September 9, 2011

TO: Board of Directors

FROM: Sandra L. Thompson
Director
Division of Risk Management Supervision

James Wigand
Director
Office of Complex Financial Institutions

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General Counsel

SUBJECT: Resolution Plan–Final Rule

RECOMMENDATION

The Division of Risk Management Supervision, the Office of Complex Financial Institutions and the Division of Resolutions and Receiverships recommend that the Board of Directors approve the attached Final Rule with an effective date 30 days after publication in the *Federal Register* (or such later date as may be required by law) and authorize its publication following approval by the Board of Governors of the Federal Reserve System ("FRB"). The General Counsel concurs in such recommendation.

EXECUTIVE SUMMARY

The Final Rule is issued jointly with the FRB to implement the resolution plan requirement in Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Staff recommends that the Board adopt and approve the attached Final Rule ("Final Rule") with an effective date 30 days after

publication in the *Federal Register* (or such later date as may be required by law) and authorize its publication in the *Federal Register* following approval by the FRB. Under the Dodd-Frank Act, the FRB must require each nonbank financial company supervised by the FRB and each bank holding company with assets of $50 billion or more ("Covered Company") to report periodically to the FRB, the Financial Stability Oversight Council (the "Council"), and the FDIC the company's resolution plan, as described more fully below. Pursuant to the Dodd-Frank Act, the FRB and the FDIC are required to jointly issue final rules implementing Section 165(d) not later than January 21, 2012.

DISCUSSION

I. Background and Authority

The Dodd-Frank Act creates a comprehensive new regulatory and resolution regime that is designed to protect the United States from the severe economic consequences of financial instability. Title I of the Dodd-Frank Act established the Council to identify risks to the financial stability of the United States, to promote market discipline and to respond to emerging threats to the financial stability of the United States. Importantly, Title I of the Dodd-Frank Act also significantly enhances the FDIC's and FRB's ability to conduct advance resolution planning for systemically important financial institutions. As demonstrated by the FDIC's experience in failed bank resolutions, as well as the FRB's and the FDIC's experience in the recent crisis, such advance planning is essential for an efficient resolution of a Covered Company. Critical to advance resolution planning are new prudential supervisory oversight authorities and

the resolution plans, or living wills, requirements of Section 165(d) of Title I of the Dodd-Frank Act.[1]

Section 165(d) of the Dodd-Frank Act mandates that the FRB require each Covered Company to report periodically to the FRB, the Council, and the FDIC the plan of such Covered Company for rapid and orderly resolution in the event of material financial distress or failure (the "Resolution Plan").[2]

The ability to undertake advance planning for the resolution of any financial institution, from small banks through globally active financial companies, is a precondition for effective crisis management and insolvency resolution. Such advance planning has long been a component of resiliency and recovery planning by financial companies. The Dodd-Frank Act now requires that certain financial companies must incorporate resolution planning into their overall planning processes. This will serve as a critical link between the planning that the FDIC performs in its assigned role as potential resolution authority under Title II of the Dodd-Frank Act, and the ongoing planning that designated financial companies must undertake to demonstrate that a rapid and orderly resolution can be achieved under the Bankruptcy Code in the event of material financial distress or failure.

The Final Rule is not focused on the simple disclosure of additional information about the business operations of the financial company. Critically, the Final Rule will require a strategic analysis by the financial company of how it can be resolved under the Bankruptcy Code in a way that does not pose systemic risk to the financial system. As

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[1] *See generally* Section 165 of Title I of the Dodd-Frank Act, 12 U.S.C. § 5365.

[2] This Final Rule is issued pursuant to Section 165(d)(8) of the Dodd-Frank Act, which requires the FRB and the FDIC to jointly issue final rules implementing Section 165(d) not later than January 21, 2012.

provided in the Final Rule, this strategic analysis requires a number of key analytical elements. The strategic analysis of how the Resolution Plan can be implemented to achieve a rapid and orderly resolution is the foundation for any credible plan. The strategic analysis describes the Covered Company's critical thinking detailing how, in practice, it could be resolved under the Bankruptcy Code. As a result, the strategic analysis should include the analytical support for the plan, its key assumptions, and how it would be implemented in different stress scenarios.

