

FEDERAL RESERVE SYSTEM

12 CFR Part [●]

[Regulation; Docket No. R-_____]

RIN 7100-AD73

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 381

RIN 3064 AD 77

Resolution Plans Required.

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

ACTION: Final Rule.

SUMMARY: The Board and the Corporation (together the “Agencies”) are adopting this final rule to implement the requirement in section 165(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) regarding resolution plans. Section 165(d)(1) requires each nonbank financial company supervised by the Board and each bank holding company with assets of \$50 billion or more to report periodically to the Board, the Corporation, and the Financial Stability Oversight Council (the “Council”) the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

DATES: The rule is effective [INSERT DATE].

FOR FURTHER INFORMATION CONTACT:

Board: Barbara J. Bouchard, Senior Associate Director, (202) 452-3072, Michael D. Solomon, Associate Director, (202) 452-3502, or Avery I. Belka, Counsel, (202) 736-5691, Division of Banking Regulation and Supervision; or Ann E. Misback, Associate General Counsel, (202) 452-

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3788, or Dominic A. Labitzky, Senior Attorney, (202) 452-3428, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

Corporation: Joseph Fellerman, Senior Program Analyst, (202) 898-6591, Office of Complex Financial Institutions, Richard T. Aboussie, Associate General Counsel, (703) 562-2452, David N. Wall, Assistant General Counsel, (703) 562-2440, Mark A. Thompson, Counsel, (703) 562-2529, or Mark G. Flanigan, Counsel, (202) 898-7426, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background.

To promote financial stability, section 165(d) of the Dodd-Frank Act requires each nonbank financial company supervised by the Board and each bank holding company with total consolidated assets of \$50 billion or more (each a “covered company”) to periodically submit to the Board, the Corporation and the Council a plan for such company’s rapid and orderly resolution in the event of material financial distress or failure, and a report on the nature and extent of credit exposures of such covered company to significant bank holding companies and significant nonbank financial companies and the nature and extent of credit exposures of significant bank holding companies and significant nonbank financial companies to such covered company.¹ This final rule implements the resolution plan requirements set forth in section 165(d)(1) of the Dodd-Frank Act.

Section 165(d)(1) provides regulators with the ability to conduct advance resolution planning for a covered company. As demonstrated by the Corporation’s experience in failed bank resolutions, as well as the Board’s and the Corporation’s experience in the recent crisis,

¹ See generally 12 U.S.C. § 5365(d).

advance planning is critical for an efficient resolution of a covered company.² Advance planning has long been a component of resiliency and recovery planning by financial companies. The Dodd-Frank Act requires that covered companies incorporate resolution planning into their overall business planning processes. In preparing for an orderly liquidation of a financial company under Title II of the Dodd-Frank Act, the Corporation will have access to the information included in such company's resolution plan. Advance knowledge of and access to this information will be a vital element in the Corporation's resolution planning for such a company. The resolution plan required of covered companies under this final rule will help regulators to better understand a firm's business and how that entity may be resolved, and will also enhance the regulators' understanding of foreign operations in an effort to develop a comprehensive and coordinated resolution strategy for a cross-border firm.

The final rule requires each covered company to produce a resolution plan, or "living will," that includes information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company; full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company; identification of the cross-guarantees tied to different securities; identification of major counterparties; a process for determining to whom the collateral of the company is pledged; and any other information that the Board and the Corporation jointly require by rule or order.³ The final rule requires a strategic analysis by the covered company of how it can be resolved under Title 11 of the U.S. Code (the "Bankruptcy Code") in a way that would not pose systemic risk to the financial system. In doing

² The ability to undertake advance planning for the resolution of any financial institution, from small banks to globally active financial companies, is a precondition for effective crisis management and resolution.

³ See 12 U.S.C. 5365(d)(1).

so, the company must map its core business lines and critical operations to material legal entities and provide integrated analyses of its corporate structure; credit and other exposures; funding, capital and cash flows; the domestic and foreign jurisdictions in which it operates; and its supporting information systems for core business lines and critical operations.

II. Notice of Proposed Rulemaking: Summary of Comments

On April 22, 2011, the Board and the Corporation invited public comment on a Notice of Proposed Rulemaking: Resolution Plans and Credit Exposure Reports Required (the “proposed rule” or “proposal”).⁴ The comment period ended on June 10, 2011. The Board and the Corporation collectively received 22 comment letters from a range of individuals and banking organizations, as well as industry and trade groups representing banking, insurance, and the broader financial services industry. In addition, the Board and the Corporation met with industry representatives to discuss issues relating to the proposed rule.

While the commenters generally expressed support for the broader goals of the proposed rule to require Covered Companies to plan for their orderly liquidation or restructuring in bankruptcy during times of material financial distress, many commenters also expressed concerns about various aspects of the proposed rule. The comments the Board and the Corporation received fit into five broad categories: one group of comments discussed issues related to the rulemaking process itself; a second group of comments focused on the resolution planning requirement, including the required informational content, of the proposed rule; a third group addressed the credit exposure reporting requirement; another dealt with the application of the proposed rule to foreign-banking organizations (“FBOs”); and a final set of comments concerned the confidential treatment of information provided as part of a resolution plan or credit exposure report. We summarize the comments below.

⁴ 76 Fed Reg. 22,648 (April 22, 2011).

i. Rulemaking Process

With respect to the rulemaking process itself, a number of commenters expressed concern about expediting the time-frame to finalize the rule ahead of the statutory deadline, January 21, 2012. In this regard, commenters noted the close connections between the proposed rule and the Board's other forthcoming rulemakings to establish additional enhanced prudential standards under section 165. Commenters questioned whether the Board and Corporation would have sufficient time to review and consider the comments received on the proposal and revise the proposal accordingly.

One commenter asserted that the proposed rule met the \$100 million threshold for an economically significant regulation and suggested that the proposed rule should be reviewed by the Office of Management and Budget. Two commenters asserted that the proposal did not comply with the Paperwork Reduction Act and requested that the Board and the Corporation correct this portion of the proposal and provide a new comment period. Another commenter argued that the cost-benefit analysis outlined in the proposed rule significantly underestimates the time, effort, and expense associated with compliance.

ii. Substantive Resolution Plan Requirements

With respect to the resolution plan requirement, some commenters suggested that the resolution plan requirement adopt a "principle-based" approach with the specific content of each plan developed through the iterative supervisory process, and that the Agencies' review of each plan be tied to the scope and planning decided on between individual firms and the Agencies as part of that process. In contrast, another commenter suggested that the plans be very specific and operationally oriented; further suggesting that such plans should include, among other things, practice exercises to test readiness and detailed descriptions of actions to be taken to facilitate

rapid and orderly resolution. Similarly, another commenter suggested that the final rule should provide detailed guidance regarding the strategic analysis, facilitate the creation of a structured data source for requested data, and adopt a submission framework to be used in the creation and review of the resolution plan. Commenters also suggested that the final rule draw a clear distinction between the limited resolution plan required by the Dodd-Frank Act and the broader resolution planning process that may be required as a prudential matter.

A number of commenters argued that insurance companies and other entities that are not subject to the Bankruptcy Code should be exempted from the resolution plan requirement, be allowed to file streamlined plans, or, where such companies are a part of a covered company, be excluded from such covered company's resolution plan. Others questioned how the resolution plans should address such entities. One commenter suggested that managers of money market funds should be excluded from the requirements of the proposed rule. Some commenters specifically requested that (i) the final resolution plan requirement reflect and conform to section 203(e) of the Dodd-Frank Act, which provides that any insurance company that is a covered financial company or a subsidiary thereof will be liquidated or rehabilitated under applicable State law; and (ii) Agencies accept as a credible resolution plan an insurance company's statement of its intent to submit itself, or its insurance subsidiaries, to applicable state liquidation or rehabilitation regimes.

One commenter suggested that the scope of the final rule should go beyond bankruptcy and should explicitly address questions of legal jurisdiction and conflicting laws. This commenter argued that a resolution plan should be supported by a legal opinion addressing which law would apply to each of the covered company's material entities in the case of the covered company's resolution. On the other hand, another commenter requested that the final

rule provide only that the resolution plan will analyze how the continuing operations of a covered company's insured depository institutions can be adequately protected in connection with the resolution of the company under the Bankruptcy Code. Still another commenter suggested that resolution under the Bankruptcy Code was inconsistent with the requirement that a covered company's resolution plan adequately protect the company's insured depository institution from the risk arising from the activities of the company's nonbanks because the covered companies cannot provide any assurances of what will happen in a bankruptcy proceeding and cannot provide special protection for a particular subsidiary in the bankruptcy process.

Commenters suggested that submissions of the resolution plan should be phased in to allow firms sufficient time to prepare and collect the extensive information required as part of the plan. Suggested approaches to phasing-in of the submission requirements included: a pilot program that would apply first to the largest, most complex firms, rolling out the entire process on a staggered basis (starting with the largest U.S.-based companies), or staggering the rule's reporting requirements. Commenters also criticized the proposed rule for not differentiating among bank holding companies subject to the proposed rule. These commenters noted that such organizations range from large, complex, highly interconnected organizations that have substantial nonbank and foreign operations to smaller, less complex organizations that are predominantly composed of one or more insured depository institutions, have few foreign operations, and fewer interconnections with other financial institutions. The commenters, therefore, suggested that the final rule should provide for a tailored resolution plan regime for smaller, less complex domestic bank holding companies.

