April 4, 2019

MEMORANDUM TO: The Board of Directors

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SUBJECT: Proposed Amendments to 12 C.F.R. Part 381 – Notice of Proposed Rulemaking

I. SUMMARY OF RECOMMENDATIONS:

This Memorandum concerns a notice of proposed rulemaking (the "Proposal") to amend and restate the current joint resolution plan rule ("Rule") implementing section 165(d) ("Section 165(d)") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] The Proposal is intended to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA")[2] and reflect improvements to the Rule identified over the seven and a half years since the Rule was adopted. The proposed amendments comprise (1) a proposal by the Board of Governors of the Federal Reserve System ("FRB") to exercise its authority granted by EGRRCPA to identify the firms with $100 billion or more but less than $250 billion in total consolidated assets that will continue to have a resolution planning requirement,[3] and (2) a proposal by the Federal Deposit Insurance Corporation ("FDIC") and the FRB to amend the Rule to (a) tailor plan content requirements to reflect the varying degrees of systemic risk posed by different types of

[1] Codified at 12 C.F.R. Part 381 and 12 U.S.C. § 5365(d), respectively.
[2] Pub. L. No. 115-174, 132 Stat. 1296 (2018).
[3] *Id.* § 401(a)(1)(C) (to be codified at 12 U.S.C. § 5365(a)(2)(C)).

firms; (b) specify new plan submissions schedules; and (c) make other improvements to procedural aspects of the Rule.

Staff recommends that the Board of the FDIC (the "Board") take the following actions:

A. Approve the Notice of Proposed Rulemaking, attached to this Memorandum as **Attachment 2**, and authorize its publication in the *Federal Register* for a comment period ending June 21, 2019.

B. Authorize the General Counsel, or designee, and the Executive Secretary, or designee, to make technical, non-substantive or conforming changes to the text of the draft *Federal Register* documents to prepare them for publication.

II. DISCUSSION:

A. Background

The Dodd-Frank Act resolution planning process is intended to help ensure that a firm's failure would not have serious adverse effects on financial stability in the United States. Accordingly, Section 165(d) and the jointly-issued Rule require certain financial companies ("covered companies") to report periodically to the FRB and the FDIC (together, the "Agencies") their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure. The resolution plan must be in the format and include the information described in the Rule, and each covered company must submit a resolution plan for review by the Agencies annually, or at such other frequency as the Agencies jointly direct. If the Agencies jointly determine that a resolution plan is not credible or would not facilitate an orderly resolution, the covered company must remedy the deficiencies in the resolution plan

jointly identified by the Agencies. If the covered company fails to adequately and timely remedy the deficiencies, the Agencies may jointly impose more stringent prudential requirements on the company until the deficiencies are remedied.[4]

1. Resolution Planning under the Rule

Since the Rule was issued in 2011, the Agencies have reviewed multiple resolution plan submissions and provided feedback and guidance to assist firms in developing their subsequent plan submissions. The Agencies' feedback and guidance have become increasingly tailored to the characteristics of individual covered companies, including their size, business models, and risk profiles, and, for foreign-based organizations, the scope of their U.S. operations. Based on these factors, certain covered companies continue to submit full resolution plans, while the Agencies have authorized certain other covered companies to submit resolution plans containing a subset of the full informational content otherwise required to be included in a plan. The Agencies have referred to those plans containing the smallest subset of content as reduced content plans.

As both the covered companies' submissions and the Agencies' feedback have evolved over several plan cycles, the Rule's annual filing requirement has been a challenging constraint for both the Agencies and the covered companies. An annual filing cycle may not always permit sufficient time for the review of resolution plan submissions and for the development of meaningful feedback and guidance. It also may

[4] 12 U.S.C. § 5365(d)(4) and (d)(5); 12 C.F.R. §§ 381.5(b) and 6(a). In addition, if the company fails to submit, within two years of the imposition of more stringent prudential requirements, a revised plan that adequately remedies the identified deficiencies, the Agencies, in consultation with the Financial Stability Oversight Council, may jointly order the company to divest such assets or operations as the Agencies jointly determine are necessary to facilitate an orderly resolution of the company under the Bankruptcy Code in the event of the company's failure. *See* 12 U.S.C. § 5365(d)(5)(B) and 12 C.F.R. § 381.6(c).

not provide covered companies with sufficient time to understand and address the feedback and to incorporate any resulting changes into their next resolution plan filings. In recognition of the challenges associated with an annual resolution plan submission cycle, over the last few submission cycles, the Agencies routinely have extended plan filing deadlines to provide at least two years between submissions.

