of 1933²⁸ prior to resolution to indicate to bondholders that its resolution strategy contemplates a bankruptcy court providing QFC counterparties' claims higher payment priority than the unsecured claims of bondholders. A firm's disclosure obligations, if any, under the Securities Act or other regulations during BAU that relate to adherence to the ISDA Protocol are beyond the scope of the guidance.

Second, with regard to liability to bondholders, the commenter also asserted that implementation of the elevation alternative may result in a creditor of the firm violating its indenture obligations regarding fiduciary duties and conflicts of interest where the creditor is a GSIB that is both a QFC counterparty of the firm, and an indenture trustee for bonds issued by the firm. For a GSIB that is a creditor of a firm in bankruptcy, its obligations to uphold its fiduciary duties or avoid conflicts of interest may affect the actions it takes during the course of the bankruptcy of a firm. The guidance focuses on firms addressing potential risks to their resolvability, which does not include discrete legal liabilities of the type discussed by the commenter that a third party may encounter upon a firm's entry into resolution. The Agencies expect firms to consider and address the dynamics of relationships with creditors to the extent

²⁶ 83 F.R. 32867 (July 16, 2018).

²⁷ 83 F.R. 32864 (July 16, 2018).

²⁸ 15 U.S.C. 77a *et seq.*

any creditor's potential course of action could present legal obstacles in the bankruptcy court's consideration of a motion to seeking to implement the elevation alternative.

The commenter also suggested that further clarification is needed in the final guidance with respect to the impact of the elevation alternative on firms' relationships with secured borrowers. Specifically, the commenter contended that a firm's proposal in its resolution plan to comply with the ISDA Protocol by adopting the elevation alternative may compel any firms that provide secured loans or residential mortgages to direct borrowers during business as usual to seek administrative priority for such prepetition obligations in the event the borrowers file for bankruptcy. Similarly, the commenter noted that the possibility of a firm implementing the elevation alternative could motivate secured creditors in the ordinary course of business with GSIBs to seek contractual provisions that would designate their claims as administrative expenses in any future bankruptcy case. However, the extent to which a firm's adherence to the ISDA Protocol might impact its relationships with external stakeholders during BAU, including its adoption of the elevation alternative for emergency motions, is beyond the scope of the guidance.

The commenter also asked that the Agencies clarify whether there is legal support for a creditor obtaining priority status for its claim. The guidance provides that firms' resolution plans should address legal issues associated with the implementation of the stay pursuant to the ISDA Protocol, including if a firm pursues the elevation strategy.

The commenter also asked the Agencies to address whether the recovery in bankruptcy for depositors holding funds in accounts that exceed the amount of deposit insurance provided by the FDIC would be negatively impacted by a firm pursuing the elevation alternative. The extent of depositors' recoveries is an issue that may arise in the resolution of an insured depository institution under the Federal Deposit Insurance Act and, therefore, is beyond the scope of the guidance.

IV. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 through 3521), 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 control number. The proposed guidance stated that the Agencies believed that the proposed changes to the 2016 Guidance would not result in an increase in information collection burden to the Covered Companies, and the Agencies invited public comment on this assessment. The Agencies received no comments regarding this assessment or the PRA more generally.

THIS GUIDANCE WILL NOT PUBLISH IN THE CFR

GUIDANCE FOR §165(D) RESOLUTION PLAN SUBMISSIONS BY
DOMESTIC COVERED COMPANIES.

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IX. *Public Section*

I. Introduction

Resolution Plan Requirement: Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies (Covered Companies) to report periodically to the Board of Governors of the Federal Reserve System (the Federal Reserve or Board) and the Federal Deposit Insurance Corporation (the FDIC) (together the Agencies) the Companies’¹ 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 (the Rule) implementing the provisions of Section 165(d), 12 CFR parts 243 and 381.² Certain Covered Companies meeting criteria set out in the Rule must file a resolution plan (Plan) annually or at a different time period specified by the Agencies.

Overview of Guidance Document: This document is intended to assist the eight current U.S. Global Systemically Important Banks (GSIBs or firms)³ in further developing their preferred resolution strategies. The document does not have the force and effect of law. Rather, it describes the Agencies’ supervisory expectations regarding these firms’ resolution plans 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 the preferred strategy.⁴

This document is organized around a number of key vulnerabilities in resolution (i.e., capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and derivatives and trading activities) that apply across resolution plans. Additional vulnerabilities or obstacles may arise based on a firm’s particular structure, operations, or

¹ Capitalized terms not defined herein have the meaning set forth in the Rule.

² 76 Fed. Reg. 67323 (November 1, 2011).

³ Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

⁴ This guidance consolidates the *Guidance for 2013 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012*; firm-specific feedback letters issued in August 2014 and April 2016; the February 2015 staff communication; and *Guidance for 2017 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Resolution Plans in July 2015*, including the frequently asked questions that were published in response to the Guidance for the 2017 Plan Submissions (taken together, prior guidance). To the extent not incorporated in or appended to this guidance, prior guidance is superseded.

resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan — e.g., by developing sensitivity analysis for certain underlying assumptions, enhancing capabilities, providing detailed analysis, or increasing optionality development, as indicated below.

The Agencies will review the Plan to determine if it satisfactorily addresses key potential vulnerabilities, including those detailed below. If the Agencies jointly decide that these matters are not satisfactorily addressed in the Plan, the Agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

II. CAPITAL

Resolution Capital Adequacy and Positioning (RCAP): To help ensure that a firm's material entities⁵ could operate while the parent company is in bankruptcy, the firm should have an adequate amount of loss-absorbing capacity to recapitalize those material entities. Thus, a firm should have outstanding a minimum amount of total loss-absorbing capital, as well as a minimum amount of long-term debt, to help ensure that the firm has adequate capacity to meet that need at a consolidated level (external TLAC).⁶

A firm's external TLAC should be complemented by appropriate positioning of additional loss-absorbing capacity within the firm (internal TLAC). The positioning of a firm's internal TLAC should balance the certainty associated with pre-positioning internal TLAC directly at material entities with the flexibility provided by holding recapitalization resources at the parent (contributable resources) to meet unanticipated losses at material entities. That balance should take account of both pre-positioning at material entities and holding resources at the parent, and the obstacles associated with each. Accordingly, the firm should not rely exclusively on either full pre-positioning or parent contributable resources to recapitalize any material entity. The plan should describe the positioning of internal TLAC within the firm, along with analysis supporting such positioning.

⁵ The terms “material entities,” “critical operations,” and “core business lines” have the same meaning as in the Agencies’ Rule.

⁶ 82 Fed. Reg. 8266 (January 24, 2017).

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

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

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,⁷ consistent with the firm's resolution strategy. However, the methodology is not required to produce aggregate losses that are greater than the amount of external TLAC that would be required for the firm under the Board's rule.⁸ The RCEN methodology should be calibrated such that recapitalized material entities have sufficient capital to maintain market confidence as required under the preferred resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for "well-capitalized" status and meet estimated additional capital needs throughout resolution. Material entities that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

⁷ The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred resolution strategy.

⁸ See 12 CFR 252.60-.65; 82 Fed. Reg. 8266 (January 24, 2017).

III. LIQUIDITY

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

Resolution Liquidity Adequacy and Positioning (RLAP): With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each material entity (including material entities that are non-U.S. branches) — i.e., the high-quality liquid assets (HQLA) at the material entity less net outflows to third parties and affiliates — and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile and risk of the firm. The model should balance the reduction in frictions associated with holding liquidity directly at material entities with the flexibility provided by holding HQLA at the parent available to meet unanticipated outflows at material entities. Thus, the firm should not rely exclusively on either full pre-positioning or the parent. The model⁹ should ensure that the parent holding company holds sufficient HQLA (inclusive of its deposits at the U.S. branch of the lead bank subsidiary) to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity position of each material entity (HQLA less net outflows) should be measured using the firm’s internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to an affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Additionally, the RLAP methodology should take into account (A) the daily contractual mismatches between inflows and outflows; (B) the daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) the daily stressed liquidity flows and trapped

⁹ “Model” refers to the set of calculations estimating the net liquidity surplus/deficit at each legal entity and for the firm in aggregate based on assumptions regarding available liquidity, e.g., HQLA, and third-party and interaffiliate net outflows.

liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

Resolution Liquidity Execution Need (RLEN): The firm should have a methodology for estimating the liquidity needed after the parent's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. The RLEN estimate should be incorporated into the firm's governance framework to ensure that the firm files for bankruptcy in a timely way, i.e., prior to the firm's HQLA falling below the RLEN estimate.

