

April 10, 2019

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley, Director
Division of Risk Management Supervision

Bret D. Edwards, Director
Division of Resolutions & Receiverships

SUBJECT: Advance Notice of Proposed Rulemaking Relating to
12 C.F.R. § 360.10 and Extension of Insured
Depository Institution Resolution Plan Submission
Deadlines

I. SUMMARY OF RECOMMENDATIONS:

This Memorandum concerns an advance notice of proposed rulemaking (“ANPR”) to obtain input from the public as the Federal Deposit Insurance Corporation (“FDIC”) reviews its rule requiring insured depository institutions (“IDIs”) with \$50 billion or more in total assets (“CIDIs”) to submit resolution plans (“IDI Rule”).¹ This Memorandum also concerns the submission deadlines for CIDIs’ next resolution plan submissions.

Staff believes that the FDIC is better prepared today to handle larger resolutions than it was during and in the immediate aftermath of the 2008 financial crisis.² This is in part because of what has been learned through the resolution plan review process established by the IDI Rule. Given the experience of reviewing resolution plans and

¹ 12 C.F.R. § 360.10.

² The IDI Rule was proposed in 2010 and became effective in 2012. Final Rule, 77 Fed. Reg. 3075 (Jan. 23, 2012); Interim Final Rule, 76 Fed. Reg. 58,379 (Sept. 21, 2011); Proposed Rule, 75 Fed. Reg. 27,464 (proposed May 17, 2010).

other FDIC rulemakings that complement resolution planning,³ staff believes it is appropriate for the FDIC to consider how the IDI Rule could be tailored and otherwise improved to support the FDIC's mandate to administer orderly and least-costly resolutions of CIDs while reducing the overall burden on CIDs.

Given the pending review of the IDI Rule, staff believes it is appropriate for the Board of the FDIC ("Board") to exercise its authority under the IDI Rule to extend the date by which all CIDs must submit their next resolution plans to such date or dates as the Board specifies by future action in connection with the Board's final determination respecting amendments to the IDI Rule.

Accordingly, staff recommends that the Board take the following actions:

A. Approve the ANPR, attached to this Memorandum as **Attachment 2**, and authorize its publication in the *Federal Register* for a comment period ending 60 days after publication.

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.

C. Extend the date by which all CIDs must submit their next resolution plans to such date or dates as the Board specifies by future action in connection with the Board's final determination respecting amendments to the IDI Rule.

³ These include the FDIC's large bank deposit insurance determination rule and qualified financial contract recordkeeping rule. 12 C.F.R. pts. 370 & 371.

II. DISCUSSION:

A. Background

The IDI Rule requires CIDs to periodically submit resolution plans that should enable the FDIC, as receiver, to resolve the CIDI in the event of its insolvency under the Federal Deposit Insurance Act (“FDI Act”) in a manner that ensures that depositors receive access to their insured deposits within one business day of the CIDI’s failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets, and minimizes the amount of any loss realized by the creditors in the resolution. The IDI Rule is intended to ensure that the FDIC has timely access to the essential information concerning a CIDI’s structure, operations, business practices, financial responsibilities, and risk exposure, which the FDIC would need to handle a resolution of a CIDI under the FDI Act.

The FDIC feedback and guidance⁴ provided to CIDs since issuance of the IDI Rule indicate that the FDIC’s experience in administering the IDI Rule has led to overall changes in its expectations regarding the process, as well as the value it places on individual components required in the resolution plans. Experience with the IDI Rule indicates that in many cases, the greatest value of resolution planning comes from the insights into each CIDI’s idiosyncratic risk profile and information on the particular CIDI that the resolution plans provide, rather than the strategies that each CIDI develops for resolution. Further, the FDIC’s experience shows that the distinctions among individual CIDs make certain elements called for in the IDI Rule more or less valuable, such that a

⁴ See Guidance for Covered Insured Depository Institution Resolution Plan Submissions (Dec. 17, 2014), <https://www.fdic.gov/news/news/press/2014/pr14109a.pdf>.

one-size-fits-all approach may no longer be the best approach for specifying resolution plan content.