2. Resolution Planning Post-EGRRCPA

EGRRCPA revised the resolution plan requirement as part of the changes the law made to application of the enhanced prudential standards in section 165 of the Dodd-Frank Act. Specifically, EGRRCPA raised the $50 billion minimum asset threshold for general application of enhanced prudential standards, including the resolution planning requirement, to $250 billion in total consolidated assets, and provided the FRB with discretion to apply the resolution planning requirement to certain bank holding companies with total consolidated assets in the $100 billion to $250 billion range. The first asset threshold increase occurred immediately on the date of enactment, May 24, 2017. Firms with total consolidated assets of less than $100 billion (for foreign banking organizations, $100 billion in total global assets) were as of this date no longer subject to the resolution planning requirement.[5]

The second threshold increase will occur 18 months after the date of EGRRCPA's enactment, at which time the threshold rises to $250 billion in total consolidated assets.[6] However, EGRRCPA provides the FRB with the authority to apply resolution planning

[5] Pub. L. No. 115-174, § 401(d)(2).
[6] *Id.* § 401(d)(1).

requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets.[7]

3. FRB's Tailoring Proposals and Resolution Planning Tailoring

On November 29, 2018, consistent with section 401 of EGRRCPA, the FRB published a proposal to revise the framework for determining the prudential standards that shall apply to large U.S. banking organizations ("domestic tailoring proposal").[8] Staff understands that the FRB will be asked to consider a similar proposal regarding foreign banking organizations ("FBO tailoring proposal") on or around April 8, 2019. Among other provisions, the domestic tailoring proposal and the FBO tailoring proposal (together, the "tailoring proposals") establish distinct categories of standards that will be applicable to firms for the purpose of calibrating enhanced prudential supervisory requirements. Three of these categories (Categories I, II, and III), which were developed by the FRB, form both the basis for the FRB's discretionary imposition of resolution planning requirements and for the Proposal's framework. Staff recommends that, as set forth in the Proposal, these same categories be used to tailor the content of the resolution planning requirements for both large U.S. banking organizations and foreign banking organizations.

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[7] *Id.* § 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. § 5365(a)(2)(C)). For foreign banking organizations, EGRRCPRA directs the use of total global assets. EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a global systemically important bank holding company ("U.S. GSIB") under the FRB's U.S. GSIB surcharge rule shall be considered a bank holding company with $250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement. *Id.* § 401(f).

[8] *Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies*, 83 Fed. Reg. 61,408 (proposed Nov. 29, 2018).

B. Overview of the Resolution Plan Proposal

Staffs of the Agencies jointly prepared the proposed modifications to the Rule, which are intended to streamline, clarify, and improve the resolution plan submission and review processes and timelines, taking into consideration the relative risks to U.S. financial stability that a firm's failure may pose. The Agencies are seeking to achieve three key goals with the Proposal: First, the Proposal is intended to improve efficiency and balance burden by allowing more focused full resolution plan submissions, as well as periodic targeted resolution plan submissions for some filers, and reduced resolution plan submissions for the remaining filers. Second, the Proposal would establish by rule a biennial filing cycle for the U.S. global systemically important bank holding companies ("U.S. GSIBs") and balance burden by extending the filing cycle to every three years for all other filers. Third, the Proposal would improve certain aspects of the Rule, such as the process for identifying critical operations, based on the Agencies' experience in applying the Rule over time. These changes are expected to permit covered companies to build on previous work more effectively.