The firm's RLEN methodology should:

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

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

The peak funding needs estimates should be projected for each material entity and cover the length of time the firm expects it would take to stabilize that material entity. Inter-affiliate funding frictions should be taken into account in the estimation process.

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

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

IV. GOVERNANCE MECHANISMS

Playbooks and Triggers: A firm should identify the governance mechanisms that would ensure execution of required board actions at the appropriate time (as anticipated under the firm's preferred strategy) and include pre-action triggers and existing agreements for such actions. Governance playbooks should detail the board and senior management actions necessary to facilitate the firm's preferred strategy and to mitigate vulnerabilities, and should incorporate the triggers identified below. The governance playbooks should also include a discussion of (A) the firm's proposed communications strategy, both internal and external;¹⁰ (B) the boards of directors' fiduciary responsibilities and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; and (D) any employee retention policy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for all entities whose boards of directors would need to act in advance of the commencement of resolution proceedings under the firm's preferred strategy.

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

- (A) The escalation of information to senior management and the board(s) to potentially take the corresponding actions at each stage of distress post-recovery leading eventually to the decision to file for bankruptcy;
- (B) Successful recapitalization of subsidiaries prior to the parent's filing for bankruptcy and funding of such entities during the parent company's bankruptcy to the extent the preferred strategy relies on such actions or support; and

¹⁰ External communications include those with U.S. and foreign authorities and other external stakeholders.

(C) The timely execution of a bankruptcy filing and related pre-filing actions.¹¹

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

Triggers linked to firm actions as contemplated by the firm's preferred strategy should identify when and under what conditions the firm, including the parent company and its material entities, would transition from business-as-usual conditions to a stress period and from a stress period to the runway and recapitalization/resolution periods. 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 ensure that resources are available and can be downstreamed, if anticipated by the firm's strategy, and with adequate time for the preparation of the bankruptcy petition and first-day motions, necessary stakeholder communications, and requisite board actions. Triggers identifying the onset of the runway and recapitalization/resolution periods, and the associated escalation procedures and actions, should be discussed directly in the governance playbooks.

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

¹¹ Key pre-filing actions include the preparation of any emergency motion required to be decided on the first day of the firm's bankruptcy. See "*OPERATIONAL – Legal Obstacles Associated with Emergency Motions*," below.

commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's preferred resolution strategy.

As noted, the analysis should include mitigants to the potential challenges to the planned Support. The plan should include the mitigant(s) to such challenges that the firm considers most effective. In identifying appropriate mitigants, the firm should consider the effectiveness of a contractually binding mechanism (CBM), pre-positioning of financial resources in material entities, and the creation of an intermediate holding company. Moreover, if the plan includes a CBM, the firm should consider whether it is appropriate that the CBM should have the following: (A) clearly defined triggers; (B) triggers that are synchronized to the firm's liquidity and capital methodologies; (C) perfected security interests in specified collateral sufficient to fully secure all Support obligations on a continuous basis (including mechanisms for adjusting the amount of collateral as the value of obligations under the agreement or collateral assets fluctuates); and (D) liquidated damages provisions or other features designed to make the CBM more enforceable. The firm also should consider related actions or agreements that may enhance the effectiveness of a CBM. A copy of any agreement and documents referenced therein (e.g., evidence of security interest perfection) should be included in the resolution plan.

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

V. OPERATIONAL

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,¹² or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution through a framework to support such access by:

- Identifying clients,¹³ FMUs, and agent banks as key from the firm's perspective, using both quantitative (volume and value)¹⁴ and qualitative criteria;
- Mapping material entities, critical operations, core business lines, and key clients to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank reflecting the firm's role(s) as a user and/or provider of PCS services.

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

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and its key clients in maintaining continued access to PCS services in the period leading up to and including the firm's resolution. Each playbook should provide analysis of the financial

¹² 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).

¹³ For purposes of this section V, 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.

¹⁴ 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.

and operational impact to the firm's material entities and key clients due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow the firm and its key clients continued access to PCS services in resolution. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its preferred resolution strategy or its RLEN/RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients, and playbooks should reflect any feedback received during such ongoing outreach.

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

- Description of the firm's relationship as a user with the key FMU or key agent bank and the identification and mapping of PCS services to material entities, 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,¹⁵ the operational and financial impact of such actions on each material entity, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and
- Discussion of PCS-related liquidity sources and uses in business-as-usual (BAU), in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by material entity.
 - PCS Liquidity Sources: These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and key client prefunded amounts in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (e.g., facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in various currencies, including placements of firm liquidity at central banks, key FMUs, and key agent banks.

¹⁵ Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

- PCS Liquidity Uses: These may include firm and key client margin and prefunding and intraday extensions of credit, including incremental amounts required during resolution.
- Intraday Liquidity Inflows and Outflows: The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.

*Content Related to Providers of PCS Services.*¹⁶ Individual key FMU and key agent bank playbooks should include:

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

¹⁶ Where a firm is a provider of PCS services through the firm's own operations, the firm is expected to produce a playbook for the material entities that provide those services, addressing each of the items described under "Content Related to Providers of PCS Services," which include contingency arrangements to permit the firm's key clients to maintain continued access to PCS services.

- Description of how the firm will communicate to its key clients the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients (e.g., due to the key client's BAU usage of that access and/or related intraday credit or liquidity), and the expected timing and form of such communication.

Managing, Identifying, and Valuing Collateral: The firm should have capabilities related to managing, identifying, and valuing the collateral that it receives from and posts to external parties and its 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 firm 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.¹⁷

Management Information Systems: The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution

¹⁷ The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity.

Shared and Outsourced Services: The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support critical operations 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. The firm should (A) maintain an identification of all shared services that support critical operations (critical services);¹⁸ (B) maintain a mapping of how/where these services support its core business lines and 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 critical shared services. These SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution. The firm should also store SLAs in a central repository or repositories in a searchable format, develop and document contingency strategies and arrangements for replacement of critical shared services, and complete re-alignment or restructuring of activities within its corporate structure. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's preferred strategy) in such entities sufficient to cover contract costs, consistent with the preferred resolution strategy.

The firm should identify all critical outsourced services that support critical operations and could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated despite continued performance upon the parent's bankruptcy filing, and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of such services during resolution. Relying on entities projected to survive during

¹⁸ This should be interpreted to include data access and intellectual property rights.

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.

Legal Obstacles Associated with Emergency Motions: The Plan should address legal issues associated with the implementation of the stay on cross-default rights described in Section 2 of the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol (Protocol), similar provisions of any U.S. protocol,¹⁹ or other contractual provisions that comply with the Agencies' rules regarding stays from the exercise of cross-default rights in qualified financial contracts, to the extent relevant.²⁰ Generally, the Protocol provides two primary methods of satisfying the stay conditions for covered agreements for which the affiliate in Chapter 11 proceedings has provided a credit enhancement (A) transferring all such credit enhancements to a Bankruptcy Bridge Company (as defined in the Protocol) (bridge transfer); or (B) having such affiliate remain obligated with respect to such credit enhancements in the Chapter 11 proceeding (elevation).²¹ A firm must file a motion for emergency relief (emergency motion) seeking approval of an order to effect either of these alternatives on the first day of its bankruptcy case.

First-day Issues – For each alternative the firm selects, the resolution plan should present the firm's analysis of issues that are likely to be raised at the hearing on the emergency motion and its best arguments in support of the emergency motion. A firm should include supporting legal precedent and describe the evidentiary support that the firm would anticipate presenting to the bankruptcy court — e.g., declarations or other expert

¹⁹ U.S. protocol has the same meaning as it does at 12 CFR 252.85(a). See also 12 CFR 382.5(a) (including a substantively identical definition).

²⁰ See 12 CFR part 47, 252.81-.88, and part 382 (together, the QFC stay rules). Plans submitted prior to the final initial applicability date of the QFC stay rules should reflect how the early termination of qualified financial contracts could impact the firm's resolution in light of the current state of its qualified financial contracts' compliance with the requirements of the QFC stay rules. The firm may also separately discuss the firm's resolution assuming that the final initial applicability date has been reached and all covered qualified financial contracts have been conformed to comply with the QFC stay rules. If the firm complies with the QFC stay rules other than through adherence to the Protocol, the plan also should explain how the alternative compliance method differs from Protocol, how those differences affect the analysis and other expectations of this "Legal Obstacles Associated with Emergency Motions" section, and how the firm plans to satisfy any different conditions or requirements of the alternative compliance method.