B. Overview of the ANPR

To facilitate comment, the ANPR proposes potential modifications to the IDI Rule in the following areas: (a) creation of tiered resolution planning requirements based on institution size, complexity, and other factors; (2) revisions to the frequency and required content of plan submissions, including elimination of plan submissions for a category of smaller and less complex IDIs; and (3) improvements to the process for periodic engagement between the FDIC and institutions on resolution-related matters. In respect of the creation of tiered requirements, the ANPR presents two alternatives.

Through the ANPR, the FDIC would seek comment from interested parties on all aspects of its large insured depository institution planning activities, including the areas described below.

Tiered approach. The ANPR presents two alternatives to grouping filers. Under the first approach, CIDs would be divided into the following three groups of filers for purposes of applying different resolution planning requirements. “Group A” CIDs would include the largest, most complex, internationally active IDIs. “Group B” CIDs would include larger, more complex regional IDIs. “Group C” CIDs would include smaller, less complex regional IDIs.

Under the second approach, CIDs would be divided into two groups of filers. The first group, “Large” CIDs, would consist of CIDs that would be Group A or Group B CIDs under the first approach. The second group would be the Group C CIDs.

Content. Under each approach, Group A and Group B CIDs would continue to be required to submit resolution plans. However, it may be appropriate to no longer

require Group C CIDs to submit resolution plans due to the relative lack of complexity of these institutions. Accordingly, Group C CIDs would no longer be required to submit resolution plans under either approach. Instead, Group C CIDs, as well as Group A and B CIDs, would engage with the FDIC staff on resolution planning matters and undergo periodic capabilities testing to support the FDIC's resolution planning efforts.

Regardless of the approach, some of the information content requirements for resolution plans could be modified or eliminated, such as requirement that the CIDI describe how its strategies are the least costly to the Deposit Insurance Fund of all possible resolution methods.⁵

Under the first approach, a different set of fixed content requirements would apply to Group A CIDs as compared to Group B CIDs. Group A CIDs would be subject to all content requirements specified in the amended IDI Rule while Group B CIDs would be subject to a subset of those content requirements, taking into account the size, complexity, and other factors of Group B CIDs as compared to Group A CIDs. In the past, the FDIC has encouraged CIDs to eliminate content not required in a particular submission through incorporating such content by reference to the prior submission. This practice could be expanded through the provision of waivers for Group A (and Group B) CIDs.

Under the second approach, there would be no bright-line distinction with regard to the informational requirements for Larger CIDs. Instead, content requirements would exist along a continuum based upon the size, complexity and other factors of the

⁵ See 12 C.F.R. § 360.10(c)(2)(vii). Because the FDIC manages FDI Act resolutions, the ANPR notes that the FDIC is considering modifying certain resolution plan content requirements to clarify that the FDIC would develop the resolution strategies and make the least cost test determination, with information provided by the CIDI.

particular CIDI. For example, a Larger CIDI that engages in significant cross-border operations would present the corresponding metrics for complexity that would trigger the requirement to include a robust discussion of those activities in its resolution plan.⁶ This same institution may not have a significant qualified financial contract business or one that presents significant risk to its business, and also may not provide systemically important functions.⁷ Because those requirements relating to qualified financial contracts and systemically important functions would not be triggered, the resolution plan for this Larger CIDI potentially could provide streamlined content on these items, or would not be required to respond to the informational item.