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A number of comments expressed concern about the initial submission and update requirements of a resolution plan. Commenters argued that the requirement to submit initial plans 180 days that from the effective date of the final rule is inadequate and inefficient. Instead, these commenters suggested that covered companies should have 270 days, 360 days, or 18 months after the effective date of the final rule to make their initial submissions. Moreover, commenters suggested that given the lack of supervisory and market experience with resolution planning, the final rule should communicate the Board's and the Corporation's expectations for "first generation" resolution plans and should provide for meaningful feedback by the Agencies within the 60 day period the Agencies have to review an initial resolution plan. Comments also noted that annual updates to the plan should not be due at the end of the first calendar quarter when firms have to meet other important reporting requirements. Commenters suggested that the timing of the annual update should be determined by agreement among the Board, the Corporation, and the covered company.

Concerning the requirement for interim updates to a resolution plan, one commenter argued that the requirement was not supported by the Dodd-Frank Act and should be excluded from the final rule. Other commenters suggested that if the final rule required interim updates, such updates should be triggered by a "fundamental change" standard instead of the material change standard described in the proposed rule. Commenters further suggested, with respect to the triggers for an interim update, that instead of a 5 percent market cap reduction, the final rule should provide for a percentage reduction change of not less than 15 percent tied to an average market capitalization of the covered company's peer group over some specific period. Commenters also suggested that the 45 day period for interim updates be lengthened to 90 days.

The proposal required that, within a reasonable amount of time after submitting its initial resolution plan, a firm demonstrate its capacity to promptly produce the data underlying the key aspects of its resolution plan. Commenters objected to this requirement indicating that it would be better addressed as part of the Board's and Corporation's ongoing review of the resolution-planning process conducted by individual firms, rather than as a regulatory requirement. Similarly, commenters suggested that any requirements related to data production capabilities requirement should be omitted from the final rule because such a requirement is better addressed as part of the Agencies' ongoing review of resolution planning by specific companies. Commenters also recommended that data required to be collected through various Dodd-Frank Act required initiatives should be coordinated to minimize redundant data collections. Other commenters recommended that covered companies' information technology systems be able to integrate and distribute essential structural and operational information on short notice to facilitate such companies' resolutions.

Some commenters objected to the requirement that multiple stress scenarios be addressed as part of the plan as burdensome and unworkable. The commenters suggested that the number of financial distress scenarios to be addressed in a covered company's resolution plan should be limited; with the specific number of scenarios to be agreed to between the covered company and the Agencies prior to the initial submission. Commenters also expressed concern about having to address a systemic stress scenario, which commenters considered to more appropriately related to the Orderly Liquidation Authority in Title II of the Dodd-Frank Act.

Some commenters criticized the corporate governance requirement of the proposed rule. These commenters suggested that a covered company's corporate governance with regard to resolution planning, unless determined to be substantially defective in one or more respects,

should be deemed to facilitate orderly resolution, as well as to be informationally complete and credible. Another commenter suggested that the corporate governance requirement should include requirements for consistently maintaining accurate asset valuations.

Commenters also noted the burdens nonbank financial companies will face. Where such firms have established an intermediate holding company (“IHC”), commenters asked that resolution plan requirement apply only to the IHC. These commenters also suggested nonbank financial firms be permitted to complete any restructuring involved in the establishment of their IHC before commencing resolution planning. Commenters also asserted that the requirement to provide an unconsolidated balance sheet and consolidating schedules was unduly burdensome, costly and impracticable.

Additionally, commenters noted that some key terms were not defined in the proposed rule. Several commenters suggested that the Agencies should develop the meaning of key terms in the final rule over time and through the supervisory process by issuing guidance, supervisory letters, or revised regulations. Other commenters specifically recommended definitions for certain key terms, including “credible plan,” “rapid and orderly resolution,” and “material financial distress.”

The Board and the Corporation received several comments that requested clarifications on various aspects of the resolution plan requirement contained in the proposed rule. Several commenters requested clarification of the term “extraordinary support,” and suggested that Federal Reserve Bank advances, Federal Home Loan Bank advances and the use of the Deposit Insurance Fund not be considered extraordinary support under the regulation.

A number of commenters expressed concern about how the Board and the Corporation will determine whether a plan is not credible or deficient and the possible ramifications of such a

determination. Some commenters requested clarification of the standards relevant to such a determination, and others suggested that these standards should be developed over time. Several commenters sought clarification of whether a covered company's board of directors (or its delegee in the case of a foreign-based covered company) is required to certify or confirm all the factual information contained in the company's resolution plan. One commenter asked whether an interim update involves the submission of an entire resolution plan or merely involves additional information describing the event triggering the update, any effects the event has on the plan, and the firm's actions to address such effects.

The Board and the Corporation were also asked to clarify the relationship that insolvency regimes other than bankruptcy bear on the preparation and assessment of a resolution plan. Commenters also asked the Agencies to confirm that the rule is not intended to restrain the covered companies from expanding through mergers, acquisitions, or diversification of their business; that the resolution plan is not meant to impose on firms the need to have duplicative capacity; and that the Agencies will take into account the companies' own cost benefit analysis in connection with whether financial and human resources should be devoted to proving duplicative capacity.

iii. Substantive Credit Exposure Report Requirements

Several commenters questioned whether there was a meaningful opportunity to comment on the credit exposure report provisions of the proposed rule and suggested that these aspects of the rulemaking be postponed or re-proposed as part of the Board's forthcoming proposal to implement the single counter party credit exposure limits established under section 165(e) of the Dodd-Frank Act. Other commenters suggested that the credit exposure reporting requirement be phased-in over a period of time. Commenters also criticized the bi-directional reporting

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requirement and recommended that the requirement be limited to available information.

Commenters also suggested that the Board maintain a list of “significant companies” for the purposes of the credit exposure report provisions of the proposed rule, that the reporting of each category should be a single number reflecting the credit exposure of the consolidated company, that the definition of “subsidiary” for the purpose of this rulemaking should be narrower than the definition of “subsidiary” found in the Board’s Regulation Y, that the credit exposure report be due 60 days, rather than 30 days, after the end of each calendar quarter, and that in lieu of quarterly reporting of trading positions, the Agencies monitor (and require improvements as needed) a firm’s capabilities to produce trading data quickly and on an automated basis.

Finally, commenters suggested that reporting of credit exposures associated with intraday credit extended should be of intraday limits and of the consequence of breaching that limit, rather than of credit exposure on any one day within a reporting quarter.

Some commenters noted that most of the information contained in the credit exposure report requirement is currently reported by insurance companies to state insurance commissioners on an annual basis, and suggested that the Board and the Corporation rely on these annual reports instead of requiring a separate credit exposure report from insurance companies. One commenter indicated that the requirement to develop the capacity to produce all data underlying the report should “be expanded to specify that the covered company develop a continuously updated database of total counterparty credit and loan exposures that can be immediately disaggregated by counterparty or borrower and legal entity and also includes information on the collateral for each exposure.” Another commenter suggested that companies should be required to be able to produce such reports within 24 hours. Similarly, a commenter asserted that covered companies be required to be able to report on their supply of liquidity to,

and dependence for liquidity on, other firms and to estimate and report, within 24 hours, on the likely effect of their sale on the prices of major classes of assets.

Commenters noted that the definition of “significant” nonbank financial company should be clarified before incorporation into the final rule and also asked that the Board and the Corporation clarify when the first credit exposure report would be due.

iv. Foreign Banking Organizations

With respect to foreign based covered companies, some commenters suggested that the \$50 billion total consolidated asset threshold be limited to U.S. total consolidated assets only and not to all global assets. Alternatively, these commenters suggested that a foreign banking organization (“FBO”) with less than \$50 billion in U.S. total consolidated assets be subject to reduced or streamlined reporting, and that the rule should be tailored to take account of the risk posed by an FBO to U.S. financial stability, the FBO’s structure and complexity, as well as the size of its U.S. operations and the extent of its interconnectedness in U.S. financial markets. In this respect, commenters requested that the submission deadline be extended for FBOs because it will take more time for these organizations to complete a resolution plan.

Commenters suggested that the resolution plan requirement be aligned with other ongoing cross-border initiatives so as to avoid overlapping or inconsistent requirements for internationally active firms. Commenters also advocated for international cooperation in developing information-sharing arrangements, including coordination with or reliance on home-country resolution plans. One comment specifically asked for clarification concerning information sharing with foreign regulators and recommended consultation with a firm’s appropriate home-country authority prior to making a credibility determination regarding the resolution plan or imposing sanctions pursuant to the rule. A commenter suggested that for those

firms with an established Crisis Management Group, the resolution plans developed through that process, with the Board and the Corporation as participants, should satisfy their section 165(d) resolution plan requirement.