²¹ Under its terms, the Protocol also provides for the transfer of credit enhancements to transferees other than a Bankruptcy Bridge Company.

testimony evidencing the solvency of transferred subsidiaries and that recapitalized entities have sufficient liquidity to perform their ongoing obligations.

For either alternative, the firm should address all potential significant legal obstacles identified by the firm. For example, the firm should address due process arguments likely to be made by creditors asserting that they have not had sufficient opportunity to respond to the emergency motion given the likelihood that a creditors' committee will not yet have been appointed. The firm also should consider, and discuss in its plan, whether it would enhance the successful implementation of its preferred strategy to conduct outreach to interested parties, such as potential creditors of the holding company and the bankruptcy bar, regarding the strategy.

If the firm chooses the bridge transfer alternative, its analysis and arguments should address at a minimum the following potential issues: (A) the legal basis for transferring the parent holding company's equity interests in certain subsidiaries (transferred subsidiaries) to a Bankruptcy Bridge Company, including the basis upon which the Bankruptcy Bridge Company would remain obligated for credit enhancements; (B) the ability of the bankruptcy court to retain jurisdiction, issue injunctions, or take other actions to prevent third parties from interfering with, or making collateral attacks on (i) a Bankruptcy Bridge Company, (ii) its transferred subsidiaries, or (iii) a trust or other legal entity designed to hold all ownership interests in a Bankruptcy Bridge Company (new ownership entity); and (C) the role of the bankruptcy court in granting the emergency motion due to public policy concerns — e.g., to preserve financial stability. The firm should also provide a draft agreement (e.g., trust agreement) detailing the preferred post-transfer governance relationships between the bankruptcy estate, the new ownership entity, and the Bankruptcy Bridge Company, including the proposed role and powers of the bankruptcy court and creditors' committee. Alternative approaches to these proposed post-transfer governance relationships should also be described, particularly given the strong interest that parties will have in the ongoing operations of the Bankruptcy Bridge Company and the likely absence of an appointed creditors' committee at the time of the hearing.

If the firm chooses the elevation alternative, the analysis and arguments should address at a minimum the following potential issues: (A) the legal basis upon which the parent company would seek to remain obligated for credit enhancements; (B) the ability of the bankruptcy court to retain jurisdiction, issue injunctions, or take other actions to prevent third parties from interfering with, or making collateral attacks on, the parent in bankruptcy or its subsidiaries; and (C) the role of the bankruptcy court in granting the emergency motion due to public policy concerns — e.g., to preserve financial stability.

Regulatory Implications – The plan should include a detailed explanation of the steps the firm would take to ensure that key domestic and foreign authorities would support, or not object to, the emergency motion (including specifying the expected approvals or forbearances and the requisite format — i.e., formal, affirmative statements of support or, alternatively, “non-objections”). The potential impact on the firm’s preferred resolution strategy if a specific approval or forbearance cannot be timely obtained should also be detailed.

Contingencies if Preferred Structure Fails – The plan should consider contingency arrangements in the event the bankruptcy court does not grant the emergency motion — e.g., whether alternative relief could satisfy the Transfer Conditions and/or U.S. Parent debtor-in-possession (DIP) Conditions of the Protocol;²² the extent to which action upon certain aspects of the emergency motion may be deferred by the bankruptcy court without interfering with the resolution; and whether, if the credit-enhancement-related protections are not satisfied, there are alternative strategies to prevent the closeout of qualified financial contracts with credit enhancements (or reduce such counterparties’ incentives to closeout) and the feasibility of the alternative(s).

Format – If the firm analyzed and addressed an issue noted in this section in a prior plan submission, the plan may incorporate this analysis and arguments and should build upon it to at least the extent required above. A bankruptcy playbook, which includes a sample emergency motion and draft documents setting forth the post-transfer governance terms

²² See Protocol sections 2(b)(ii) and (iii) and related definitions.

substantially in the form they would be presented to the bankruptcy court, is an appropriate vehicle for detailing the issues outlined in this section. In preparing analysis of these issues, the firm may consult with law firms and other experts on these matters. The Agencies do not object to appropriate collaboration among firms, including through trade organizations and with the academic community and bankruptcy bar, to develop analysis of common legal challenges and available mitigants.

VI. LEGAL ENTITY RATIONALIZATION AND SEPARABILITY

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

Specifically, application of the criteria should:

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

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

Separability: The firm should identify discrete operations that could be sold or transferred in resolution, which individually or in the aggregate would provide meaningful optionality in resolution under different market conditions.

A firm's separability options should be actionable, and impediments to their execution and projected mitigation strategies should be identified in advance. Relevant impediments could include, for example, legal and regulatory preconditions, interconnectivity among the firm's operations, tax consequences, market conditions, and other considerations. To be actionable, divestiture options should be executable within a reasonable period of time.

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

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

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

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

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

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

Within the plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts meet the 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.

VII. DERIVATIVES AND TRADING ACTIVITIES

Applicability.

This section of the proposed guidance applies to Bank of America Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, and Wells Fargo & Company (each, a dealer firm).

Booking Practices.

A dealer firm should have booking practices commensurate with the size, scope, and complexity of a firm's derivatives portfolios,²³ including systems capabilities to track and monitor market, credit, and liquidity risk transfers between entities. The following booking practices-related capabilities should be addressed in a dealer firm's resolution plan:

Derivatives booking framework. A dealer firm should have a comprehensive booking model framework that articulates the principles, rationales, and approach to implementing its booking practices. The framework and its underlying components should be documented and adequately supported by internal controls (e.g., procedures, systems, and processes). Taken together, the derivatives booking framework and its components should provide transparency with respect to (i) what is being booked (e.g., product/counterparty), (ii) where it is being booked (e.g., legal entity/geography), (iii) by whom it is booked (e.g., business/trading desk); (iv) why it is booked that way (e.g., drivers/rationales); and (v) what controls are in place to monitor and manage those practices (e.g., governance/information systems).²⁴ The dealer firm's resolution plan should include detailed descriptions of the framework and each of its material components. In particular, a dealer firm's resolution plan should include descriptions of the documented booking models covering its firm-wide derivatives portfolio.²⁵ The descriptions should provide clarity with respect to the underlying trade flows (e.g., the mapping of trade flows based on multiple trade characteristics as decision points that determine on which entity a trade is booked, if risk is transferred, and at which entity that risk is subsequently managed). For example, a firm may choose to incorporate decision trees that depict the multiple trade flows within each documented booking model.²⁶ Furthermore, a dealer firm's resolution plan should describe its

²³ A firm's derivatives portfolios include its derivatives positions and linked non-derivatives trading positions. The firm may define linked non-derivatives trading positions based on its overall business and resolution strategy.

²⁴ The description of controls should include any components of the firm-wide market, credit, and liquidity risk management framework that are material to the management of its derivatives practices.

²⁵ "Firm-wide derivatives portfolio" should represent the vast majority (for example, 95%) of a dealer firm's derivatives transactions measured by firm-wide derivatives notional and by firm-wide gross market value of derivatives. Presumably, each asset class/product would have a booking model that is a function of the firm's regulatory and risk management requirements, client's preference, and regulatory requirements specifically for the underlying asset class, and other transaction related considerations.

²⁶ Some firms use trader mandates or similar controls to constrain the potential trading strategies that can be pursued by a business and to monitor the permissibility of booking activity. However, the mapping of trader mandates alone,

end-to-end trade booking and reporting processes, including a description of the current scope of automation (e.g., automated trade flows and detective monitoring) for the systems controls applied to its documented booking models. The plan should also discuss why the firm believes its current (or planned) scope of automation is sufficient for managing its derivatives activities and executing its preferred resolution strategy.²⁷

Derivatives entity analysis and reporting. A dealer firm should have the ability to identify, assess, and report on each of its entities (material and non-material) with derivatives portfolios (a derivatives entity). First, the firm's resolution plan should describe its method (that may include both qualitative and quantitative criteria) for evaluating the significance of each derivatives entity both with respect to the firm's current activities and to its preferred resolution strategy.²⁸ Second, a dealer firm's resolution plan should demonstrate (including through illustrative samples) its ability to readily generate current derivatives entity profiles that (i) cover all derivatives entities, (ii) are reportable in a consistent manner, and (iii) include information regarding current legal ownership structure, business activities/volume, and risk profile (including applicable risk limits).

Inter-Affiliate Risk Monitoring and Controls.

A dealer firm should be able to assess how the management of inter-affiliate risks can be affected in resolution, including the potential disruption in the risk transfers of trades between affiliate entities. Therefore, a dealer firm should have capabilities to provide timely transparency

especially those mandates that grant broad permissibility, may not provide sufficient distinction between booking model trade flows.