C. The Proposal

1. Identification of Firms Subject to the Resolution Planning Requirement

Firms Subject to the Requirement Explicitly. Under the Dodd-Frank Act, as amended by EGRRCPA, three sets of firms are explicitly subject to the resolution planning requirement:

(a) U.S. and foreign banking organizations with $250 billion or more in total consolidated assets;

(b) U.S. banking organizations identified as U.S. GSIBs; and

(c) Any designated nonbank financial companies that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act must be supervised by the FRB.[9]

Firms Subject to the Requirement at the FRB's Discretion. Further, the FRB may determine, after making certain findings (as set out in the statute) that firms with $100 billion or more and less than $250 billion in total consolidated assets shall be subject to resolution planning requirements.[10]

The FRB has exercised this authority in promulgating the domestic tailoring proposal. The risk-based indicators established in the tailoring proposals are important indicia of a firm's complexity and serve to gauge the likely impact of a firm's failure on U.S. financial stability. Therefore, the FRB is proposing to use these risk-based indicators to identify those domestic and foreign firms with total consolidated assets equal to $100 billion or more and less than $250 billion that should be subject to a resolution planning requirement. The Proposal also uses these risk-based indicators to divide U.S. and foreign-based covered companies into groups for the purposes of determining the frequency and informational content of resolution plan filings.

Thus, under the Proposal, consistent with the domestic tailoring proposal, the FRB would exercise its discretion to apply resolution planning requirements to U.S. bank holding companies with (a) total consolidated assets equal to $100 billion or more and less than $250 billion, and (b) $75 billion or more in any of the following risk-based indicators: cross-jurisdictional activity, nonbank assets, weighted short-term wholesale

[9] 12 U.S.C. § 5323.

[10] 12 U.S.C. § 5365(a); Pub. L. No. 115-174, § 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. § 5365(a)(2)(C)). *See also* Pub. L. No. 115-174, § 401(g).

funding, or off-balance sheet exposure.[11] For U.S. bank holding companies, the $75 billion threshold for risk-based indicators would be measured on a consolidated basis. Under the Proposal, the FRB would not require continuing resolution plan submissions from those U.S. bank holding companies with total consolidated assets equal to $100 billion or more and less than $250 billion that do not have at least $75 billion in one of these risk-based indicators.[12]

Moreover, consistent with the FBO tailoring proposal, under the Proposal the FRB would apply resolution planning requirements to foreign banking organizations with (a) total global assets equal to $100 billion or more and less than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75 billion or more in any of the risk-based indicators measured with respect to combined U.S. operations.[13] Under the Proposal, the FRB would not require continuing resolution plan submissions from those foreign banking organizations with total global assets equal to $100 billion or more and less than $250 billion that do not have at least $100 billion in combined U.S. assets and $75 billion or more in at least one of the risk-based indicators measured with respect to combined U.S. operations.

The Proposal explains in detail the considerations supporting the proposed categorization by the FRB of firms with $100 billion or more and less than $250 billion in total consolidated assets. These same considerations support the proposed joint

[11] These U.S. bank holding companies would be subject to Category II or III standards.

[12] These U.S. bank holding companies would be subject to Category IV standards.

[13] These foreign banking organizations would be subject to Category II or III standards. "Combined U.S. assets" means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. § 1841(h)(2)), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on form FR Y-7Q.

modifications to the Rule to create new filing groups, revise plan submission frequency, and determine the type(s) of plans each filing group would submit.

The Proposal also outlines the FRB's alternative approach under its tailoring proposals for assessing the risk profile and systemic footprint of firms using a single, comprehensive score. The alternative approach would use the FRB's identification methodology (scoring methodology) to identify a U.S. bank holding company as a U.S. GSIB and apply risk-based capital surcharges to these firms. Under the Proposal, the FRB would use this same scoring methodology to determine whether to apply the resolution planning requirements to firms with $100 billion or more but less than $250 billion in total consolidated assets. If the FRB were to utilize this alternative methodology in the final rulemakings for the tailoring proposals, certain of the firms subject to Categories II or III standards could change. Under these circumstances, the Agencies would need to consider whether the final rulemaking for the Proposal should similarly use the alternative approach to determine the applicable resolution plan filing requirements for firms in Categories II and III because the content and frequency of a firm's plan submissions could consequently change.

2. Creation of Filing Groups

The Proposal divides covered companies into three groups of filers, commensurate with the potential impact of such companies' failure on U.S. financial stability. The Proposal differentiates, for each group of filers, the resolution plan filing cycle length and information content requirements. The three groups of resolution plan filers are defined as: (1) biennial filers; (2) triennial full filers; and (3) triennial reduced filers. Under the Proposal, all covered companies would have a July 1 submission date,

in place of the current division between July 1 and December 31. This unified submission date is intended to streamline the overall resolution planning framework.