Commenters asked the Agencies to clarify that any restriction or requirements imposed pursuant to the rule would apply only to an FBO's U.S. activities, assets, and operations. In a banking organization with multiple covered companies, commenters sought clarification on whether the organization could submit one resolution plan or whether each covered company within such an organization had to submit a separate individualized resolution plan. The Board and the Corporation were also asked to clarify that an FBO's board of directors has discretion to identify the delegee (including named individuals, specific titleholders, and designated group or committee) to act on its behalf and in prescribing the terms of the delegation; that an FBO may rely on certain information reported to the Board to satisfy the rule's requirement regarding the structure of and changes to such FBO's operations; and that the resolution plan requirement will be consistent with the Corporation's proposed rule regarding resolution planning for significant insured depository institutions.

v. *Confidentiality*

A frequent comment related to the confidentiality of resolution plans and credit exposure reports. Commenters expressed concern that the proposed rule did not provide a sufficient level of assurance that resolution plans and credit exposure reports submitted would be kept confidential, particularly in light of the disclosure requirements of the Freedom of Information Act ("FOIA"). The commenters suggested the proposed rule acknowledge the applicability of certain FOIA exemptions. In particular, commenters expressed the view that information

submitted in connection with the resolution plan requirement and credit exposure report should be treated as confidential supervisory information.

One commenter suggested that the resolution plan and credit exposure report not be disclosed to the Council and other regulatory agencies. Another commenter suggested that the final rule provide that the Agencies will oppose, to the maximum extent possible, any production of resolution plan materials in response to a third party subpoena or other requests, and that the Agencies should restrict access to resolution plan materials to staff of the Agencies with specific needs for such access. Moreover, commenters suggested that the Board and the Corporation put in place practical procedures (either as part of the final rule or in guidance) to minimize the risk of leaks or inadvertent disclosures when information contained in the resolution plan and credit exposure report was shared among the covered company's regulators, including home-country supervisors. Commenters asked the Agencies to discuss any concerns regarding their ability to provide confidential treatment to the resolution plan and all related information in the final rule and specifically request that Congress take appropriate legislative action to address such concerns.

The Board and the Corporation have carefully considered the comments and made appropriate revisions to the final rule as described below.

III. Overview of Final Rule.

The final rule applies to each covered company, which includes any bank holding company that has \$50 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Federal Reserve's FR Y-9C. It also includes any foreign bank or company that is or is treated as a bank holding company under section 8(a) of the International

Banking Act of 1978⁵ and that has \$50 billion or more in total consolidated assets, as determined based on the foreign bank's or company's most recent annual or, as applicable, the average of the four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y-7Q. A covered company that is a bank holding company remains a "covered company" unless it has less than \$45 billion in total consolidated assets, as determined based on the most recent annual or, as applicable, the average of the four most recent quarterly reports made to the Federal Reserve. To further clarify, a company that after reducing its total consolidated assets to below \$45 billion, as described above, and is therefore no longer treated as a "covered company", would again become a covered company if it has total consolidated assets of \$50 billion or more, as determined based on the most recent annual or, as applicable, the average of the four most recent quarterly reports made to the Federal Reserve.

In addition, a covered company includes any nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act⁶ must be supervised by the Board and for which such determination is in effect. In a multi-tiered holding company structure, covered company means the top-tier legal entity of the multi-tiered holding company only.

The Board and Corporation believe that a plain reading of Section 165 of the Dodd-Frank Act leads to the reasonable interpretation that "total consolidated assets" for purposes of the \$50 billion threshold established in the statute encompasses a firm's world-wide consolidated assets, rather than only its U.S. assets. Thus, the final rule does not exclude non-U.S. assets for purposes of determining whether a foreign-based bank holding company must file a resolution plan as suggested by some commenters. Nonetheless, the Board and the Corporation recognize

⁵ 12 U.S.C. 3106(a).

⁶ 12 U.S.C. 5323.

that resolution plans will vary by company and, in their evaluation of plans, will take into account variations among companies in their core business lines, critical operations, domestic and foreign operations, capital structure, legal structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors.

Moreover, the Dodd-Frank Act requires that, in applying the requirements of section 165(d) to any foreign nonbank financial company supervised by the Board or any foreign-based company, the Board give due regard to the principle of national treatment and equality of competitive opportunity, and take into account the extent to which the foreign-based financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.⁷ Given the foregoing, the resolution plan of a foreign-based company that has limited assets or operations in the United States would be significantly limited in its scope and complexity. Furthermore, of utmost importance for the resolution plan of a foreign-based company with limited U.S.-based assets and no critical operations will be a close analysis of how the resolution plan fits within the firm's overall resolution or contingency planning process. The nature and extent of the home country's related crisis management and resolution planning requirements for the foreign-based company also will be considered as part of the Agencies' resolution plan review process.

The final rule requires that each covered company periodically submit to the Board and Corporation a plan for the rapid and orderly resolution of the covered company under the Bankruptcy Code in the event of material financial distress at or failure of the covered company. The final rule establishes rules and requirements regarding the submission and content of a

⁷ 12 U.S.C. 5365(b)(2).

resolution plan and procedures for review by the Board and Corporation of a resolution plan.

The Board will make such plans available to the Council upon request.

Under the Proposal, a firm would also have been required to submit a quarterly report on its credit exposure to other “significant” bank holding companies and financial firms, as well as their credit exposure to the firm. Commenters expressed significant concerns about the clarity of key definitions and the scope of the bi-directional and intraday reporting requirement of the proposal. Commenters recommended separating the credit exposure report requirement from the final rule, and suggested re-proposing the credit exposure report requirement in conjunction with the proposal to implement the Dodd-Frank single-counterparty credit exposure limit.

Commenters indicated that legal entity-level reporting could result in significant burden to the firms.

While the Board and the Corporation believe that robust reporting of a covered company’s credit exposures to other significant bank holding companies and financial companies is critical to ongoing risk management by covered companies, as well as to the Board’s ongoing supervision of covered companies and the Corporation’s responsibility to resolve covered companies, as appropriate, the Board and Corporation are not at this time finalizing the credit exposure reporting requirement.

Section-by-Section Analysis

Definitions. Section _____. 2 of the final rule defines certain terms, including “rapid and orderly resolution,” “material financial distress,” “core business lines,” “critical operations” and “material entities,” which are key definitions in the final rule.

“Rapid and orderly resolution” means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction

other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.⁸ Under the final rule, each resolution plan submitted should provide for the rapid and orderly resolution of the covered company.

“Material financial distress” with regard to a covered company means that: (i) the covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (ii) the assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or (iii) the covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business. Under the final rule, each resolution plan should provide for the rapid and orderly resolution of the covered company in the event of material financial distress or failure of the covered company.

“Core business lines” means those business lines, including associated operations, services, functions and support that, in the firm’s view, upon failure would result in a material loss of revenue, profit, or franchise value. The resolution plan should address how the resolution of the covered company will affect the core business lines.

“Critical operations” are those operations, including associated services, functions and support the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States. This definition is revised from the Proposal to provide greater clarity as to which

⁸ If a covered company is subject to an insolvency regime other than the Bankruptcy Code, the analysis should be in reference to that regime.

of a firm's operations would be deemed a "critical operation". Initially defined as operations that, upon failure or discontinuance, "would likely result in a disruption to the U.S. economy or financial markets," the Board and the Corporation revised this definition to more closely reflect the purpose of section 165 of the Dodd-Frank Act, i.e., "to prevent or mitigate risks to financial stability of the United States."⁹ Moreover, the revised definition clarifies that the threshold of significance for a disruption to U.S. financial stability resulting from the failure or discontinuance of a critical operation must be severe enough to pose a threat to the financial stability of the United States. For example, a critical operation of a covered company would include an operation, such as a clearing, payment, or settlement system, which plays a role in the financial markets for which other firms lack the expertise or capacity to provide a ready substitute. The resolution plan should address and provide for the continuation and funding of critical operations.

"Material entity" means a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line.

Resolution plan required. Section _____.3 of the proposed rule required each covered company to submit a resolution plan within 180 days of the effective date of the final rule, or within 180 days of such later date as the company becomes a covered company. Several commenters suggested that, given the limited resources of the Board and the Corporation to review resolution plans and the industry's desire for additional time to prepare resolution plans, the timing for submission of plans should be staggered.

The final rule provides for staggered submission of resolution plans by dividing the population of covered companies into groups with staggered submission dates. Strictly for purposes of phasing submission of initial resolution plans after the rule becomes effective,

⁹ See 12 U.S.C. 5365(a)(1).

covered companies have been divided into three groups. The first group comprises the largest, most complex covered companies, i.e., any covered company that has \$250 billion or more in total nonbank assets (or, in the case of a foreign-based covered company, in total U.S. nonbank assets). Covered companies in this first group must submit their initial resolution plans no later than July 1, 2012.