²⁷ Effective preventative (up-front) and detective (post-booking) controls embedded in a dealer firm's derivatives booking processes can help avoid and/or timely remediate trades that do not align with a documented booking model or related risk limits. Firms typically use a combination of manual and automated control functions. Although automation may not be best suited for all control functions, as compared to manual methods it can improve consistency and traceability with respect to derivatives booking practices. Nonetheless, non-automated methods can also be effective when supported by other internal controls (e.g., robust detective monitoring and escalation protocols).

²⁸ The firm should leverage any existing methods and criteria it uses for other entity assessments (e.g., legal entity rationalization and/or the pre-positioning of internal loss-absorbing resources). The firm's method for determining the significance of derivatives entities is allowed to diverge from the parameters for material entity designation under the Resolution Plan Rule (i.e., entities significant to the activities of a critical operation or core business line) but should be adequately supported and any differences should be explained.

into the management of risk transfers between affiliates by maintaining an inter-affiliate market risk framework, consisting of at least the following two components²⁹:

1. A method for measuring, monitoring, and reporting the market risk exposures for a given material derivatives entity³⁰ resulting from the termination of a specific counterparty or a set of counterparties (e.g., all trades with a specific affiliate or with all affiliates in a specific jurisdiction)³¹ and
2. A method for identifying, estimating associated costs of, and evaluating the effectiveness of, a re-hedge strategy in resolution put on by the same material derivatives entity.³²

In determining the re-hedge strategy, the firm should consider whether the instruments used (and the risk factors and risk sensitivities controlled for) are sufficiently tied to the material derivatives entity's trading and risk-management practices to demonstrate its ability to execute the strategy in resolution using existing resources (e.g., existing traders and systems).

A dealer firm's resolution plan should describe and demonstrate its inter-affiliate market risk framework (discussed above). In addition, the firm's plan should provide detailed descriptions of its compression strategies used for executing its preferred strategy and how those strategies would differ from those used currently to manage its inter-affiliate derivatives activities. To the extent a dealer firm relies on compression strategies for executing its preferred strategy, the plan should include detailed descriptions of its compression capabilities, the associated risks, and obstacles in resolution.

Portfolio Segmentation and Forecasting.

A dealer firm should have the capabilities to produce analysis that reflects derivatives portfolio segmentation and differentiation of assumptions taking into account trade-level

²⁹ The inter-affiliate market risk framework is a supplement to the firm's systems capabilities to track and monitor market, credit, and liquidity risk transfers between entities.

³⁰ A "material derivatives entity" is a material entity with a derivatives portfolio.

³¹ Firms may use industry market risk measures such as statistical risk measures (e.g., VaR or SVaR) or other risk measures (e.g., worst case scenario or stress test).

³² A dealer firm's method may include an approach to identifying the risk factors and risk sensitivities, hedging instruments, and risk limits a derivatives entity would employ in its re-hedge strategy, and the quantification of any estimated basis risk that would result from hedging with only exchange-traded and centrally-cleared instruments in a severely adverse stress environment.

characteristics. More specifically, a dealer firm should have the systems capabilities that would allow it to produce a spectrum of derivatives portfolio segmentation analysis using multiple segmentation dimensions, including (1) legal entity (and material entities that are branches), (2) trading desk and/or product, (3) cleared vs. clearable vs. non-clearable trades, (4) counterparty type, (5) currency, (6) maturity, (7) level of collateralization, and (8) netting set.³³ A dealer firm should also have the capabilities to segment and analyze the full contractual maturity (run-off) profile of its external and inter-affiliate derivatives portfolios. The dealer firm's resolution plan should describe and demonstrate the firm's ability to segment and analyze its firm-wide derivatives portfolio using the relevant segmentation dimensions and to report the results of such segmentation and analysis. In addition, the dealer firm's resolution plan should address the following segmentation and forecasting related capabilities:

“Ease of exit” position analysis. A dealer firm should have, and its resolution plan should describe and demonstrate, a method and supporting systems capabilities for categorizing and ranking the ease of exit for its derivatives positions based on a set of well-defined and consistently applied segmentation criteria. These capabilities should cover the firm-wide derivatives portfolio and the resulting categories should represent a range in degree of difficulty (e.g., from easiest to most difficult to exit). The segmentation criteria should, at a minimum, reflect characteristics³⁴ that the firm believes could affect the level of financial incentive and operational effort required to facilitate the exit of derivatives portfolios (e.g., to motivate a potential step-in party to agree to the novation or an existing counterparty to bilaterally agree to a termination). Dealer firms should consider this methodology when separately identifying and analyzing the population of derivatives positions that it will include in the potential residual portfolio under the firm's preferred resolution strategy (discussed below).

Application of exit cost methodology. Each dealer firm should have a methodology for forecasting the cost and liquidity needed to exit positions (e.g., terminate/tear-up, sell, novate, and compress), and the operational resources related to those exits, under the specific scenario

³³ The enumerated segmentation dimensions are not intended as an exhaustive list of relevant dimensions. With respect to any product/asset class, a firm may have reasons for not capturing data on (or not using) one or more of the enumerated segmentation dimensions, but those reasons should be explained.

³⁴ Examples of characteristics that may affect the level of financial incentive and operational effort could include: product, size, clearability, currency, maturity, level of collateralization, and other risk characteristics.

adopted in the firm's preferred resolution strategy. To help preserve sufficient optionality with respect to managing and de-risking its derivatives portfolios in a resolution, a dealer firm should have the systems capabilities to apply its exit cost methodology to its firm-wide derivatives portfolio, at the segmentation levels the firm would likely apply to exit the particular positions (e.g., valuation segment level). The dealer firm's plan should provide detailed descriptions of the forecasting methodology (inclusive of any challenge and validation processes) and data systems and reporting capabilities. The firm should also describe and demonstrate the application of the exit cost method and systems capabilities to the firm-wide derivatives portfolio.

Analysis of operational capacity. In resolution, a dealer firm should have the capabilities to forecast the incremental operational needs and expenses related to executing specific aspects of its preferred resolution strategy (e.g., executing timely derivatives portfolio novations). Therefore, a dealer firm should have, and its resolution plan should describe and demonstrate, the capabilities to assess the operational resources and forecast the costs (e.g., monthly expense rate) related to its current derivatives activities at an appropriately granular level and the incremental impact from executing its preferred resolution strategy.³⁵ In addition, a dealer firm should have the ability to manage the logistical and operational challenges related to novating (selling) derivatives portfolios during a resolution, including the design and adjustment of novation packages. A dealer firm's resolution plan should describe its methodology and demonstrate its supporting systems capabilities for timely segmenting, packaging, and novating derivatives positions. In developing its methodology, a dealer firm should consider the systems capabilities that may be needed to reliably generate preliminary novation packages tailored to the risk appetites of potential step-in counterparties (buyers), as well as the novation portfolio profile information that may be most relevant to such counterparties.

Sensitivity analysis. A dealer firm should have a method to apply sensitivity analyses to the key drivers of the derivatives-related costs and liquidity flows under its preferred resolution strategy. A dealer firm's resolution plan should describe its method for (i) evaluating the

³⁵ A dealer firm should have separate categories for fixed and variable expenses. For example, more granular operational expenses could roll-up into categories for (i) fixed-compensation, (ii) fixed non-compensation, and (iii) variable cost.

materiality of assumptions and (ii) identifying those assumptions (or combinations of assumptions) that constitute the key drivers for its forecasts of operational and financial resource needs under the preferred resolution strategy. In addition, using its preferred resolution strategy as a baseline, the dealer firm's resolution plan should describe and demonstrate its approach to testing the sensitivities of the identified key drivers and the potential impact on its forecasts of resource needs.³⁶

Prime Brokerage Customer Account Transfers.

A dealer firm should have the operational capacity to facilitate the orderly transfer of prime brokerage accounts to peer prime brokers in periods of material financial distress and in resolution. The firm's plan should include an assessment of how it would transfer such accounts. This assessment should be informed by clients' relationships with other prime brokers, the use of automated and manual transaction processes, clients' overall long and short positions facilitated by the firm, and the liquidity of clients' portfolios. The assessment should also analyze the risks of and mitigants to the loss of customer-to-customer internalization (e.g., the inability to fund customer longs with customer shorts), operational challenges, and insufficient staffing to effectuate the scale and speed of prime brokerage account transfers envisioned under the firm's preferred resolution strategy.