In preparing for a Title II resolution of a Covered Company subject to heightened prudential standards under Title I, the FDIC will have access to the information included in such Covered Company's Resolution Plan. This will be a vital element in the FDIC's planning. The elements contained in a Resolution Plan will help the FRB and the FDIC to better understand a Covered Company's business and how that entity may be resolved. The plans 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 Covered Companies to file with the FRB and the FDIC their initial Resolution Plans on a staggered basis. Covered Companies have been divided into three groups. The first group consists of Covered Companies that, as of the effective date of the Final Rule, have $250 billion or more in total nonbank assets (or, in the case of a Covered Company that is a foreign-based company, such company's total U.S. nonbank assets). Those Covered Companies are required to file their Resolution Plans on or before July 1, 2012. The second group consists of Covered Companies not in the first group and that, with respect to any Covered Company that, as of the effective

date of the Final Rule, had $100 billion or more in total nonbank assets (or, in the case of a Covered Company that is a foreign-based company, such company's total U.S. nonbank assets). The Covered Companies in the second group are required to file their Resolution Plans on or before July 1, 2013. The third group consists of the remaining Covered Companies. Covered Companies in the third group are required to file their Resolution Plans on or before December 31, 2013.

The Final Rule allows a Covered Company to file a more tailored Resolution Plan that focuses on the resolution of its nonbank operations if the Covered Company (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).

After the initial Resolution Plan is submitted, each Covered Company is required to submit a new Resolution Plan annually on or before the anniversary date of the date for submission of its initial plan. Notices following material events must be filed no later than 45 days after any event, occurrence, change in conditions or circumstances or change that results in, or could reasonably be foreseen to have, a material effect on the Covered Company's Resolution Plan.

Each Resolution Plan will be reviewed by the FRB and the FDIC to determine if it meets the informational, analytical and strategic planning requirements set forth in the

proposed regulation. The proposed regulation provides a time frame and process for remediation of a Resolution Plan that is found to be not credible or would not facilitate the orderly resolution of the Covered Company under the Bankruptcy Code.

II. Notice of Proposed Rulemaking: Comment Summary and Discussion

On April 22, 2011, the FDIC caused to be published in the *Federal Register* a Notice of Proposed Rulemaking ("NPR") entitled Resolution Plans and Credit Exposure Reports Required (the "Proposed Rule").[3] The NPR solicited public comment on all aspects of the Proposed Rule. The comment period ended on June 10, 2011, and 22 comments were received. In addition, staff of the FRB and the FDIC met with industry representatives to discuss issues relating the Proposed Rule.

The letters generally were supportive of the need for resolution planning. The comments related to resolution planning can be sorted 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.

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

[3] 76 Fed Reg. 22648.

deadline, January 21, 2012. In this regard, commenters noted the close connections between the proposed rule and the FRB's other forthcoming rulemakings to establish additional enhanced prudential standards under section 165. Commenters questioned whether the FRB and the FDIC 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 FRB and the FDIC 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.

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 FRB's and the FDIC's review of each plan be tied to the scope and planning decided on between individual firms and the FRB and the FDIC 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) the FRB and the FDIC 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.

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 FRB's and the FDIC's expectations for "first generation" Resolution Plans and should provide for meaningful feedback by the FRB and the FDIC within the 60 day period the FRB and the FDIC 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 FRB, the FDIC, 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 FRB's and FDIC'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 FRB's and the FDIC's 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 FRB and the FDIC 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 FRB and the FDIC 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 FRB and the FDIC 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 FRB and the FDIC 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' 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 FRB and the FDIC 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 FRB and the FDIC 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 FRB and the FDIC

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.