Firms part of the second group of covered companies must submit their initial resolution plans no later than July 1, 2013. This second group consists of covered companies with \$100 billion or more in nonbank assets (or, in the case of a foreign-based covered company, in total U.S. nonbank assets). A recovery planning process, such as that proposed by the Financial Stability Board in its recently published consultative document,¹⁰ can be useful towards developing a robust resolution plan. Therefore, the Board and Corporation encourage covered companies to fully consider the recommendations of the Financial Stability Board regarding effective recovery planning. The third and final group consists of the remaining covered companies, i.e., covered companies with less than \$100 billion in nonbank assets (or, in the case of a foreign-based covered company, in total U.S. nonbank assets). Covered companies in this third group are required to file their initial resolution plans on or before December 31, 2013. The above phase-in schedule generally applies to any company that is a covered company as of the effective date. However, the Board and Corporation may determine that a covered company must submit its initial resolution plan earlier or later than provided for in the final rule. A company that becomes a covered company after the effective date of this final rule, e.g., a company the Council has designated for supervision by the Board or a bank holding company that grows, organically or by merger or acquisition, over the \$50 billion threshold, must submit

¹⁰ Financial Stability Board, "Effective Resolution of Systemically Important Financial Institutions," available at http://www.financialstabilityboard.org/publications/r_110719.pdf (July 19, 2011).

its resolution plan by the next July 1 following the date the company becomes a covered company, provided such date is at least 270 days after the date the company becomes a covered company.

The Board and Corporation recognize the burden associated with developing an initial resolution plan as well as establishing the processes, procedures, and systems necessary to annually, or as otherwise appropriate, update a resolution plan. While an organization's initial resolution plan must include all informational elements required under this final rule, the Board and Corporation (as noted above) expect the process of submission and review of the initial resolution plan iterations to include an ongoing dialogue with firms. In developing their initial resolution plans, covered companies should therefore focus on the key elements of a resolution plan, including identifying critical and core operations, developing a robust strategic analysis, and identifying and describing the interconnections and interdependencies among material entities. To the extent practicable, covered companies should—with respect to the initial resolution plan—try to leverage off of and incorporate information already reported to the Board or Corporation or publicly-disclosed, e.g., in securities or other similar filings.

The final rule specifies the minimum content of a resolution plan. The Board and the Corporation recognize that plans will vary by company and, in their evaluation of plans, will take into account variances among companies in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. The resolution plans of more complex covered companies will be more complex and require information that may not be relevant for smaller, less complex covered companies. For example, a less complex covered company that does not engage in a material number or value amount of trades will not be

required to address that component of the resolution plan, while a more complex covered company may require an extensive discussion of systems in which it conducts trading operations and how those systems map to material entities, critical operations and core business lines. To the extent an informational element is not applicable or the covered company does not engage in the activity relevant to such informational element to a material extent, then a covered company should indicate such in its resolution plan and is not required to provide other information with regard to that informational element.

Moreover, for covered companies that operate predominately through one or more insured depository institutions, the statutory requirement to develop and submit a plan for the orderly resolution of the company under the Bankruptcy Code presents a challenge. As discussed above, several commenters criticized the proposal in this regard, noting that there are significant differences in complexity and structure among the various bank holding companies subject to the rule. Many of the smaller and less complex bank holding companies subject to the rule operate predominately through one or more insured depository institutions (or, in the case of a large number of foreign banking organizations subject to the rule, one or more branches). Commenters recommended that the Board and Corporation modify the final rule to provide for a tailored resolution plan regime for smaller, less complex bank holding companies and foreign banking organizations.

In response to these comments, the Board and Corporation have tailored the resolution plan requirement applicable to smaller, less complex bank holding companies and foreign banking organizations in order to focus the content and analysis of such an organization's resolution plan on the nonbanking operations of the organization. As discussed further below, the list of informational content required to be submitted would be largely similar (to the extent

applicable) to that provided by other firms. However, the focus of such a resolution plan would be on the nonbanking operations and business lines subject to the Bankruptcy Code, and, importantly, the interconnections between the nonbanking operations and the insured depository institution operations of the covered company.

After the initial resolution plan is submitted, each covered company is required to submit an updated resolution plan annually on or before the anniversary date of the date for submission of its initial plan. A company that becomes a covered company after the effective date of the final rule shall submit its initial resolution plan no later than the next July 1 following the date the company becomes a covered company, provided such date is at least 270 days after the date the company becomes a covered company. The Board and FDIC have the joint authority to require a covered company to submit its initial resolution plan at a date other than as specified by the rule.

Each covered company is required to file with the Board and the Corporation a notice within a time period specified by the Board and the Corporation, but no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company. Several commenters expressed concern that the proposed rule suggested that an update was being required upon the occurrence of events that either were not material events to the covered company or did not have a material effect on the resolution plan. Several commenters suggested that an interim update should only be required if an event results in a fundamental change to the covered company. In response to comments, the final rule instead requires a covered company to submit (within 45 days of the event) a notice identifying any material event significant enough to merit modification of its resolution plan. The company

must then revise its next annual resolution plan to take account of that event. The Board and the Corporation require notice only when an event results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company such that the resolution plan would be ineffective or require material amendment to be effective. Such notice is not required if an event does not result in, or could not reasonably be foreseen to have, a material effect on the resolution plan of the covered company. In regard to what constitutes a material effect on the resolution plan, the effect on the resolution plan should be of such significance as to render the resolution plan ineffective, in whole or in part, until revisions are made to the plan.

The Board and the Corporation jointly may waive a requirement that a covered company file a notice following a material event. The Board and the Corporation jointly may also require an update for any other reason, more frequent submissions or updates, and may extend the time period that a covered company has to submit its resolution plan or notice following a material event.

The board of directors of the covered company is required to approve the initial and each annual resolution plan filed. In the case of a foreign-based covered company, a delegee of the board of the directors of such organization may approve the initial resolution plan and any updates to a resolution plan. Several commenters wanted clarification that this requirement did not require the board of directors to attest that a resolution plan is accurate and the information contained therein is current. The Board and the Corporation confirm that no attestation is required. The board of directors or its delegee must approve the resolution plan in accordance with the procedures applicable to other documents of strategic importance.

Informational Content of a Resolution Plan. Several commenters suggested that the content required in resolution plans should be tailored to take into account the wide range of

organizations, from large, complex, highly interconnected organizations that have substantial nonbank and foreign operations to smaller, less complex organizations that are predominantly composed of one or more insured depository institutions, have few foreign operations and fewer interconnections with other financial institutions. As a general matter, the Board and the Corporation will take into account variances among companies in their core business lines, critical operations, domestic and foreign operations, capital structure, legal structure, risk, complexity, financial activities, size and other relevant factors. As described above, smaller, less complex covered companies may, unless otherwise directed, elect to file a tailored resolution plan.

Section ____4 of the final rule sets forth the general informational content requirements of a resolution plan. A covered company that is domiciled in the United States is required to provide information with regard to both its U.S. operations and its foreign operations. A foreign-based covered company is required to provide information regarding its U.S. operations, an explanation of how resolution planning for its U.S. operations is integrated into the foreign-based covered company's overall contingency planning process, and information regarding the interconnections and interdependencies among its U.S. operations and its foreign-based operations.

For covered companies with less than \$100 billion in total nonbank assets that predominately operate through one or more insured depository institutions, i.e., the company's insured depository institution subsidiaries comprise at least 85 percent of its total consolidated assets (or, in the case of a foreign-based covered company, the assets of the U.S. depository institution operations, branches, and agencies of which comprise 85 percent or more of the company's U.S. total consolidated assets), the Board and Corporation have tailored the

resolution plan requirements to focus on the nonbank operations of the covered company. Specifically, a firm meeting the above criteria and not otherwise excluded or directed by the Board and Corporation to submit a standard resolution plan shall in its resolution plan identify and describe interconnection and interdependencies pursuant to §[---].4(g) and provide the contact information required under §[---].4(i) with respect to the entire organization. Such resolution plan must also include the remaining resolution plan elements, i.e., the strategic analysis, organizational structure, description of management information systems, and the other content specified in §[---].4(c) through §[---].4(f) and paragraph §[---].4(h), only with respect to the covered company's nonbanking operations. Importantly, with respect to the information concerning interconnection and interdependencies, the resolution plan must describe in detail, and map to legal entity the interconnections and interdependencies among the nonbanking operations as well as between the nonbanking operations and the insured depository institution operations of the covered company.

Covered companies with more than \$100 billion in nonbank assets are not eligible to submit the type of plan described above, regardless of whether their operations satisfy the 85 percent criterion described above. Moreover, the Board and Corporation may determine that a firm that would otherwise meet the prerequisites for submitting a plan focused on its nonbank operations must nonetheless submit the full resolution plan.

Each resolution plan is required to contain an executive summary, a strategic analysis of the plan's components, a description of the covered company's corporate governance structure for resolution planning, information regarding the covered company's overall organizational structure and related information, information regarding the covered company's management

information systems, a description of interconnections and interdependencies among the covered company and its material entities, and supervisory and regulatory information.

The executive summary must summarize the key elements of the covered company's strategic plan, material changes from the most recently filed plan, and any actions taken by the covered company to improve the effectiveness of the resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the plan.

Under the final rule, each resolution plan submitted shall provide for the rapid and orderly resolution of the covered company in the event of material financial distress or failure of the covered company. The strategic analysis of how the resolution plan can be implemented to facilitate a rapid and orderly resolution is the foundation for any resolution plan. The strategic analysis should detail how, in practice, the covered company could be resolved under the Bankruptcy Code. As a result, the strategic analysis should include the analytical support for the plan, its key assumptions, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan.