In addition, a dealer firm should describe and demonstrate its ability to segment and analyze the quality and composition of prime brokerage customer account balances based on a set of well-defined and consistently applied segmentation criteria (e.g., size, single-prime, platform, use of leverage, non-rehypotheatable securities, and liquidity of underlying assets). The capabilities should cover the firm's prime brokerage customer account balances, and the resulting segments should represent a range in potential transfer speed (e.g., from fastest to longest to transfer, from most liquid to least liquid). The selected segmentation criteria should

³⁶ For example, key drivers of derivatives-related costs and liquidity flows might include the timing of derivatives unwind, cost of capital-related assumptions (target ROE, discount rate, WAL, capital constraints, tax rate), operational cost reduction rate, and operational capacity for novations. Other examples of key drivers likely also include CCP margin flow assumptions and risk-weighted assets forecast assumptions.

reflect characteristics³⁷ that the firm believes could affect the speed at which the client account balance would be transferred to an alternate prime broker.

Derivatives Stabilization and De-risking Strategy.

A dealer firm's plan should provide a detailed analysis of the strategy to stabilize and de-risk its derivatives portfolios (derivatives strategy) that has been incorporated into its preferred resolution strategy.³⁸ In developing its derivatives strategy, a dealer firm should apply the following assumption constraints:

- *OTC derivatives market access:* At or before the start of the resolution period, each derivatives entity should be assumed to lack an investment-grade credit rating (e.g., unrated or downgraded below investment grade). The derivatives entity should also be assumed to have failed to establish or reestablish investment-grade status for the duration of the resolution period, unless the plan provides well-supported analysis to the contrary. As a result of the lack of investment grade status, it should be further assumed that the derivatives entity has no access to the bilateral OTC derivatives markets and must use exchange-traded and/or centrally-cleared instruments where any new hedging needs arise during the resolution period. Nevertheless, a dealer firm may assume the ability to engage in certain risk-reducing derivatives trades with bilateral OTC derivatives counterparties during the resolution period to facilitate novations with third parties and to close out inter-affiliate trades.³⁹
- *Early exits (break clauses).* A dealer firm should assume that counterparties (external or affiliates) will exercise any contractual termination right, consistent with any rights stayed by the ISDA 2015 Universal Resolution Stay protocol or other applicable

³⁷ For example, relevant characteristics might include: product, size, clearability, currency, maturity, level of collateralization, and other risk characteristics.

³⁸ Subject to the relevant constraints, a firm's derivatives strategy may take the form of a going-concern strategy, an accelerated de-risking strategy (e.g., active wind-down) or an alternative, third strategy so long as the firm's resolution plan adequately supports the execution of the chosen strategy. For example, a firm may choose a going-concern scenario (e.g., derivatives entities reestablish investment grade status and do not enter a wind-down) as its derivatives strategy. Likewise, a firm may choose to adopt a combination of going-concern and accelerated de-risking scenarios as its derivatives strategy. For example, the derivatives strategy could be a stabilization scenario for the lead bank entity and an accelerated de-risking scenario for the broker-dealer entities.

³⁹ A firm may engage in bilateral OTC derivatives trades with, for example, (i) external counterparties, to effect the novation of the firm's side of a derivatives contract to a new counterparty, bilateral OTC trades with the acquiring counterparty; and, (ii) inter-affiliate counterparties, where the trades with inter-affiliate counterparties do not materially increase (a) the credit exposure of any participating counterparty and (b) the market risk of any such counterparty on a standalone basis, after taking into account hedging with exchange-traded and centrally-cleared instruments. The firm should provide analysis to support the risk nature of the trade on the basis of information that would be known to the firm at the time of the transaction.

protocols or amendments⁴⁰, (i) that is available to the counterparty at or following the start of the resolution period; and (ii) if exercising such right would economically benefit the counterparty (counterparty-initiated termination).

- *Time horizon*: The duration of the resolution period should be between 12 and 24 months. The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred resolution strategy.

A dealer firm's analysis of its derivatives strategy should take into account (i) the starting profile of its derivatives portfolios (e.g., nature, concentration, maturity, clearability, and liquidity of positions); (ii) the profile and function of the derivatives entities during the resolution period; (iii) the means, challenges, and capacity for managing and de-risking its derivatives portfolios (e.g., method for timely segmenting, packaging, and selling the derivatives positions; challenges with novating less liquid positions; re-hedging strategy); (iv) the financial and operational resources required to effect the derivatives strategy; and (v) any potential residual portfolio (further discussed below). In addition, the firm's resolution plan should address the following areas in the analysis of its derivatives strategy:

Forecasts of resource needs. The forecasts of capital and liquidity resource needs of material entities required to adequately support the firm's derivatives strategy should be incorporated into the firm's RCEN and RLEN estimates for its overall preferred resolution strategy. These include, for example, the costs and/or liquidity flows resulting from (i) the close-out of OTC derivatives, (ii) the hedging of derivatives portfolios, (iii) the quantified losses that could be incurred due to basis and other risks that would result from hedging with only exchange-traded and centrally cleared instruments in a severely adverse stress environment, and (iv) the operational costs.⁴¹

Potential residual derivatives portfolio. A dealer firm's resolution plan should include a method for estimating the composition of any potential residual derivatives portfolio transactions

⁴⁰For each of the derivatives entities that have adhered to the Protocol, the dealer firm may assume that the protocol is in effect for all counterparties of that derivatives entity (except for any affiliated counterparty of the derivatives entity that has not yet adhered to the Protocol).

⁴¹A dealer firm may choose not to isolate and separately model the operational costs solely related to executing its derivatives strategy. However, the firm should provide transparency around operational cost estimation at a more granular level than material entity (e.g., business line level within a material entity, subject to wind-down).

remaining at the end of the resolution period under its preferred resolution strategy. The method may be a combination of approaches (e.g., probabilistic and deterministic) but should demonstrate the dealer firm's capabilities related to portfolio segmentation (discussed above). The dealer firm's plan should also provide detailed descriptions of the trade characteristics used to identify the potential residual portfolio and of the resulting trades (or categories of trades).⁴² A dealer firm should assess the risk profile of the potential residual portfolio (including its anticipated size, composition, complexity, counterparties) and the potential counterparty and market impacts of non-performance on the stability of U.S. financial markets (e.g., on funding markets and the underlying asset markets and on clients and counterparties).

Non-surviving entity analysis. To the extent the preferred resolution strategy assumes a material derivatives entity enters its own resolution proceeding after the entry of the parent company into a bankruptcy proceeding (a non-surviving material derivatives entity), the dealer firm should provide a detailed analysis of how the non-surviving material derivatives entity's resolution can 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 and to the orderly execution of the firm's preferred resolution strategy. In particular, the firm should provide an analysis of the potential impacts on funding markets and the underlying asset markets, on clients and counterparties (including affiliates), and on the preferred resolution strategy. If the non-surviving material derivatives entity is located in, or provides more than *de minimis* services to clients or counterparties located in, a non-U.S. jurisdiction, then the analysis should also specifically consider potential local market impacts.

VIII. FORMAT AND STRUCTURE OF PLANS

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

⁴² If under the firm's preferred resolution strategy, any derivatives portfolios are transferred during the resolution period by way of a line of business sale (or similar transaction), then those portfolios should nonetheless be included within the firm's potential residual portfolio analysis.

discussion of the firm's assessment of any impediments to the firm's resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for rapid and orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative). The Narrative also should include a high level discussion of how the firm is addressing key vulnerabilities jointly identified by the Agencies. This is not an exhaustive list and does not preclude identification of further vulnerabilities or impediments.

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.⁴³
3. The firm should not assume that it will be able to sell critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

⁴³ 12CFR 243.4(a)(4)(ii) and 381.4(a)(4)(ii)

4. The Plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which the Plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process. The Plan should also discuss any changes to the resolution strategy under the adverse and baseline scenarios to the extent that these scenarios reflect obstacles to a rapid and orderly resolution that are not captured under the severely adverse scenario.
5. The resolution strategy may be based on an idiosyncratic event or action. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.
6. 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.)
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 firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections

The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the resolution strategy. It should also include projected statements of 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 a 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:

- a. Any U.S.-based or non U.S. affiliates, including any branches, that are significant to the activities of a critical operation conducted in whole or material part in the United States.
- b. 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 a critical operation.
- c. 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 a critical operation.
- d. Subsidiaries or foreign offices that are engaged in derivatives booking activity that is significant to the activities of a critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.
- e. Subsidiaries or foreign offices engaged in asset custody or asset management that are significant to the activities of a critical operation.
- f. Subsidiaries or foreign offices holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of a critical operation.