Attachment 3 depicts, by filing group, the applicable categories from the tailoring proposals and the firms that are expected to be included.

(a) Biennial Filers. The biennial filers in the Proposal comprise (i) firms subject to Category I standards, i.e., the U.S. GSIBs, which are the largest, most systemically important U.S. bank holding companies, and (ii) any nonbank financial company supervised by the FRB that has not been jointly designated as a triennial full filer by the Agencies. The failure of a firm in this group would pose the most serious threat to U.S. financial stability and, accordingly, the Proposal provides that this group be subject to the most stringent resolution planning requirements in terms of both submission frequency and information content.

For a biennial filer, the Proposal would require submission of a resolution plan every two years, alternating between a full resolution plan that would be subject to a waiver option and a targeted resolution plan (detailed below). Given that the U.S. GSIBs' resolution plans have matured since their initial submissions in 2012 and that these firms have taken meaningful steps to develop the foundational capabilities necessary for the implementation of their resolution strategies, staffs of the Agencies have concluded that a two-year filing cycle is appropriate.

(b) Triennial Full Filers. The Proposal would create a second filing group, triennial full filers. Triennial full filers would comprise firms subject to Category II or Category III standards and certain non-bank financial companies, namely:

(i) U.S. firms with $250 billion or more in total consolidated assets that are not U.S. GSIBs;

(ii) U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion that have $75 billion or more in any of the following risk-based indicators: cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure;

(iii) Foreign banking organizations with $250 billion or more in combined U.S. assets;

(iv) Foreign banking organizations with combined U.S. assets of $100 billion or more and less than $250 billion that have $75 billion or more in any of the following risk-based indicators: cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure, measured based on the firm's combined U.S. assets; and

(v) Nonbank financial companies supervised by the FRB that the Agencies have jointly designated as triennial full filers.

The Proposal would require triennial full filers to submit a resolution plan every three years, alternating between a full resolution plan and a targeted resolution plan. Under the Proposal, staffs of the Agencies have concluded that this longer filing cycle is appropriate in light of the lesser degree of systemic risk posed by the failure of a firm in this group as compared to the biennial filers. As a covered company's resolution plan matures over time and as the risks presented by individual firms and the market change, a different filing cycle may be appropriate. Accordingly, the Proposal retains the Agencies' current flexibility to move filing dates when appropriate.

Notably, this filing group includes the foreign banking organizations that have received detailed guidance from the Agencies.[14] Staffs of the Agencies believe that it is appropriate that these firms be part of the triennial full filing group and submit plans on the three-year filing cycle because the preferred outcome for each of these foreign

[14] *See, e.g., Guidance for 2018 §165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015*, available at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf.

banking organizations is a successful home country resolution using a single point of entry resolution strategy, not the resolution strategy described in its U.S. resolution plan.

(c) Triennial Reduced Filers. The Proposal establishes a third group, triennial reduced filers, which consists of any covered company that is not a biennial filer or triennial full filer. Triennial reduced filers would comprise foreign banking organizations with $250 billion or more in total global consolidated assets that are not subject to Category II or III standards.[15]

The Proposal would require a firm that becomes a covered company and that is a triennial reduced filer to submit as its initial submission a full resolution plan and thereafter, as its periodic submission, a reduced resolution plan (described below) every three years. Staffs of the Agencies have concluded that extending the filing cycle and reducing the informational requirements is appropriate given these firms' limited U.S. operations.

3. Resolution Plan Content

Under the Proposal, firms would submit – based upon their filer group – either a (a) full resolution plan, (b) targeted resolution plan, or (c) reduced resolution plan.