Engagement and capabilities testing. The IDI Rule's requirement for a CIDI to make its personnel available to assist the FDIC in assessing the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan⁸ could be modified to also require each CIDI to engage with the FDIC to provide feedback on the development of the FDIC's resolution strategy for the CIDI. The FDIC could use this opportunity to explore how identified gaps could be mitigated through additional data and analysis, future resolution plan submissions, or additional resolution strategy development. In addition, CIDs that submit resolution plans would continue to be subject to periodic capabilities testing to verify the accuracy of the resolution plan information provided to the FDIC. All CIDs would continue to be subject to periodic capabilities testing to verify the ability of the CIDI promptly to provide critical

⁶ See 12 C.F.R. § 360.10(c)(2)(xviii).

⁷ See 12 C.F.R. § 360.10(c)(2)(xii) and (xvii).

⁸ See 12 C.F.R. § 360.10(d)(1).

information if required to do so in exigent circumstances. The capabilities testing would be tailored according to the size, complexity, and other factors of the CIDI.

Frequency. Under the first approach, the concurrent cycle would be replaced with a staggered biennial/triennial cycle, under which Group A CIDs would submit resolution plans biennially and Group B CIDs would submit resolution plans triennially. Under the second approach, Larger CIDs would submit their resolution plans either biennially or triennially based on the characteristics of the CIDI. Alternatively, under either approach, a schedule in which the filing cycle could alternate between resolution plan submissions and further streamlined content submissions (focusing, for example, on a subset of informational requirements) could be considered. Engagement and capabilities testing for all CIDs would occur on a periodic basis, in addition to any conditions-based supplemental resolution planning. To ensure that the FDIC is prepared to resolve a CIDI, the ANPR notes that the FDIC is considering implementing supplemental resolution planning outreach and engagement if the FDIC determines that a CIDI is in stress or becomes troubled.

C. Extension of Deadlines for Affected CIDs

All CIDs are required to submit their next resolution plans on or before July 1, 2020. Because the FDIC may propose and finalize revisions to the IDI Rule after the ANPR's comment period ends, staff believes it is appropriate to extend the date by which all CIDs must submit their next resolution plans to such date or dates as the Board specifies by future action in connection with the Board's final determination respecting

amendments to the IDI Rule.⁹ This action would be consistent with feedback letters to CIDs approved by the Board on March 29, 2019, and recent public statements that no resolution plan submission under the IDI Rule will be required prior to the completion of the ongoing rulemaking process.

Staff believes that requiring additional resolution plan submissions prior to completion of the ongoing rulemaking process could have several negative effects. First, CIDs could be confused about the applicable requirements, given potential differences between the current IDI Rule and the potential changes described in the ANPR. The result could be inconsistent and unclear resolution plan submissions. Second, resolution plans submitted before the ongoing rulemaking process is completed may prove inconsistent with the IDI Rule as it may be amended. Preparing such plans could require an inefficient and unnecessary expenditure of CIDs' resources. Third, Board member and staff time could be utilized inefficiently to review and assess portions of the submissions that may be modified or eliminated.

In the interest of providing certainty and clarity, staff recommends that the Board extend the date by which all CIDs – including an IDI that becomes a CID after the date that the Board considers this matter – must submit their next resolution plans to such date or dates as the Board specifies by future action in connection with the Board's final determination respecting amendments to the IDI Rule. The Director of the Division of Risk Management Supervision, or designee, would communicate with CIDs concerning this extension as appropriate.

⁹ The Board took similar action in 2016 when it extended on a one-time basis the date by which ten CIDs were required to submit their respective resolution plans from July 1, 2016, to such date as the Board would specify in the responses to those CIDs' 2015 resolution plans, which date would in any event be no earlier than December 31, 2016. *See* Resolution of the FDIC Board No. 083384 (April 26, 2016).

III. CONCLUSION:

Staff recommends that the Board:

- A. Approve the attached ANPR and authorize its publication in the *Federal Register* for a comment period ending 60 days after publication.
- 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.
- C. Extend the date by which all CIDs must submit their next resolution plans to such date or dates as the Board specifies by future action in connection with the Board's final determination respecting amendments to the IDI Rule.

CONCUR:

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4/10/2019
Date

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