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

IX. PUBLIC SECTION

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

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

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 resolution 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.

APPENDIX: Frequently Asked Questions

In April 2016, the Federal Reserve Board and the Federal Deposit Insurance Corporation issued guidance for use in developing the 2017 resolution plan submissions by eight large domestic bank holding companies (BHCs).⁴⁴

In response to frequently asked questions regarding the guidance from the BHCs, Board and FDIC staff jointly developed answers and provided those answers to the firms in 2016 so that firms could take them into account in developing their next resolution plan submissions.⁴⁵

The questions in this Appendix:

- Comprise common questions asked by different BHCs. Not every question is applicable to every BHC; not every aspect of the guidance applies to each BHC's preferred strategy/structure; and
- Reflect updated references to correspond to the Agencies' final resolution planning guidance for the BHCs (the Final Guidance).

As indicated below, those questions and answers that are deemed to be no longer meaningful or relevant have not been consolidated in this Appendix to the Final Guidance and are superseded.

Capital

CAP 1. Capital Pre-Positioning and Balance

Q. How should a firm determine the appropriate balance between resources pre-positioned at the material entities and held at the parent?

A. The Final Guidance addresses this issue in the Capital section. The Agencies are not prescribing a specific percentage allocation of resources pre-positioned at the material entities versus resources held at the parent. In considering the balance between certainty and flexibility, the Agencies note that the risk profile of each material entity should inform the “unanticipated

⁴⁴ Bank of America Corporation, Bank of New York Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

⁴⁵ The FAQs represent the views of staff of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation and do not bind the Board or the FDIC.

losses” at the entity, which should be taken into account in determining the appropriate balance. For instance, the balance would likely be different for a large, complex, foreign trading subsidiary versus a small, domestic bank subsidiary.

CAP 2. Not consolidated.

CAP 3. Definition of “Well-Capitalized” Status

Q. How should firms apply the term “well-capitalized” to material entities outside the U.S. or to material entities not subject to Basel III requirements?

A. Material entities must comply with the local capital requirements and expectations of their primary regulator. Material entities should be recapitalized to meet jurisdictional requirements and to maintain market confidence as required under the preferred resolution strategy.

CAP 4. RCEN Relationship to DFAST Severely Adverse Scenario

Q. How should the firm’s RCEN and RLEN estimates relate to the DFAST Severely Adverse scenario (as per the 2014 feedback letters)? Can those estimates be recalibrated in actual stress conditions?

A. For resolution plan submission purposes, the estimation of RLEN and RCEN should assume macroeconomic conditions consistent with the DFAST Severely Adverse scenario.

However, the RLEN and RCEN methodologies should have the flexibility to incorporate macroeconomic conditions that may deviate from the DFAST Severely Adverse scenario in order to facilitate execution of the preferred resolution strategy.

CAP 5. Not consolidated.

Liquidity

LIQ 1. Inter-Company “Frictions” and Inter-Affiliate Deposits

Q. Can the Agencies clarify what kinds of frictions might occur between affiliates beyond regulatory ring-fencing?

A. Frictions are any impediments to the free flow of funds, collateral and other transactions between material entities. Examples include regulatory, legal, financial (i.e., tax consequences), market, or operational constraints or requirements. Explicit frictions are described in the Final Guidance and include the requirement that firms should not assume that a net liquidity sur- plus

at one material entity subsidiary (including material entities that are non-U.S. branches) can be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Q2. How should firms treat deposits at affiliate banks, including parent deposits? Should firms assume they are, or are not, fungible in resolution?

A. As stated in the Final Guidance, the model estimating the net liquidity surplus/deficit for the firm may assume the parent holding company's deposits at the U.S. branch of the lead bank subsidiary are available as HQLA. Further, the stand-alone net liquidity position of each material entity (HQLA less net outflows) should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure, including deposits, made with an affiliate should be assumed to mature. As noted in the Liquidity section of the Final Guidance, firms should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.

LIQ 2. Distinction between Liquidity Forecasting Periods

Q. How long is the stabilization period?

A. The stabilization period begins immediately after the parent company bankruptcy filing and extends until each material entity reestablishes market confidence. The stabilization period may not be less than 30 days. The reestablishment of market confidence may be reflected by the maintaining, reestablishing, or establishing of investment grade ratings or the equivalent financial condition for each entity. The stabilization period may vary by material entity, given differences in regulatory, counterparty, and other stakeholder interests in each entity.

Q2. How should we distinguish between the runway, resolution, and stabilization periods on the one hand, and RLAP and RLEN on the other, in terms of their length, sequencing, and liquidity thresholds?

A. In the Final Guidance, the Agencies did not specify a direct mathematical relationship between the runway period, the RLAP model, and RLEN model. As noted in prior guidance, firms may assume a runway period of up to 30 days prior to entering bankruptcy provided the period is sufficient for management to contemplate the necessary actions preceding the filing of bankruptcy. The RLAP model should provide for the adequate sizing and positioning of HQLA at material entities for anticipated net liquidity outflows for a period of at least

30 days. The RLEN model estimates the liquidity needed after the parent's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. As noted in the Final Guidance, the RLEN model should be integrated into the firm's governance framework to ensure that the firm files for bankruptcy prior to HQLA falling below the RLEN estimate. See "LIQ 4. RLEN and Minimum Operating Liquidity (MOL)," Question 1, for further detail on the required components of the RLEN model.

Q3. What is the resolution period?

A. The resolution period begins immediately after the parent company bankruptcy filing and extends through the completion of the preferred strategy. After the stabilization period (see "LIQ 2. Distinction between Liquidity Forecasting Periods," Question 1, regarding "stabilization period"), financial statements and projections may be provided at quarterly intervals through the remainder of the resolution period.

LIQ 3. Inter-Affiliate Transaction Assumptions

Q. Does inter-affiliate funding refer to all kinds of intercompany transactions, including both unsecured and secured?

A. Yes.

LIQ 4. RLEN and Minimum Operating Liquidity (MOL)

Q. How should firms distinguish between the minimum operating liquidity (MOL) and peak funding needs during the RLEN period?

A. The RLEN should ensure that the firm has sufficient liquidity in the form of HQLA to facilitate the execution of the firm's resolution strategy; therefore, RLEN should include both MOL and peak funding needs. The peak funding needs represent the peak cumulative net outflows during the stabilization period. The components of peak funding needs, including the monetization of assets and other management actions, should be transparent in the RLEN

projections. The peak funding needs should be supported by projections of daily sources and uses of cash for each material entity, incorporating inter-affiliate and third-party exposures. In mathematical terms, $RLEN = MOL + \text{peak funding needs during the stabilization period}$. For the firms subject to the Derivatives and Trading Activities section of the Final Guidance (dealer firms), RLEN should also incorporate liquidity execution needs of the preferred derivatives strategy (see “DER 1. Preferred Resolution Strategy and Wind-Down Scenarios” in the Derivatives and Trading Activities section).

Q2. Should the MOL per entity make explicit the allocation for intraday liquidity requirements, inter-affiliate and other funding frictions, operating expenses, and working capital needs?

A. Yes, the components of the MOL estimates for each material entity should be transparent and supported.

Q3. Can MOLs decrease as MLEs wind down?

A. MOL estimates can decline as long as they are sufficiently supported by the firm’s methodology and assumptions.

LIQ 5. Liquidity Pre-Positioning and Balance

Q. How should a firm determine the appropriate balance between liquidity resources pre-positioned at the material entities and held at the parent? Do the Agencies have a specific ratio allocation in mind?

A. The Final Guidance addresses this issue in the Liquidity section. The Agencies are not prescribing a specific percentage allocation of resources pre-positioned at the material entities

versus resources held at the parent. In considering the balance between certainty and flexibility, the risk profile of each material entity should inform the “unanticipated outflows” at the entity, which should be taken into account in determining the appropriate balance. For instance, the balance would likely be different for a large, complex, foreign trading subsidiary versus a small, domestic bank subsidiary.

LIQ 6. RLAP Guidance Application

Q. The RLAP guidance elements can be applied in different ways that yield disparate outcomes for the same situation. For instance, a parent overnight loan to a material entity could be assumed to unwind (treated as a third-party exposure), or it could be assumed to be trapped (to not augment parent resources). In such situations, what should a firm do to ensure it is applying the guidance appropriately?

A. Firms should interpret and apply the Final Guidance in the context of the Resolution Plan Assessment Framework and Determinations paper (April 2016), which states on page 10:

*“[Firms] must be able to track and measure their liquidity sources and uses at all material entities under normal and stressed conditions. They must also conduct liquidity stress tests that **appropriately capture the effect of stresses and impediments to the movement of funds**”*

(emphasis added).