(a) Full Resolution Plan. The Proposal would not substantively modify the informational components of a full resolution plan. The Proposal specifies that applicable guidance previously issued to individual full resolution plan filers concerning

[15] These foreign banking organizations would be required to submit resolution plans because they would have at least $250 billion in total global assets. *See* Pub. L. No. 115-174, § 401(a) (to be codified at 12 U.S.C. § 5365).

the content of their upcoming submissions would continue to apply to those individual firms.[16]

(b) Waiver for Full Resolution Plan Content. Through a covered company's repeated resolution plan submissions, certain aspects of its plan may reach a steady state or become less material such that regular updates would not be useful to the Agencies in their review of the plan. In acknowledgement of this, the Proposal would continue to permit the Agencies to waive certain informational content requirements for one or more firms on the Agencies' joint initiative. Waivers could be granted for one or more filing cycles.

The Proposal also lays out a new process for a covered company to apply for a waiver of certain informational content requirements of a full resolution plan. Waivers would not be available for targeted or reduced resolution plans, or for an initial submission full plan. Where the covered company would like to omit certain informational elements from its next full resolution plan submission, the covered company would need to apply for the waiver at least 15 months in advance of the filing date.

In order to limit administrative burden and maximize transparency, covered companies would be limited to making one waiver request for each filing cycle, and a separate public section of the waiver request, containing the list of the requirements sought to be waived, would be made public. Waivers would be automatically granted on the date that is nine months prior to due date of the plan to which the waiver request

[16] For example, *Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations*, 84 Fed. Reg. 1438 (Feb. 4, 2019), and *Guidance for 2018 §165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015* available at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf.

relates, if the Agencies do not jointly deny the waiver prior to that date. The Proposal further provides that covered companies would not be able to request waivers for certain informational content requirements of the Rule.[17]

(c) Targeted Resolution Plan. The Proposal would also introduce a new type of resolution plan submission: a targeted resolution plan. A targeted resolution plan would be a subset of a full resolution plan. The staffs of the Agencies propose the creation of the targeted resolution plan to strike the appropriate balance between providing for the receipt of updated information on structural or other changes that may affect a firm's resolution strategy, while avoiding submission of information that remains largely unchanged since the previous submission.

The targeted resolution plan elements are proposed to be as follows:

(i) *Certain Resolution Plan Core Elements:* An update of the information required to be included in a full resolution plan pursuant to Section ____.5(c), (d)(1)(i), (d)(1)(iii)–(iv), (e)(1)(ii), (e)(2)–(3), (e)(5), (f)(1)(v), and (g) regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan.

(ii) *Material Changes:* Descriptions of material changes since the filing of the covered company's previously submitted resolution plan, and the changes the covered company has made to its plan in response to such material changes.

(iii) *Changes in Response to Regulatory Requirements, Guidance, or Feedback:* A discussion of changes made to the resolution plan, including the covered company's resolvability or resolution strategy or how the strategy is implemented, in response to feedback or guidance from the Agencies, or to legal or regulatory changes.

[17] These include the core elements required in a targeted resolution plan (as discussed below), information about changes the covered company has made to its resolution plan in response to a material change, information required in the public section of a full resolution plan, information about a deficiency or shortcoming that has not been adequately remedied or satisfactorily addressed, and information that is specifically required to be included in a resolution plan pursuant to Section 165(d). 12 U.S.C. § 5365(d)(1)(A) through (C).

(iv) *Public Section:* A public section with the same content required of a full resolution plan's public section.

(v) *Targeted Areas of Interest:* A discussion of targeted areas of interest identified by the Agencies that the filer should address to enhance its resolution plan submission.[18]

Attachment 5 includes a chart of the informational elements required in a full plan and in a targeted plan under the Proposal.

(d) Reduced Resolution Plan. The Proposal would also codify another plan type, the reduced resolution plan. For foreign banking organizations with limited U.S. operations, the Agencies have generally agreed, on a case-by-case basis, to limit the informational requirements of these firms' recent submissions to material changes and improvements to the firms' resolution strategies. These plan submissions in past practice have been referred to as reduced content plans. The Proposal would formalize the information requirements for this type of resolution plan, as follows: (i) a description of material changes to the covered company's resolution plan since the filing of its previously submitted plan, (ii) a description of changes made to the strategic analysis that was presented in the firm's previously submitted resolution plan resulting from any (x) change in law or regulation, (y) guidance or feedback from the Agencies, or (z) material changes described in clause (i) above, and (iii) a public section with specified reduced informational requirements.