Several commenters requested clarification of the section _____.4(a)(3)(ii) of the proposal that states a "covered company ... not rely on the provision of extraordinary support of the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company." The provision is intended to prohibit the covered company from assuming in its resolution plan that the United States or any other government will provide the covered company funding or capital other than in the ordinary course of business.

Pursuant to Section 165(i)(1) of the Dodd-Frank Act,¹¹ the Board, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, will conduct annual stress tests of covered companies. As part of that exercise, the Board expects to provide covered companies with different sets of economic conditions under which the evaluation will be conducted: baseline, adverse and severely adverse economic conditions. For initial resolution plans, a covered company may assume that failure would occur under the baseline economic scenario, or, if a baseline scenario is not then available, a reasonable substitute developed by the covered company. Subsequent iterations of a covered company's resolution plan should assume that the failure of the covered company will occur under the same economic conditions consistent with the Board's final rule implementing Section 165(i)(1).

The strategic analysis should include detailed information as to how, in the event of material financial distress or failure of the covered company, a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States. The strategic analysis of the covered company's resolution plan must also identify the range of options and specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, critical operations and core business lines in the event of its material financial distress or failure.

Funding, liquidity, support functions, and other resources, including capital resources, should be identified and mapped to the covered company's material entities, critical operations,

¹¹ 12 U.S.C. 5365(i).

and core business lines. The covered company's strategy for maintaining and funding the material entities, critical operations and core business lines in an environment of material financial distress and in the implementation and execution of its resolution plan should be provided and mapped to its material entities. The covered company's strategic analysis should demonstrate how such resources would be utilized to facilitate an orderly resolution in an environment of material financial distress. The covered company should also provide its strategy in the event of a failure or discontinuation of a material entity, critical operation, or core business line, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the company and the United States.

The final rule designates a subsidiary that conducts core business lines or critical operations of the covered company as a "material entity." When the covered company utilizes a material entity and that material entity is subject to the Bankruptcy Code, then a resolution plan should assume the failure or discontinuation of such material entity and provide both the covered company's and the material entity's strategy, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States. A number of commenters asked how this discussion of strategy was to be applied when a major subsidiary was not subject to the Bankruptcy Code, but rather to another specialized insolvency regime, such as the Federal Deposit Insurance Act ("FDI Act"), state liquidation regimes for state-licensed uninsured branches and agencies of foreign banks, the International Banking Act of 1978 for federally licensed branches and agencies, foreign insolvency regimes, state insolvency regimes for insurance companies, or the Securities Investor Protection Act applicable to broker-dealers.

Recognizing many of the challenges that may be posed by such a requirement if a material entity is subject to an insolvency regime other than the Bankruptcy Code, the final rule provides that a covered company may limit its strategic analysis with respect to a material entity that is subject to an insolvency regime other than the Bankruptcy Code to a material entity that either has \$50 billion or more in total assets or conducts a critical operation. Any such analysis should be in reference to that applicable regime. Thus, for example, if a covered company owns a national bank with \$50 billion or more in total consolidated assets, the resolution plan of the covered company should assume the failure of such national bank and the bank's resolution under the FDI Act and provide the covered company's strategy, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States.

Under a separate rulemaking, the Corporation is requiring insured depository institutions with total assets of \$50 billion or more to develop their own strategies to facilitate a resolution under the FDI Act.¹² The Board and the Corporation expect the resolution plan of a covered company that is a bank holding company to be complementary with its insured depository institution's resolution plan. To avoid duplication in the production of information, several of the informational elements of the Corporation's rule have been revised to correspond more closely with the informational elements of this final rule. In addition, the Corporation's rule specifically provides that the insured depository institution may incorporate data and other information from its covered company's resolution plan.

In addition to providing a strategy that assumes its insured depository institution with \$50 billion or more in total consolidated assets will fail, a covered company is required to assume

¹² See Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions, 75 FR 27,464 (May 17, 2010) (to be codified at 12 CFR Part 360). The Corporation will issue an interim final rule to implement this requirement concurrently with this final rule.

that each of its insured depository institutions, without regard to asset size, is not the cause of the failure and provide the covered company's strategy for ensuring that its insured depository institution subsidiary will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution). This requirement is a specific statutory requirement and is applicable only to insured depository institutions and is not applicable to other types of regulated subsidiaries.¹³

The description of the covered company's corporate governance structure for resolution planning should include information regarding how resolution planning is integrated into the corporate governance structure and processes of the covered company, and identify the senior management official who is primarily responsible for overseeing the development, maintenance, implementation, and filing of the resolution plan and for the covered company's compliance with the final rule. The requirements in the final rule are minimums and the size of the corporate governance structure is expected to vary based upon the size and complexity of the covered company. For the largest and most complex companies, it may be necessary to establish a central planning function that is headed by a senior management official. Such official would report to the Chief Risk Officer or Chief Executive Officer and periodic reports on resolution planning would be made to the covered company's board of directors.

The information regarding the covered company's overall organizational structure and related information should include a hierarchical list of all material entities, with jurisdictional and ownership information. This information should be mapped to core business lines and critical operations. The proposal would have required each covered company to provide its unconsolidated balance sheet and a consolidating schedule for all entities that are subject to

¹³ 12 U.S.C. 5365(d)(1)(A).

consolidation by the covered company. However, in response to commenters' concerns, the Board and Corporation revised the final rule to require only an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation should be provided. Amounts attributed to entities that are not material entities may be aggregated on the consolidating schedule.

The resolution plan should include information regarding material assets, liabilities, derivatives, hedges, capital and funding sources and major counterparties. Material assets and liabilities should be mapped to material entities along with location information. An analysis of whether the bankruptcy of a major counterparty would likely have an adverse effect on and result in the material financial distress or failure of the covered company should also be included. Trading, payment, clearing and settlement systems utilized by the covered company should be identified. The covered company would not need to identify trading, payment, clearing and settlement systems that are immaterial in resolution planning, such as a local check clearing house.

For a U.S.-based covered company with foreign operations, the plan should identify the extent of the risks related to its foreign operations and the covered company's strategy for addressing such risks. These elements of the resolution plan should take into consideration, and address through practical responses, the complications created by differing national laws, regulations, and policies. This analysis should include a mapping of core business lines and critical operations to legal entities operating or with assets, liabilities, operations, or service providers in foreign jurisdictions. The continued ability to maintain core business lines and critical operations in these foreign jurisdictions during material financial distress and insolvency

proceedings should be evaluated and practical steps identified to address weaknesses or vulnerabilities.

The final rule requires the covered company to provide information regarding the management information systems supporting its core business lines and critical operations, including information regarding the legal ownership of such systems as well as associated software, licenses, or other associated intellectual property. The analysis and practical steps that are identified by the covered company should address the continued availability of the key management information systems that support core business lines and critical operations both within the United States and in foreign jurisdictions.

The final rule requires the resolution plan to include a description of the capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and other data underlying the resolution plan. Moreover, the resolution plan must also identify the deficiencies, gaps, or weaknesses in those capabilities of the covered company's management information systems and describe the actions the covered company plans to undertake, including the associated timelines for implementation, to promptly address such deficiencies, gaps, or weaknesses. The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy these requirements, and will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

The final rule also requires the covered company to provide a description of interconnections and interdependencies among the covered company and its material entities and affiliates, and among the critical operations and core business lines of the covered company that,

if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its critical operations or core business lines. As noted above, the continued availability of key services and supporting business operations to core business lines and critical operations in an environment of material financial distress and after insolvency should be a focus of resolution planning. Steps to ensure that service level agreements for such services, whether provided by internal or external service providers, survive insolvency should be demonstrated in the resolution plan.

The plan should identify the covered company's supervisory authorities and regulators, including information identifying any foreign agency or authority with significant supervisory authority over material foreign-based subsidiaries or operations.

Review of resolution plans; Resubmission of deficient resolutions plans. Several commenters requested changes in the process and procedures for reviewing resolution plans set forth in the Proposed Rule. The Board and the Corporation desire to work closely with covered companies and, as applicable, other authorities, in the development of a firm's resolution plan and are dedicating staff for that purpose. The Board and the Corporation expect the review process to evolve as covered companies gain more experience in preparing their resolution plans. The Board and the Corporation recognize that resolution plans will vary by company and, in their evaluation of plans, will take into account variances among companies in their core business lines, critical operations, domestic and foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Because each resolution plan is expected to be unique, the Board and the Corporation encourage covered companies to ask questions and, if so desired, to arrange a meeting with the Board and the Corporation. There is no expectation by the Board and the

Corporation that the initial resolution plan iterations submitted after this rule takes effect will be found to be deficient, but rather the initial resolution plans will provide the foundation for developing more robust annual resolution plans over the next few years following that initial period. The final rule allows the Board and the Corporation to extend deadlines on their own initiative or upon request.

Section _____.5 of the final rule sets forth procedures regarding the review of resolution plans. When a covered company submits a resolution plan, the Board and Corporation will preliminarily review a resolution plan for informational completeness within 60 days. If the Board and the Corporation determine that a resolution plan is informationally incomplete or that substantial additional information is necessary to facilitate further review, the Board and the Corporation will inform the covered company in writing of the area(s) in which the resolution plan is informationally incomplete or with respect to which additional information is required. The covered company will be required to resubmit an informationally complete resolution plan, or such additional information as jointly requested to facilitate review of the resolution plan, no later than 30 days after receiving such notice or such other time period as the Board and Corporation may jointly determine.