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 FRB'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 requirement and recommended that the requirement be limited to available information. Commenters also suggested that the FRB 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 FRB'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 FRB and the FDIC 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 FRB and the FDIC 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 FRB and the FDIC clarify when the first credit exposure report would be due.

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 FRB and the FDIC as participants, should satisfy their section 165(d) Resolution Plan requirement.

Commenters asked the FRB and the FDIC 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 FRB and the FDIC 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 FRB 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 FDIC's proposed rule regarding resolution planning for significant insured depository institutions.

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 FRB and the FDIC 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 FRB and the FDIC should restrict access to

Resolution Plan materials to staff of the FRB and the FDIC with specific needs for such access. Moreover, commenters suggested that the FRB and the FDIC 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 FRB and the FDIC 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.

Staff carefully considered the comments and made appropriate revisions to the Final Rule as described below.

III. Summary of Changes to the Text of the Proposed Rule

The text of the Proposed Rule was changed in various respects for the Final Rule. The major changes are summarized as follows:

- The Final Rule provides for staggered filing of initial plans beginning on July 1, 2012. The Proposed Rule required all Covered Companies to file their Resolution Plans within 180 days of the effective date of the rule.

- The Final Rule provides certain Covered Companies with the option of filing a tailored plan focused on the Covered Company and its nonbanking operations. The Proposed Rule did not vary the requirements for a Resolution Plan based on the size or complexity of a Covered Company, but rather contemplated that less complex companies would file less complex plans.

- The Final Rule provides for a notice of a material change to the Covered Company that would affect its Resolution Plan. The Proposed Rule required an interim update in the event of a material change.

- The Final Rule incorporates changes with respect to production of data on demand to allow requirements to develop over time.

- The Final Rule requires the Covered Company to submit a public portion and a confidential portion of its Resolution Plan. The Proposed Rule did not have a similar provision.

- The Final Rule does not contain credit exposure reporting requirements. Rulemaking in this area has been postponed in order to provide greater consistency with the FRB's separate rulemaking regarding credit concentrations.

IV. Summary of the Final Rule

The Final Rule is summarized as follows:

Section ____.2 of the Final Rule defines certain terms utilized in the Final Rule, including "rapid and orderly resolution," "material financial distress," "core business lines," "critical operations" and "material entities," which are key definitions in the Final Rule.

Section ____.3 of the Final Rule requires Covered Companies to file their initial Resolution Plans on a staggered basis. Covered Companies have been divided into three groups. The first group consists of Covered Companies that, as of the effective date of the Final Rule, have $250 billion or more in total nonbank assets (or, in the case of a Covered Company that is a foreign-based company, such company's total U.S. nonbank

assets). Those Covered Companies are required to file their Resolution Plans on or before July 1, 2012. The second group consists of Covered Companies not included in the first group and that, with respect to any Covered Company that, as of the effective date of the Final Rule, had $100 billion or more in total nonbank assets (or, in the case of a Covered Company that is a foreign-based company, such company's total U.S. nonbank assets). The Covered Companies in the second group are required to file their Resolution Plans on or before July 1, 2013. The third group consists of the remaining Covered Companies. Covered Companies in the third group are required to file their Resolution Plans on or before December 31, 2013.

The Final Rule allows a Covered Company to file a more tailored Resolution Plan that focuses on the resolution of its nonbank operations if the Covered Company (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).

After the initial Resolution Plan is submitted, each Covered Company is required to submit a new Resolution Plan annually on or before the anniversary date of the date for submission of its initial plan.

Notices following material events are required to be filed no later than 45 days after any event, occurrence, change in conditions or circumstances or change which

results in, or could reasonably be foreseen to have, a material effect on the Covered Company's Resolution Plan. A notice should describe the material event and explain why the event may require changes to the Resolution Plan. The FRB and the FDIC may require more frequent submissions and may extend the time period that a Covered Company has to submit its Resolution Plan or notices.