For instance, the Final Guidance states:

- “The [RLAP] model should ensure that the parent holding company holds sufficient HQLA (inclusive of its deposits at the U.S. branch of the lead bank subsidiary) to cover the sum of all stand-alone material entity net liquidity deficits.”
- An RLAP model that utilizes the U.S. LCR definition of HQLA for each material entity and expands that for the parent to include parent deposits at the U.S. branch of the lead bank subsidiary would be consistent with the Final Guidance. For an RLAP model that utilizes an internal stress testing definition of HQLA that is more expansive than the U.S.

LCR definition, the Agencies expect the firm to support whether that assumption is consistent with a liquidity stress test that appropriately captures the effect of stresses and impediments to the movement of funds.

The Final Guidance also states:

- “[T]he firm should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities **or to augment parent resources**” (emphasis added).
- An RLAP model that assumes zero liquidity flows from material entities back to the parent would be consistent with this statement. Note, parent HQLA (including overnight secured lending collateralized by Treasury securities), as well as deposits at the U.S. branch of the lead bank subsidiary, would also be consistent with this statement.

In addition, the Final Guidance states:

- “The stand-alone net liquidity position of each material entity (HQLA less net outflows) should be measured using the firm’s internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures.”

A firm’s RLAP model should “treat inter-affiliate exposures in the same manner as third-party exposures” only where the results would appropriately capture impediments to the movement of funds. For instance, application of third-party assumptions to inter-affiliate deposits that would result in treatment of inter-affiliate deposits as HQLA, and thus not subject to any impediments to the movement of funds, even though such impediments could exist, would not be consistent with the Final Guidance.

More generally, for material entities where the net liquidity position is comprised of a significant third party net outflow offset by an inter-affiliate net inflow, the Agencies note the heightened importance of taking into account “trapped liquidity as a result of actions taken by clients, counterparties, financial market utilities (FMUs), and foreign supervisors, among others,” as described in the Liquidity section of the Final Guidance.

LIQ 7. Not consolidated.

LIQ 8. Inter-Affiliate Transactions with Optionality

Q. How should firms treat an inter-affiliate transaction with an embedded option that may affect the contractual maturity date?

A. For the purpose of calculating a firm's net liquidity position at a material entity, RLAP and RLEN models should assume that these transactions mature at the earliest possible exercise date; this adjusted maturity should be applied symmetrically to both material entities involved in the transaction. See also "LIQ 6. RLAP Guidance Application."

LIQ 9. Stabilization and Regulatory Liquidity Requirements

Q. As it relates to the RLEN model and actions necessary to re-establish market confidence, what assumptions should firms make regarding compliance with regulatory liquidity requirements?

A. Firms should consider the applicable regulatory expectations for each material entity to achieve the stabilization needed to execute the preferred strategy. Firms' assumptions in the RLEN model regarding the actions necessary to reestablish market confidence during the stabilization period may vary by material entity, for example, based on differences in regulatory, counterparty, other stakeholder interests, and based on the preferred strategy for each material entity. See also "LIQ 2. Distinction between Liquidity Forecasting Periods."

LIQ 10. HQLA and Assets Not Eligible as HQLA in RLAP and RLEN Models

Q. The Final Guidance states that HQLA should be used to meet estimated net liquidity deficits in the RLAP model and that the RLEN estimate should be based on the minimum amount of

HQLA required to facilitate the execution of the firm’s preferred resolution strategy. How should firms incorporate any expected liquidity value of assets that are not eligible as HQLA (non-HQLA) into RLAP and RLEN models?

A. A firm’s RLAP model should assume that only HQLA are available to meet net liquidity deficits at material entities. For a firm’s RLEN model, firms may incorporate conservative estimates of potential liquidity that may be generated through the monetization of non-HQLA. The estimated liquidity value of non-HQLA should be supported by thorough analysis of the potential market constraints and asset value haircuts that may be required. Assumptions for the monetization of non-HQLA should be consistent with the preferred resolution strategy for each material entity. See “LIQ 6. RLAP Guidance Application” for detail on assets eligible as HQLA.

LIQ 11. Components of Minimum Operating Liquidity

Q. Do the agencies have particular definitions of the “intraday liquidity requirements,” “operating expenses,” and “working capital needs” components of minimum operating liquidity (MOL) estimates?

A. No. A firm may use its internal definitions of the components of MOL estimates. The components of MOL estimates should be well-supported by a firm’s internal methodologies and calibrated to the specifics of each material entity.

LIQ 12. RLEN Model and Net Revenue Recognition

Q. Can firms assume in the RLEN model that cash-based net revenue generated by material entities after the parent holding company’s bankruptcy filing is available to offset estimated liquidity needs?

A. Yes. Firms may incorporate cash revenue generated by material entities in the RLEN model. Cash revenue projections should be conservatively estimated and consistent with the operating environment and the preferred strategy for each material entity.

LIQ 13. RLEN Model and Inter-Affiliate Frictions

Q. Can a firm modify its assumptions regarding one or more inter-affiliate frictions during the stabilization or post-stabilization period in the RLEN model?

A. Once a material entity has achieved market confidence necessary for stabilization consistent with the preferred strategy, a firm may modify one or more inter-affiliate frictions, provided the firm provides sufficient analysis to support this assumption.

LIQ 14. RLEN Relationship to DFAST Severely Adverse scenario

(See “CAP 4. RCEN Relationship to DFAST Severely Adverse Scenario” in the Capital section.)

LIQ 15. Application of Inter-Affiliate Frictions Guidance to Intermediate Holding Companies (IHC)

Q. With respect to an IHC that has been established to facilitate recapitalization or liquidity support to material entities, how should firms apply the RLAP and RLEN guidance for inter-affiliate frictions?

A. For IHCs that provide funds for recapitalization or liquidity support to material entities and do not have any operations or outstanding third-party exposures of their own, the Agencies recognize that fewer potential impediments to the movement of the funds may exist when compared to movements of funds between operating material entities. Still, for both the RLAP

and RLEN model, firms are expected to provide an analysis of, and take into account, potential inter-affiliate frictions that may exist between an IHC and material entities.

Specific to the Final Guidance for the RLAP model and the Q&A in “LIQ 6. RLAP Guidance Application,” it would be inconsistent with the guidance for firms to assume that an IHC could be used as an intermediary to facilitate transfers of net liquidity surpluses at one material entity to another material entity. Instead, firms may only assume a one-way flow of funds from the IHC to the material entity. For the RLEN model, firms should assess the potential for inter-affiliate frictions in transactions from the IHC to material entities as well as from material entities to the IHC. The prohibition on assuming that net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities under the Final Guidance does not prohibit the firm from assuming that an IHC may provide liquidity to material entities.

LIQ 16. Access to Reserve Bank Daylight Credit

Q. What assumptions can firms make regarding access to Federal Reserve daylight credit?

A. Access to daylight credit is governed by the Federal Reserve Board’s Policy on Payment System Risk (PSR Policy) and generally is provided only to institutions that are in sound financial condition based on their capital ratios and supervisory ratings and subject to the discretion of the Reserve Bank. For the purpose of Section 165(d) resolution plans only, firms may assume that subsidiary depository institutions that are at least adequately capitalized will have access to fully collateralized daylight credit even in cases where the supervisory ratings of the parent assumed in the exercise fall below fair as a result of the condition of the parent firm or an affiliate. However, the plan should not assume depository institutions will have access to

intraday credit while undercapitalized, in FDIC receivership, or operating as a bridge bank. This guidance applies only to the Section 165(d) resolution plans and does not modify the PSR Policy.

Governance Mechanisms

GOV 1. Triggers

Q. Do firms need to have all three types of triggers (i.e., capital, liquidity, and market) for each phase (i.e., BAU to stress, stress to runway, runway to recapitalization; and recapitalization to bankruptcy filing/PNV)?

A. No, a firm does not need all three types of triggers for each phase.

Q2. Are firms required to have triggers for each material entity or are firm-wide triggers sufficient?

A. Triggers at the level of the consolidated company may not be sufficient without additional triggers at the material entity level depending upon the firm structure and/or preferred strategy.

All triggers may not be applicable to all material entities. For example, pre-funded service entities or foreign branches may not require particular capital or liquidity triggers if they will not need these resources prior to the parent company entering bankruptcy.

Q3. Should firms include a formal regulatory trigger by which the Agencies can directly trigger a contractually binding mechanism?