(e) Supersession of Tailored Plans. The Rule currently permits certain bank-centric firms to submit "tailored" resolution plans that focus on their nonbank activities

[18] Under the Proposal, the Agencies would notify covered companies of any targeted areas of interest at least 12 months prior to the applicable submission date.

and omit some informational content of a full resolution plan submission.[19] The Proposal's waiver process and the targeted resolution plan provisions would provide effective substitutes for this type of focused submission in appropriate circumstances. Additionally, many of the covered companies currently eligible for a tailored plan either have ceased, post-EGRRCPA, to be subject to the resolution plan submission requirement or would become triennial reduced filers. The proposed provisions supersede the tailored plan category and, accordingly, the Proposal would delete the existing tailored plan provisions.

4. Critical Operations Methodology and Reconsideration Process

The current Rule provides for "critical operations" to be identified by the firms or at the Agencies' joint direction.[20] In 2012, the Agencies established a process and methodology for jointly identifying critical operations for both U.S. and foreign-based covered companies. The Agencies' original critical operations identifications have remained largely unchanged, although some covered companies have submitted ad hoc requests seeking reconsideration of certain critical operations identifications. Given that both firms and markets continually evolve and change, staffs of the Agencies have concluded that a periodic, comprehensive review of critical operations identifications would help to ensure that resolution planning remains appropriately focused on key areas.

[19] 12 C.F.R. § 381.4(a)(3).

[20] Under the current Rule, "critical operations" are 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 Agencies, would pose a threat to the financial stability of the United States. 12 C.F.R. § 381.2(g). The information a full resolution plan must provide is dictated, in a number of areas, by whether the covered company has one or more critical operations. *See, e.g.*, 12 C.F.R. § 381.4(c)(1)(ii) through (v).

The Proposal would establish procedures for both the firms and the Agencies to identify particular operations of covered companies as critical operations and to rescind prior critical operations identifications. The intended result would be a process that yields an updated and relatively stable population of identified critical operations, while allowing for recognition of new, or changes to existing, markets or activities, as well as changes to individual firms' participation in those markets or activities, among other factors.

The Proposal would require biennial filers and triennial full filers, *i.e.*, generally those with currently identified critical operations, to maintain a process and methodology for the identification of critical operations on a scale that reflects the nature, size, complexity, and scope of their operations (or, for a foreign-based organization, its U.S. operations). The Proposal also would require the covered company's critical operations review process to occur at least as frequently as its resolution plan submission cycle, and be documented in the covered company's corporate governance policies and procedures. The Agencies would be required to conduct a critical operations review at least every six years. The Proposal would also provide a process by which a firm that previously submitted a resolution plan but does not currently have an identified critical operation could request a waiver from the critical operations process and methodology requirement.

5. Clarifications and Other Changes to the Rule

Based on their joint experience implementing the Rule since its promulgation in November 2011, staffs of the Agencies also recommend, and the Proposal includes, a number of clarifications and additional changes to the Rule.

(a) Standard of Review. The statute and the Rule require that, in reviewing resolution plans, the Agencies identify any "deficiencies" in the plans and communicate them to the firms. Neither the statue nor the Rule defines the term. However, in the course of their experience with reviewing plans, the Agencies have developed a definition of deficiency, as well as the related concept of a "shortcoming" to use in characterizing their conclusions concerning the plans. The Agencies have defined these terms in a public statement and utilized them in feedback letters to individual covered companies.[21] To provide an opportunity for public comment and a clearer articulation of the standards the Agencies apply in identifying deficiencies and shortcomings, the Proposal adds a formal definition of each of these items that is consistent with the terminology of the Agencies' prior public statement.[22]

(b) Elimination of Incompleteness Concept. The Rule includes a requirement that the Agencies review a resolution plan within 60 days of submission and jointly inform the covered company if the plan is informationally incomplete or additional information is required to facilitate review of the plan.[23] This process led to a limited number of resubmissions in 2012 but has not been invoked since. As resolution plans have developed, staffs of the Agencies have found that this requirement does not materially facilitate their review of the resolution plans and therefore recommend removing it.

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[21] *Resolution Plan Assessment Framework and Firm Determinations (2016)*, Apr. 13, 2016, available at: https://www.fdic.gov/news/news/press/2016/pr16031a.pdf.