In order to allow evaluation of the Resolution Plan, each Covered Company must provide the FRB and the FDIC such information and access to personnel of the Covered Company as the FRB and the FDIC 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 Plan. The FRB and the FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency (or other regulatory agency) for the relevant company.

The board of directors of the Covered Company must approve the initial and each annual Resolution Plan filed. In the case of a foreign-based organization, a delegee of the board of the directors of such organization may approve the initial and annual Resolution Plans.

Part ____.4 of the Final Rule sets forth the minimum 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

resolution planning process and information regarding the interconnections and interdependencies among its U.S. operations and its foreign-based operations.

Each full 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 organization 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 Final Rule requires the Covered Company to identify and map its core business lines and critical operations to legal entities; provide integrated analyses of its corporate structure; credit and other exposures; funding, capital and cash flows; domestic and foreign jurisdictions in which it operates; supporting information systems and other essential services; and other key components of its business operations, all as part of the plan for its rapid and orderly resolution. 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 Final Rule also requires the Covered Company to provide and map its strategy for maintaining and funding for critical operations and core business lines to its material entities. The Covered Company should also provide its 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.

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 (the "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 or the Securities Investor Protection Act. The Final Rule designates a subsidiary that conducts core business lines or critical operations of the Covered Company as a "material entity." The Final Rule provides that, 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 and concurrently by the resolution authority of the material entity, to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States. 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 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. In addition, the Resolution Plan should provide the strategy and the proposed actions that the FDIC, as receiver of the national bank pursuant to the FDI Act, could take concurrently in its resolution of the national bank to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States.

The Resolution Plan is required to include information regarding the material assets, liabilities, derivatives, hedges, capital and funding sources of the Covered Company. An analysis of whether the bankruptcy of a major counterparty would likely have an adverse impact on and result in the material financial distress or failure of the Covered Company should also be included. Material trading, payment, clearing and settlement systems utilized by the Covered Company should be identified.

For a U.S.-based Covered Company with foreign operations, the Final Rule requires that the plan identify the extent of the risks related to those operations and the Covered Company's strategy for addressing such risks. A Covered Company is required to provide its strategy for ensuring that any 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).

The Final Rule requires the Resolution Plan to include a description of the Covered Company's processes and systems to collect, maintain, and report the

information and other data underlying the Resolution Plan. The plan should identify any deficiencies in such processes and systems and discuss plans to remedy such deficiencies.

With respect to a Covered Company that files a "tailored" Resolution Plan, the plan of such company generally will cover the elements described above with respect to the Covered Company and its non-banking material entities. In addition, a tailored Resolution Plan will also focus on and fully analyze the interconnections and interdependencies between the Covered Company, its non-banking material entities and operations, and its insured depository institutions. A tailored Resolution Plan will also include a strategy for ensuring that any insured depository institution subsidiary will be adequately protected from risks arising from the activities of nonbank subsidiaries of the Covered Company, as required by Section 165(d)(1) of the Dodd Frank Act.

Part ____.5 of the Final Rule sets forth procedures regarding the review of Resolution Plans. When a Resolution Plan is submitted, it will be reviewed initially to determine whether it appears to contain the elements set forth in Final Rule and is informationally complete. Within 60 calendar days of receiving a Resolution Plan, the FRB and the FDIC will determine whether the Resolution Plan should be accepted for further review. If the FRB and the FDIC determine that a Resolution Plan is informationally incomplete or that substantial additional information is necessary to permit further review, the FRB and the FDIC 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 is 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 FRB and the FDIC may jointly determine.

After a Resolution Plan is accepted for review, the FRB and the FDIC will review the plan for its compliance with the requirements of the Final Rule. If, following such review, the FRB and the FDIC jointly determine that the Resolution Plan of a Covered Company submitted is not credible or would not facilitate an orderly resolution of the Covered Company under the Bankruptcy Code, the FRB and the FDIC will jointly notify the Covered Company in writing of such determination. Such notice will identify the aspects of the Resolution Plan that the FRB and the FDIC 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 FRB and the FDIC may jointly determine, a Covered Company is required to submit a revised Resolution Plan to the FRB and the FDIC that addresses the deficiencies jointly identified by the FRB and the FDIC. The revised Resolution Plan must discuss in detail: (i) the revisions made by the Covered Company to address the deficiencies jointly identified by the FRB and the FDIC; (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.