The Board and Corporation will review each resolution plan for its compliance with the requirements of the final rule. If, following such review, the Board and the Corporation jointly determine that the resolution plan of a covered company submitted under this part is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation will jointly notify the covered company in writing of such determination. Such notice will identify the aspects of the resolution plan that the Board and

Corporation jointly determined to be deficient and request the resubmission of a resolution plan that remedies the deficiencies of the resolution plan.

Within 90 days of receiving such notice of deficiencies, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company will be required to submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation. The revised resolution plan will be required to discuss in detail: (i) the revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation; (ii) any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and (iii) why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time for review and submission established hereunder. Any extension request should be supported by a written statement of the company describing the basis and justification for the request.

Failure to cure deficiencies on resubmission of a Resolution Plan. Section ____ .6 of the final rule provides that, if the covered company fails to submit a revised resolution plan or the Board and the Corporation jointly determine that a revised resolution plan submitted does not adequately remedy the deficiencies identified by the Board and the Corporation, then the Board and Corporation may jointly subject a covered company or any subsidiary of a covered company to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth,

activities, or operations. Any such requirements or restrictions would apply to the covered company or subsidiary, respectively, until the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies identified. In addition, if the covered company fails, within the two-year period beginning on the date on which the determination to impose such requirements or restrictions was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation, then the Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as the Board and Corporation jointly determine necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company were to fail.

Consultation. Section ____ .7 of the final rule provides that, prior to issuing any notice of deficiencies, determining to impose requirements or restrictions on a covered company, or issuing a divestiture order with respect to a covered company that is likely to have a significant effect on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board shall consult with each Council member that primarily supervises any such subsidiary and may consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

No limiting effect or private right of action; Confidentiality of resolution plans. Section ____ .8 of the final rule provides that a resolution plan submitted shall not have any binding effect on: (i) a court or trustee in a proceeding commenced under the Bankruptcy Code; (ii) a receiver appointed under Title II of the Dodd-Frank Act (12 U.S.C. 5381 et seq.); (iii) a bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or (iv) any other authority that is

authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

The final rule further provides that nothing in the rule would create or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

Most commenters requested that the resolution plans be treated as exempt from disclosure under FOIA. The Board and the Corporation are aware of and sensitive to the significant concerns regarding confidentiality of resolution plans. The regulation contemplates and requires the submission of highly detailed, internal proprietary information of covered companies. This is the type of information that covered companies would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. In the view of the Board and the Corporation, release of this information would impede the quality and extent of information provided by covered companies and could significantly impact the efforts of the Board and the Corporation to encourage effective and orderly unwind of the covered companies in a crisis.

Under section 112(d)(5)(A) of the Dodd-Frank Act, the Board and the Corporation “shall maintain the confidentiality of any data, information, and reports submitted under” Title I (which includes section 165(d), the authority this regulation is promulgated under) of the Dodd-Frank Act. The Board and the Corporation will assess the confidentiality of resolution plans and related material in accordance with applicable exemptions under the Freedom of Information Act (“FOIA”) and 5 U.S.C. 552(b) and the Board’s and the Corporation’s implementing regulations

(12 CFR part 261 (Board); 12 CFR part 309 (Corporation)). The Board and the Corporation certainly expect that large portions of the submissions will contain or consist of “trade secrets and commercial or financial information obtained from a person and privileged or confidential” and information that is “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.” This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. §§ 552(b)(4) and 552(b)(8).

The Board and the Corporation also recognize, however, that the regulation calls for the submission of details regarding covered companies that are publicly available or otherwise are not sensitive and should be made public.

In order to address this, the regulation requires resolution plans to be divided into two portions: a public section and a confidential section. The public section of the resolution plan should consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company: (i) the names of material entities; (ii) a description of core business lines; (iii) consolidated or segment financial information regarding assets, liabilities, capital and major funding sources; (iv) a description of derivative activities and hedging activities; (v) a list of memberships in material payment, clearing and settlement systems; (vi) a description of foreign operations; (vii) the identities of material supervisory authorities; (viii) the identities of the principal officers; (ix) a description of the corporate governance structure and processes related to resolution planning; (x) a description of material management information systems; and (xi) a description, at a high level, of the covered company’s resolution strategy, covering such items as

the range of potential purchasers of the covered company, its material entities and core business lines.

The public section will be made available to the public in accordance with the Board's Rules Regarding Availability of Information (12 C.F.R. 261) and the Corporation's Disclosure of Information Rules (12 C.F.R. 309).

A covered company should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the Board and the Corporation will make formal exemption and segregability determinations if and when a plan is requested under the FOIA. Enforcement. Section _____.9 of the final rule provides that the Board and Corporation may jointly enforce an order jointly issued under section _____.6(a) or _____.6(c) of the final rule. Furthermore, the Board, in consultation with the Corporation, may address any violation of the rule by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

V. Administrative Law Matters

A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board and the Corporation have sought to present the final rule in a simple and straightforward manner.

B. Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The Corporation has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

C. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the final rule under the authority delegated to the Board by OMB.

Title of Information Collection: Resolution Plans Required.

Frequency of Response: Varied—some requirements are done at least quarterly, some at least annually, and some are event-generated.

Affected Public: Bank holding companies and foreign banking organizations with total consolidated assets of \$50 billion or more, and nonbank financial companies.

Abstract: The information collection requirements are found in sections .3, .4, and .5 of the final rule. These requirements would implement the resolution plan requirement set forth in section 165(d)(1) of the Dodd-Frank Act. Since the Board supervises all of the respondents, the Board will take all of the paperwork burden associated with this information collection.

Section .3 sets forth the requirements for resolution plans to be filed initially, annually, and on an basis following material events. Section .4 details the information to be included in the resolution plans. Organizational structure information required in Section .4 may be incorporated by reference to information previously reported to the Board (FR Y-6, Annual

Report of Bank Holding Companies; FR Y-7, Annual Report of Foreign Banking Organizations; and FR Y-10, Report of Changes in Organizational Structure; OMB No. 7100-0297). Section .5 includes a written request for institutions to request an extension of time to resubmit the resolution plan where deficiencies have been identified by the agencies.

Estimated Burden

The burden associated with this collection of information may be summarized as follows:

Number of Respondents: 124.

Estimated Burden Per Respondent: 12,400 hours for initial implementation and 2,881 hours annually on an ongoing basis.

Total Estimated Annual Burden: 1,337,600 hours for initial implementation and 267,544 hours on an ongoing basis.

D. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (“RFA”), requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.¹⁴ Based on its analysis and for the reasons stated below, the Board and the Corporation certify that this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with section 165(d) of the Dodd-Frank Act, the Board is adopting the final rule which amends Regulation (12 CFR et seq.) and the Corporation is proposing to add new Part 381 (12 CFR Part 381) to establish the requirements that a covered company periodically

¹⁴ See 5 U.S.C. 603, 604 and 605.

submit a resolution plan and a Credit Exposure Report to the Board and Corporation.¹⁵ The final rule would also establish the procedures and standards for joint review of a resolution plan by the Board and Corporation. The reasons and justification for the final rule are described in the Supplementary Information. As further discussed in the Supplementary Information, the procedure, standards, and definitions that would be established by the final rule are relevant to the joint authority of the Board and Corporation to implement the resolution plan and Credit Exposure requirements.

Under regulations issued by the Small Business Administration (“SBA”), a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7 million or less in assets to \$175 million or less in assets.¹⁶ The Board and the Corporation believe that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies or nonbank financial companies with asset sizes of \$175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the final rule applies to a “covered company,” which includes only bank holding companies and foreign banks that are or are treated as a bank holding company (“foreign banking organization”) with \$50 billion or more in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. Bank holding companies and foreign banking organizations that are subject to the final rule therefore substantially exceed the \$175 million asset threshold at which a

¹⁵ See 12 U.S.C. § 5365(d).

¹⁶ 13 CFR 121.201.

banking entity is considered a “small entity” under SBA regulations.¹⁷ The final rule would apply to a nonbank financial company supervised by the Board regardless of such a company’s asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.¹⁸ It is therefore unlikely that a financial firm that is at or below the \$175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the final rule is not likely to apply to any company with assets of \$175 million or less, the final rule is not expected to apply to any small entity for purposes of the RFA. Moreover, as discussed in the Supplementary Information, the Dodd-Frank Act requires the Board and the Corporation jointly to adopt rules implementing the provisions of section 165(d) of the Dodd-Frank Act. The Board and Corporation do not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board and the Corporation certify that the final rule would not have a significant economic impact on a substantial number of small entities.

¹⁷ The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the \$50 billion asset threshold for the application of the resolution plan and credit exposure report requirements. See 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

¹⁸ See 76 FR 4555 (January 26, 2011).

Text of the Common Rules

(All Agencies)

PART [] — RESOLUTION PLANS.

Sec.

____.1 Authority and scope.

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§____.1 Authority and scope.

(a) Authority. This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. No. 111-203, 124 Stat. 1376, 1426-1427), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (Corporation) to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act.