A. No.

Q4. Could the Agencies clarify what is meant by “synchronized” triggers within the Final Guidance?

A. “Synchronized to the firm’s liquidity and capital methodologies” in this context means informed by the firm’s RCEN and RLEN estimates.

Q5. What are examples of market metrics and market metric triggers?

A. The Agencies are not prescribing specific market metrics or triggers.

Operational: Shared Services

OPS SS 1. Not consolidated.

OPS SS 2. Working Capital

Q. Must working capital be maintained for third party and internal shared service costs?

A. Where a firm maintains shared service companies to provide services to affiliates, working capital should be maintained in those entities sufficient to permit those entities to continue to provide services for six months or through the period of stabilization as required in the firm's preferred strategy. Costs related to third-party vendors and inter-affiliate services should be captured through the working capital element of the MOL estimate (RLEN).

Q2. When does the six month working capital requirement period begin?

A. The measurement of the six month working capital expectation begins upon the bankruptcy filing of the parent company. The expectation for maintaining the working capital is effective upon the July 2017 submission.

OPS SS 3. Not consolidated.

OPS SS 4. Not consolidated.

Operational: Payments, Clearing, and Settlement

OPS PCS 1. Not consolidated.

OPS PCS 2. Access to Reserve Bank Daylight Credit

(See "LIQ 16. Access to Reserve Bank Daylight Credit" in the Liquidity section)

Legal Entity Rationalization and Separability

LER 1. Data Room

Q. What information should be in the data room?

A. The Final Guidance addresses the data room on page in the section regarding Legal Entity Rationalization and Separability. The data room should contain the necessary information on discrete sales options to facilitate buyer due diligence. Including only a table of contents of information that could be provided when needed would not be sufficient.

Q2. Are firms expected to include in a data room described in the Final Guidance lists of individual employee names and compensation levels?

A. The firm should include the necessary information to facilitate buyer due diligence. In the circumstance where employee information would be important to buyer due diligence the firm should demonstrate the capability to provide such information in a timely manner. For individual employee names and compensation, the data room may include a representative sample and may have personally identifiable information redacted.

LER 2. Not consolidated.

LER 3. Legal Entity Rationalization Criteria

Q. Is it acceptable to take into account business-related criteria, in addition to the resolution requirements, so that the LER Criteria can be used for both resolution planning and business operations purposes?

A. Yes, LER criteria may incorporate both business and resolution considerations. In determining the best alignment of legal entities and business lines to improve the firm's resolvability

under different market conditions, business considerations should not be prioritized over resolution needs.

LER 4. Creation of Additional Legal Entities

Q. Is the addition of legal entities acceptable, so long as it is consistent with the LER criteria?

A. Yes.

LER 5. Clean Funding Pathway

Q. Can you provide additional context around what is meant by clean lines of ownership and clean funding pathways in the legal entity rationalization criteria? Additionally, what types of funding are covered by the requirements?

A. The funding pathways between the parent and material entities and the ownership chain should minimize uncertainty in the provision of funds and facilitate recapitalization. Also, the complexity of ownership should not impede the flow of funding to a material entity under the firm's preferred resolution strategy. Potential sources of additional complexity could include, for example, multiple intermediate holding companies, tenor mismatches, or complicated ownership structures (including those involving multiple jurisdictions or fractional ownerships). Ownership should be as clean and simple as practicable, supporting the preferred strategy and actionable sales, transfers, or wind-downs under varying market conditions. The clean funding pathways expectation applies to all funding provided to a subsidiary material entity regardless of type and should not be viewed solely to apply to internal TLAC.

Q2. The Final Guidance regarding legal entity rationalization criteria discusses "clean lines of ownership" and "clean funding pathways." Does this statement mean that firms' legal entity

rationalization criteria should require funding pathways and recapitalization to always follow lines of ownership?

A. No. However, the firm should identify and address or mitigate any legal, regulatory, financial, operational, and other factors that could complicate the recapitalization and/or liquidity support of material entities.

LER 6. Separability Options Information

Q. How should a firm approach inclusion of legal risk assessments and other buyer due diligence information into separability options?

A. The legal assessment should consider both buyer and seller legal aspects that could impede the timely or successful execution of the divestiture option. Where impediments are identified, mitigation strategies should be developed.

LER 7. Market Conditions

Q. What is meant by the phrase “under different market conditions” in the Legal Entity Rationalization and Separability section of the Final Guidance?

A. The phrase “under different market conditions” is meant to ensure that a firm has a menu of divestiture options from which at least some could be executed under different market stresses.

LER 8. Not consolidated.

LER 9. Application of Legal Entity Rationalization Criteria

Q. Which legal entities should be covered under the LER framework?

A. All legal entities. The scope of a firm’s LER criteria should apply to the entire enterprise.

Q2. To the extent a firm has a large number of similar non-material entities (such as single-purpose entities formed for Community Reinvestment Act purposes), may a firm apply its legal entity rationalization criteria to these entities as a group, rather than at the individual entity level?

A. Yes.

Derivatives and Trading Activities

To the extent relevant, the derivatives and trading FAQs have been consolidated into the updated section of the Final Guidance.

Legal

LEG 1. Emergency Motion

Q. The Final Guidance states that “the plan should consider contingency arrangements in the event the bankruptcy court does not grant the emergency motion.” What are the Agencies’ expectations given the industry’s focus on complying with the ISDA Resolution Stay Protocol?

A. Firms may present a preferred strategy that makes use of the Protocol. Nonetheless, the Agencies expect firms also to consider the possibility that a bankruptcy court may not timely enter an order that satisfies the Transfer Conditions and/or the U.S. Parent debtor-in-possession Conditions of the Protocol as contemplated in the firm’s preferred strategy. See the Legal Obstacles Associated with Emergency Motions section of the Final Guidance.

Q2. Could the Agencies clarify what further legal analysis would be expected regarding the impact of potential state law and bankruptcy law challenges and mitigants to the planned provision of Support?

A. The firms should address developments from the firm's own analysis of potential legal challenges regarding the Support and should also address any additional potential legal challenges identified by the Agencies in the Pre-Bankruptcy Parent Support section of the Final Guidance. A legal analysis should include a detailed discussion of the relevant facts, legal challenges, and Federal or State law and precedent. The analysis also should evaluate in detail the legal challenges identified in the Final Guidance under the heading "Pre-Bankruptcy Parent Support," any other legal challenges identified by the firm, and the efficacy of potential mitigants to those challenges. Firms should identify each factual assumption underlying their legal analyses and discuss how the analyses and mitigants would change if the assumption were not to hold. Moreover, the analysis is not required to take the form of a legal opinion.

Q3. Not consolidated.

LEG 2. Contractually Binding Mechanisms

Q. Do the Agencies have any preference as to whether capital is down-streamed to key subsidiaries (including an IDI subsidiary) in the form of capital contributions vs. forgiveness of debt?

A. No. The Agencies do not have a preference as to the form of capital contribution or liquidity support.

Q2. The letter makes reference to a contractually binding mechanism. Does such an agreement relate to the provision of capital or liquidity? What classes of assets would be deemed to provide capital vs. liquidity?

A. Contractually binding mechanism is a generic term and includes the down-streaming of capital and/or liquidity as contemplated by the preferred strategy. Furthermore, it is up to the

firm, as informed by any relevant guidance of the Agencies, to identify what assets would satisfy a subsidiary's need for capital and/or liquidity.

Q3. Is there a minimum acceptable duration for a contractually binding mechanism? Would an "evergreen" arrangement, renewable on a periodic basis (and with notice to the Agencies), be acceptable?

A. To the extent a firm utilizes a contractually binding mechanism, such mechanism, including its duration, should be appropriate for the firm's preferred strategy, including adequately addressing relevant financial, operational, and legal requirements and challenges.

Q4. Not consolidated.

Q5. Not consolidated.

Q6. The firm may need to amend its contractually binding mechanism from time to time resulting potentially from changes in relevant law, new or different regulatory expectations, etc. Is a firm able to do this as long as there is no undue risk to the enforceability (e.g., no signs of financial stress sufficient to unduly threaten the agreement's enforceability as a result of fraudulent transfer)?

A. Yes, however the Agencies should be informed of the proposed duration of the agreement, as well as any terms and conditions on renewal and/or amendment. Any amendments should be identified and discussed as part of the firm's next plan submission.

General

None of the general FAQs were consolidated.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,
Secretary of the Board.

Dated at Washington, DC, on December 18, 2018.

Federal Deposit Insurance Corporation.

Valerie J. Best,
Assistant Executive Secretary.

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