[22] The Proposal would define a "deficiency" as an aspect of a firm's resolution plan that the Agencies jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the firm's plan. A "shortcoming" is defined as a weakness or gap that raises questions about the feasibility of a firm's plan, but does not rise to the level of a deficiency for both Agencies.

[23] 12 C.F.R. § 381.5(a)(2).

(c) Other Changes and Clarifications. The Proposal includes a number of other proposed modifications, which are intended to clarify aspects of the Rule, formalize past practice with respect to certain provisions of the Rule, or otherwise change certain technical aspects of the Rule. These proposed modifications include, among others, items relating to:

(i) Identification of the entity in a multi-tiered holding company that must submit the resolution plan where the top tier entity is a foreign government, a sovereign entity, or a family trust;

(ii) In assessing a potential new covered company, discretion for the Agencies to jointly consider, for a firm whose assets have grown due to a merger, acquisition, combination, or similar transaction, information for one or more quarters preceding the transaction;

(iii) The methodology for determining the point at which a firm with decreasing asset size ceases to be a covered company;

(vi) The timing of a firm's subsequent submission when it changes filing groups; and

(v) Prohibited assumptions in a resolution plan concerning resolution actions outside of the United States taken by a foreign banking organization.

D. Transition Period

The Proposal includes a proposed schedule to transition existing covered companies from their current plan types and submission dates to the new filing groups, plan types, and filing schedules that the Proposal would establish.

Attachment 4 includes a chart showing for the proposed filing groups of firms when their next filing is due under the current Rule and would be due under the Proposal through 2025, and the proposed plan type for each group and submission.

E. Expected Effects

The proposal would modify the expected costs imposed by the Rule while seeking to preserve the firms' resolvability and the benefits to U.S. financial stability provided by the Rule.

Consistent with EGRRCPA, the Proposal would raise the asset threshold at which all firms would be required to submit resolution plans, and would introduce risk-based indicators that would trigger resolution plan filing requirements for certain U.S. firms and foreign banking organizations with total consolidated assets equal to $100 billion or more and less than $250 billion, thereby reducing the number of U.S. filers from 27 to 12, and the number of foreign banking organization filers from 108 to 62. The staffs of the Agencies estimate that these modifications would reduce by more than 60 percent the number of hours firms commit annually to preparing resolution plan submissions, resulting in approximately $40 million in savings annually by the industry.[24] At the same time, the risk-based indicators provide for firms with certain complexities to continue to submit resolution plans even if they do not satisfy EGRRCPA's $250 billion threshold. Though the Proposal would extend firms' resolution plan submission cycle and allow for more streamlined informational content, the Agencies would retain authority to require a firm to submit a resolution plan prior to its regular deadline, and to submit a full

[24] In the FRB's most recent Paperwork Reduction Act ("PRA") submission to the Office of Management and Budget regarding the mandatory reporting requirements associated with the Rule, the total estimated annual burden was 1,137,797 hours. *Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB*, 83 Fed. Reg. 42296 (Aug. 21, 2018). Staff estimates the total annual hour burden under the Proposal would be 425,523, a reduction of 712,274 hours annually. When the Rule was adopted in 2011, the FRB took the entire PRA burden associated with the Rule even though the FRB and the FDIC are both legally authorized to receive and review resolution plans. The Agencies have decided to now share equally in the PRA burden associated with the Proposal. Using data from the Bureau of Labor Statistics, staff estimates the hourly wage associated with resolution plan preparation to be $56.05. Accordingly, the Proposal would result in an estimated annual savings of $39,922,958.

resolution plan even if it was next scheduled to submit a targeted resolution plan. Staff believes these retained authorities would minimize the impact of the reduced filing requirements on the firms' resolution preparedness.

III. CONCLUSION:

Staff recommends that the Board:

A. Approve the attached Notice of Proposed Rulemaking and authorize its publication in the *Federal Register* for a comment period ending June 21, 2019.

B. Authorize the General Counsel, or designee, and the Executive Secretary, or designee, to make technical, non-substantive or conforming changes to the text of the draft *Federal Register* documents to prepare them for publication.

CONCUR:

4/4/19
Date

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