(b) Scope. This part applies to each covered company and establishes rules and requirements regarding the submission and content of a resolution plan, as well as procedures for review by the Board and Corporation of a resolution plan.

§____.2 Definitions.

For purposes of this part:

(a) Bankruptcy Code means Title 11 of the United States Code.

(b) Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization, but does not include any organization, the majority of the voting securities of which are owned by the United States.

(c) Control. A company controls another company when the first company, directly or indirectly, owns, or holds with power to vote, 25 percent or more of any class of the second company's outstanding voting securities.

(d) Core business lines means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value.

(e) Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(f) Covered company. (1) In general. A "covered company" means:

(i) Any nonbank financial company supervised by the Board;

(ii) Any bank holding company, as that term is defined in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225), that has \$50 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Federal Reserve's Form FR Y-9C ("FR Y-9C"); and

(iii) Any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and that has \$50 billion or more in total consolidated assets, as determined based on the foreign bank's or company's most recent annual or, as applicable, the average of the four most

recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y-7Q ("FR Y-7Q").

(2) Once a covered company meets the requirements described in paragraph (1)(ii) or paragraph (1)(iii), the company shall remain a covered company for purposes of this part unless and until the company has less than \$45 billion in total consolidated assets, as determined based on the—

(i) Average total consolidated assets as reported on the company's four most recent FR Y-9Cs, in the case of a covered company described in paragraph (1)(ii); or

(ii) Total consolidated assets as reported on the company's most recent annual FR Y-7Q, or, as applicable, average total consolidated assets as reported on the company's four most recent quarterly FR Y-7Qs, in the case of a covered company described in paragraph (1)(iii).

Nothing in this paragraph (2) shall preclude a company from becoming a covered company pursuant to paragraph (1).

(3) Multi-tiered holding company. In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company only.

(4) Asset threshold for bank holding companies and foreign banking organizations. The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in paragraph (f)(1)(ii) or (iii) of this section.

(5) Exclusion. A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

(g) Critical operations means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which, in the view of

the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States.

(h) Depository institution has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

(i) Foreign banking organization means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary..

(j) Foreign-based company means any covered company that is not incorporated or organized under the laws of the United States.

(k) Functionally regulated subsidiary has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

(l) Material entity means a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line (as defined in this part).

(m) Material financial distress with regard to a covered company means that:

(1) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) The covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(n) Nonbank financial company supervised by the Board means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(o) Rapid and orderly resolution means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

(p) Subsidiary means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

(q) United States means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§____.3 Resolution plan required.

(a) Initial and annual resolution plans required.—(1) Each covered company shall submit its initial resolution plan to the Board and the Corporation on or before the date set forth below (“Initial Submission Date”):

(i) July 1, 2012, with respect to any covered company that, as of the effective date of this part, had \$250 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets);

(ii) July 1, 2013, with respect to any covered company that is not described in paragraph (a)(1)(i), and that, as of the effective date of this part had \$100 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(iii) December 31, 2013, with respect to any other covered company that is a covered company as of the effective date of this part but that is not described in paragraph (i) or (ii) of this paragraph (a)(1).

(2) A company that becomes a covered company after the effective date of this part shall submit its initial resolution plan no later than the next July 1 following the date the company becomes a covered company, provided such date occurs no earlier than 270180 days after the date on which the company became a covered company.

(3) After filing its initial resolution plan pursuant to paragraph (a)(1) or (a)(2) above, each covered company shall annually submit a resolution plan to the Board and the Corporation on or before each anniversary date of its Initial Submission Date.

(4) Notwithstanding anything to the contrary in this paragraph (a), the Board and Corporation may jointly determine that a covered company shall file its initial or annual resolution plan by a date other than as provided in this paragraph (a). The Board and the

Corporation shall provide a covered company with written notice of a determination under this paragraph (4) no later than 180 days prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan.

(b) Authority to require interim updates and notice of material events.—(1) In general.

The Board and the Corporation may jointly require that a covered company file an update to a resolution plan submitted under paragraph (a) of this section, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall make a request pursuant to this paragraph (b)(1) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(2) Notice of material events. Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company. Such notice should describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. The covered company shall address any event, occurrence or change with respect to which it has provided notice pursuant to this paragraph (2) in the following resolution plan submitted by the covered company.

(3) Exception. A covered company shall not be required to file a notice under paragraph (b)(2) of this section if the date on which the covered company would be required to submit the notice under paragraph (b)(2) would be within 90 days prior to the date on which the covered company is required to file an annual resolution plan under paragraph (a) of this section.

(c) Authority to require more frequent submissions or extend time period.—The Board and Corporation may jointly:

(1) Require that a covered company submit a resolution plan more frequently than required pursuant to paragraph (a) of this section; and

(2) Extend the time period that a covered company has to submit a resolution plan or a notice following material events under paragraphs (a) and (b) of this section.

(d) Access to information.—In order to allow evaluation of the resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. The Board and the Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(e) Board of directors approval of resolution plan.—Prior to submission of a resolution plan under paragraph (a) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegee acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(f) Resolution plans provided to the Council.—The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

§ ____ .4 Informational content of a resolution plan.

(a) In general.—(1) Domestic covered companies. Except as otherwise provided in paragraph (a)(3), the resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (i) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) Foreign-based covered companies.—Except as otherwise provided in paragraph (a)(3), the resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (i) of this section with respect to the subsidiaries, branches and agencies, and critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based covered company and any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(3) Tailored resolution plan.

(i) Eligible covered company.—Paragraph (ii) applies to any covered company that as of December 31 of the calendar year prior to the date its resolution plan is required to be submitted under this part—

(I) has less than \$100 billion in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(II) the total insured depository institution assets of which comprise 85 percent or more of the covered company's total consolidated assets (or, in the case of a covered company that is a foreign-based company, the assets of the U.S. insured depository institution operations, branches, and agencies of which comprise 85 percent or more of such covered company's U.S. total consolidated assets).

(ii) Tailored resolution plan elements. A covered company described in paragraph (i) may file a resolution plan that is limited to the following items—

(A) An executive summary, as specified in paragraph (b) of this section;

(B) The information specified in paragraphs (c) through (f) and paragraph (h) of this section, but only with respect to the covered company and its nonbanking material entities and operations;

(C) The information specified in paragraphs (g) and (i) of this section with respect to the covered company and all of its insured depository institutions (or, in the case of a covered company that is a foreign-based company, the U.S. insured depository institutions, branches, and agencies) and nonbank material entities and operations. The interconnections and interdependencies identified pursuant to (g) shall be included in the analysis provided pursuant to paragraph (c).

(iii) Notice.—A covered company that meets the requirements of paragraph (a)(3)(i) and that intends to submit a resolution plan pursuant to this paragraph (a)(3), shall provide the Board and Corporation with written notice of such intent and its eligibility under paragraph (a)(3)(i) no later than 270 days prior to the date on which the covered company is required to submit its resolution plan. Within 90 of receiving such notice, the Board and Corporation may jointly determine that the covered company must submit a resolution plan that meets some or all of the requirements as set forth in paragraph (a)(1) or (a)(2), as applicable.

(4) Required and prohibited assumptions.—In preparing its plan for rapid and orderly resolution in the event of material financial distress or failure required by this part, a covered company shall:

(i) Take into account that such material financial distress or failure of the covered company may occur under the baseline, adverse and severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a covered company may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the covered company; and

(ii) Not rely on the provision of extraordinary support by the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company.

(b) Executive summary.—Each resolution plan of a covered company shall include an executive summary describing:

(1) The key elements of the covered company's strategic plan for rapid and orderly resolution in the event of material financial distress at or failure of the covered company.

(2) Material changes to the covered company's resolution plan from the company's most recently filed resolution plan (including any notices following a material event or updates to the resolution plan).

(3) Any actions taken by the covered company since filing of the previous resolution plan to improve the effectiveness of the covered company's resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the resolution plan.

(c) Strategic Analysis.—Each resolution plan shall include a strategic analysis describing the covered company's plan for rapid and orderly resolution in the event of material financial distress or failure of the covered company. Such analysis shall—

(1) Include detailed descriptions of the—

(i) Key assumptions and supporting analysis underlying the covered company's resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan;

(ii) Range of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, and its critical operations and core business lines in the event of material financial distress or failure of the covered company;

(iii) Funding, liquidity and capital needs of, and resources available to, the covered company and its material entities, which shall be mapped to its critical operations and core business lines, in the ordinary course of business and in the event of material financial distress at or failure of the covered company;

(iv) Covered company's strategy for maintaining operations of, and funding for, the covered company and its material entities, which shall be mapped to its critical operations and core business lines;

(v) Covered company's strategy in the event of a failure or discontinuation of a material entity, core business line or critical operation, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; provided, however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a covered company may exclude that entity from its strategic analysis unless that entity either has \$50 billion or more in total assets or conducts a critical operation; and

(vi) Covered company's strategy for ensuring that any insured depository institution subsidiary of the covered company will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution);

(2) Identify the time period(s) the covered company expects would be needed for the covered company to successfully execute each material aspect and step of the covered company's plan;

(3) Identify and describe any potential material weaknesses or impediments to effective and timely execution of the covered company's plan;

(4) Discuss the actions and steps the covered company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the covered company, including a timeline for the remedial or other mitigatory action; and

(5) Provide a detailed description of the processes the covered company employs for:

(i) Determining the current market values and marketability of the core business lines, critical operations, and material asset holdings of the covered company;

(ii) Assessing the feasibility of the covered company's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the covered company's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the covered company, its material entities, critical operations and core business lines.