While the review procedures of the Final Review are as set forth above, several commenters requested changes in the process and procedures for reviewing Resolution Plans set forth in the Proposed Rule. The FRB and the FDIC indicate in the Preamble to the Final Rule their desire to work closely with Covered Companies in the development of their Resolution Plans. The FRB and the FDIC indicate that they expect the review process to evolve as Covered Companies gain more experience in preparing their Resolution Plans. The FRB and the FDIC indicate that they 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. The FRB and the FDIC also indicate that there is no expectation by the FRB and the FDIC that initial Resolution Plans 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. The Final Rule allows the FRB and the FDIC to extend deadlines on their own initiative or upon request.

Upon a written request by a Covered Company, the FRB and the FDIC may jointly extend the time to resubmit a revised Resolution Plan. Any extension request must be supported by a written statement of the company describing the basis and justification for the request.

Part ____.6 of the Final Rule provides that, if the Covered Company fails to submit a revised Resolution Plan or the FRB and the FDIC jointly determine that a revised Resolution Plan submitted does not adequately remedy the deficiencies identified

by the FRB and the FDIC, then a Covered Company or any subsidiary of a Covered Company may be subjected to more stringent capital, leverage, or liquidity requirements, or restrictions on growth, activities, or operations. Any such requirements or restrictions shall apply to the Covered Company or subsidiary, respectively, until the FRB and the FDIC jointly determine the Covered Company has submitted a revised Resolution Plan that adequately remedies the deficiencies cited therein. In addition, if the Covered Company fails, within the 2-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 FRB and the FDIC, then the FRB and the FDIC, in consultation with the Council, may jointly, by order, direct the Covered Company to divest such assets or operations as the FRB and the FDIC jointly determine necessary to facilitate an orderly resolution of the Covered Company under the Bankruptcy Code in the event the company were to fail.

Part ____.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 impact on a functionally regulated subsidiary or a depository institution subsidiary of the Covered Company, the FRB shall consult with each FSOC member that primarily supervises any such subsidiary and may consult with any other Federal, state, or foreign supervisor as the FRB considers appropriate.

Part ____.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; (iii) a

bridge financial company chartered in connection with a Title II receivership; 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 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 FRB or the FDIC with respect to any Resolution Plan submitted under this part.

In addition, the Final Rule provides that a Resolution Plan shall be divided into a public section and a confidential section. The public section is required to include an executive summary of the Resolution Plan that provides a description of the business of the Covered Company, specific information elements and a description of, at a high level, the Covered Company's resolution strategy. In addition, the Final Rule provides that, to the extent permitted by law, the information comprising the confidential section of a Resolution Plan will be treated as confidential.

Part ____.9 of the Final Rule provides that the FRB and the FDIC may jointly enforce orders issued pursuant to part ___.6. The FRB, in consultation with the FDIC, may take other enforcement actions related to this part against a Covered Company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

CONCLUSION

Section 165(d) of the Dodd-Frank Act mandates that the FRB require each Covered Company to periodically submit to the FRB, the Council, and the FDIC a Resolution Plan. Section 165(d)(8) of the Dodd-Frank Act requires the FRB and the

FDIC to jointly issue final rules implementing Section 165(d) not later than January 21, 2012. This Final Rule is issued jointly with the FRB to implement the requirements in Section 165(d) of the Dodd-Frank Act. Thus, staff recommends that the Board approve and adopt the Final Rule with an effective date 30 days after publication in the *Federal Register* (or such later date as may be required by law) and authorize its publication in the *Federal Register* after approval by the FRB.

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