(d) Corporate governance relating to resolution planning.—Each resolution plan shall:

(1) Include a detailed description of:

(i) How resolution planning is integrated into the corporate governance structure and processes of the covered company;

(ii) The covered company's policies, procedures, and internal controls governing preparation and approval of the covered company's resolution plan;

(iii) The identity and position of the senior management official(s) of the covered company that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the covered company's resolution plan and for the covered company's compliance with this part; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the covered company regarding the development, maintenance, and implementation of the covered company's resolution plan;

(2) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the covered company since the date of the covered company's most

recently filed resolution plan to assess the viability of or improve the resolution plan of the covered company; and

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

(e) Organizational structure and related information.—Each resolution plan shall—

(1) Provide a detailed description of the covered company's organizational structure, including:

(i) A hierarchical list of all material entities within the covered company's organization (including legal entities that directly or indirectly hold such material entities) that:

(A) Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified;

(ii) A mapping of the covered company's critical operations and core business lines, including material asset holdings and liabilities related to such critical operations and core business lines, to material entities;

(2) Provide an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation by the covered company;

(3) Include a description of the material components of the liabilities of the covered company, its material entities, critical operations and core business lines that, at a minimum,

separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities, and subordinated liabilities;

(4) Identify and describe the processes used by the covered company to:

(i) Determine to whom the covered company has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the covered company;

(5) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the covered company and its material entities, including a mapping to its critical operations and core business lines;

(6) Describe the practices of the covered company, its material entities and its core business lines related to the booking of trading and derivatives activities;

(7) Identify material hedges of the covered company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity;

(8) Describe the hedging strategies of the covered company;

(9) Describe the process undertaken by the covered company to establish exposure limits;

(10) Identify the major counterparties of the covered company and describe the interconnections, interdependencies and relationships with such major counterparties;

(11) Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the covered company; and

(12) Identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, critical operations and core business lines.

(f) Management information systems.—(1) Each resolution plan shall include—

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the covered company and its material entities. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to the material entities, critical operations and core business lines of the covered company that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the covered company, its material entities, critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, critical operations and core business lines; and

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (f) of this section; and

(v) A description and analysis of—

(A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and data underlying the resolution plan; and

(B) Any deficiencies, gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(2) The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy the requirements of paragraph (v). The Board will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

(g) Interconnections and interdependencies. To the extent not elsewhere provided, identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its critical operations or core business lines. Such interconnections and interdependencies may include:

(1) Common or shared personnel, facilities, or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems);

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

(4) Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions, and cross-affiliate netting agreements;

(5) Risk transfers; and

(6) Service level agreements.

(h) Supervisory and regulatory information. Each resolution plan shall—

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency)

with supervisory authority or responsibility for ensuring the safety and soundness of the covered company, its material entities, critical operations and core business lines; and

(ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the covered company, and its material entities and critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and critical operations or core business lines of the covered company; and

(3) Include contact information for each agency identified in paragraphs (h)(1) and (2) of this section.

(i) Contact information. Each resolution plan shall identify a senior management official at the covered company responsible for serving as a point of contact regarding the resolution plan of the covered company, and include contact information (including phone number, e-mail address, and physical address) for a senior management official of the material entities of the covered company.

(j) Incorporation of previously submitted resolution plan informational elements by reference. An annual submission of or update to a resolution plan submitted by a covered company may incorporate by reference informational elements (but not strategic analysis or

executive summary elements) from a resolution plan previously submitted by the covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to incorporate informational elements by reference clearly indicates:

(i) the informational element the covered company is incorporating by reference; and
(ii) which of the covered company's previously submitted resolution plan(s) originally contained the information the covered company is incorporating by reference; and

(2) The covered company certifies that the information the covered company is incorporating by reference remains accurate.

(k) Exemptions. The Board and the Corporation may jointly exempt a covered company from one or more of the requirements of this section.

§____.5 Review of resolution plans; resubmission of deficient resolution plans.

(a) Acceptance of submission and review.—

(1) The Board and Corporation shall review a resolution plan submitted under section this subpart within 60 days.

(2) If the Board and Corporation jointly determine within the time described in paragraph (1) that a resolution plan is informationally incomplete or that substantial additional information is necessary to facilitate review of the resolution plan:

(i) The Board and Corporation shall jointly inform the covered company in writing of the area(s) in which the resolution plan is informationally incomplete or with respect to which additional information is required; and

(ii) The covered company shall resubmit an informationally complete resolution plan or such additional information as jointly requested to facilitate review of the resolution plan no later

than 30 days after receiving the notice described in paragraph (a)(2)(i) of this section, or such other time period as the Board and Corporation may jointly determine.

(b) Joint determination regarding deficient resolution plans.—If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under section ____ .3(a) is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph shall identify the aspects of the resolution plan that the Board and Corporation jointly determined to be deficient.

(c) Resubmission of a resolution plan.—Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b) of this section, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company shall submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation, and that discusses in detail:

(i) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation;

(ii) Any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and

(iii) Why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

(d) Extensions of time.—Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time period under this section.

Each extension request shall be supported by a written statement of the covered company describing the basis and justification for the request.

§ ____ .6 Failure to cure deficiencies on resubmission of a resolution plan.

(a) In general.—The Board and Corporation may jointly determine that a covered company or any subsidiary of a covered company shall be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the covered company or the subsidiary if:

(1) The covered company fails to submit a revised resolution plan under section § ____ .5(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § ____ .5(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § ____ .5(b).

(b) Duration of requirements or restrictions.—Any requirements or restrictions imposed on a covered company or a subsidiary thereof pursuant to paragraph (a) of this section shall cease to apply to the covered company or subsidiary, respectively, on the date that the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____ .5(b).

(c) Divestiture.—The Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as are jointly identified by the Board and Corporation if:

(1) The Board and Corporation have jointly determined that the covered company or a subsidiary thereof shall be subject to requirements or restrictions pursuant to paragraph (a) of this section; and

(2) The covered company has failed, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions under paragraph (a) was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.5(b); and

(3) The Board and Corporation jointly determine that the divestiture of such assets or operations is necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company was to fail.

§ ____.7 Consultation.—Prior to issuing any notice of deficiencies under § ____.5(b), determining to impose requirements or restrictions under § ____.6(a), or issuing a divestiture order pursuant to § ____.6(c) with respect to a covered company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board—

(a) Shall consult with each Council member that primarily supervises any such subsidiary; and

(b) May consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

§ ____.8 No limiting effect or private right of action; confidentiality of resolution plans.

(a) No limiting effect on bankruptcy or other resolution proceedings.—A resolution plan submitted pursuant to this part shall not have any binding effect on:

(1) A court or trustee in a proceeding commenced under the Bankruptcy Code;

(2) A receiver appointed under Title II of the Dodd-Frank Act (12 U.S.C. 5381 et seq.);

(3) A bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or

(4) Any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

(b) No private right of action.—Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

(c) Form of resolution plans. Each resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section. The public section shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(1) The names of material entities;

(2) A description of core business lines;

(3) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(4) A description of derivative activities and hedging activities;

(5) A list of memberships in material payment, clearing and settlement systems;

(6) A description of foreign operations;

(7) The identities of material supervisory authorities;

(8) The identities of the principal officers;

(9) A description of the corporate governance structure and processes related to resolution planning;

(10) A description of material management information systems; and

(11) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities and core business lines.

(d) Confidential treatment of resolution plans.

(1) The confidentiality of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 C.F.R. 261), and the Corporation's Disclosure of Information Rules (12 CFR part 309).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), the Board's Rules Regarding Availability of Information (12 CFR part 261), and the Corporation's Disclosure of Information Rules (12 CFR part 309) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

§____.9 **Enforcement.** The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § _____.6(a) or _____.6(c) of this part. The Board, in consultation with the Corporation, may take any action to address any violation of this part by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

[END OF COMMON TEXT]

List of Subjects

12 CFR Part [●]

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 381

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Resolution plans and credit exposure reports.

Adoption of Common Rule

The adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to add the text of the common rule as set forth at the end of the Supplementary Information as Part [●] to Chapter II of Title 12, modified as follows:

PART [●]—RESOLUTION PLANS (Regulation [●]).

1. The authority citation for part 252 is revised to read as follows:

Authority: 12 U.S.C. 5365.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation proposes to add the text of the common rule as set forth at the end of the Supplementary Information as Part 381 to Chapter III of Title 12, Code of Federal Regulations, modified as follows:

PART 381 – RESOLUTION PLANS.

1. The authority citation for part 381 shall read as follows:

Authority: 12 U.S.C. 5365(d).

Draft

September 9, 2011

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “RESOLUTION PLANS”]

By order of the Board of Governors of the Federal Reserve System, [DATE].

Jennifer J. Johnson

Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “RESOLUTION PLANS.”]

Dated at Washington, D.C., this [Date].

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.