

ALERT MEMORANDUM

Agencies Propose 2019 Resolution Plan Guidance for U.S. G-SIBs

July 6, 2018

On June 29th, the Federal Reserve and the FDIC (the “Agencies”) proposed for public comment revised resolution plan guidance (the “Proposed Guidance”)¹ for the eight largest, most complex U.S. banks (the “U.S. G-SIBs”)². The Proposed Guidance would apply beginning with the next scheduled July 1, 2019 resolution plan submissions from the firms.

The Proposed Guidance is largely similar to the guidance issued by the Agencies in April 2016 (the “2016 Guidance”) and addresses six key issues:

1. Capital
2. Liquidity
3. Governance Mechanisms
4. Operational
5. Legal Entity Rationalization and Separability
6. Derivatives and Trading Activities

The Agencies identified numerous areas of significant progress by the firms and recognized that the U.S. G-SIBs had already incorporated significant portions of the Proposed Guidance into their resolution plans based on the 2016 Guidance. However, the Proposed Guidance notes that comments to the U.S. G-SIBs on their 2017 resolution plans identified four areas requiring additional work in upcoming resolution plans. The Agencies are proposing updates to two such areas regarding payment, clearing, and settlement activities (“PCS”) and derivatives and trading activities (“DER”). The Agencies intend to provide additional information on the two other areas, intra-group liquidity and

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¹ Proposed Guidance, June 29, 2018, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180629a.pdf>.

² Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., the Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley, State Street Corporation and Wells Fargo & Company.

internal loss absorbing capacity, in the future. The Proposed Guidance also suggests minor changes to certain areas of the 2016 Guidance to streamline the firms' submissions and to provide additional clarity.

The Proposed Guidance identified specific questions for comments and required that all comments be submitted within 60 days from publication in the Federal Register.

Key Takeaways

- The Proposed Guidance¹ is a product of several longer term and new developments in resolution planning.
 - o First, the Agencies have recognized that U.S. G-SIBs have made significant progress towards resolvability, and resolution plan guidance has become more focused and granular on more specific issues. This has created difficulties where certain guidance, particularly on capital and liquidity, have become effective binding constraints without notice and comment rulemaking on that guidance.
 - o Second, while an enormous volume of information continues to be required, the greater focus on specific resolution planning issues has led to a movement away from the broader information dumps that characterized the first few plans. Based on our experience, this evolution better reflects the intent of the resolution planning rules.
 - o Third, and perhaps most significantly, the Proposed Guidance is a product of a new emphasis on greater clarity and transparency through notice and comment. Both Federal Reserve
- Vice Chairman for Supervision Randal Quarles and new FDIC Chairman Jelena McWilliams have emphasized the importance of transparency, and Vice Chairman Quarles has specifically commented on the need for public and firm comment on resolution planning guidance. Significantly, while the Proposed Guidance does not address changes to the resolution planning capital and liquidity requirements, Vice Chairman Quarles also has noted that these requirements should be subject to formal rulemaking. Further transparency, and perhaps moderated standards, may lie in the future.
- Reflecting these developments, in issuing the Proposed Guidance, the Agencies expressly stated an intent to streamline the submissions of the U.S. G-SIBs and provide additional clarity, especially with respect to resolution plans' PCS and DER sections.
- The Proposed Guidance represents the first time the Agencies have requested feedback on resolution planning guidance. The U.S. Department of Treasury last year recommended that resolution planning guidance should be subject to notice and comment.

- Guidance on capital, liquidity, governance mechanisms, collateral management, management information systems, shared and outsourced services, legal entity rationalization criteria and separability remains largely unchanged from the 2016 Guidance.
 - o Additional guidance on capital and liquidity frameworks may be part of the forthcoming information on intra-group liquidity and internal loss absorbing capacity.
- The Proposed Guidance is not applicable to non-U.S. G-SIBs. It is reasonable to expect that the Agencies will propose guidance applicable to non-U.S. G-SIBs in the future after review of the resolution plans submitted by such institutions on July 1, 2018.

Payment, Clearing, and Settlement Activities²

- The Proposed Guidance would require the U.S. G-SIBs to demonstrate the ability to maintain access to PCS services through a framework that includes the identification of key clients, FMUs and agent banks, along with a playbook for each FMU and agent bank. This extends beyond the 2016 Guidance by including key clients and agent banks.
- Each U.S. G-SIB would be required to discuss its roles as (1) a user and (2) a provider of PCS services, both directly and indirectly, with a mapping for each to material entities, critical operations and core business lines (“CBLs”).

Derivatives and Trading Activities³

- For Bank of America, Citigroup, Goldman Sachs, JP Morgan, Morgan Stanley and

Wells Fargo (the “dealer firms”), the Proposed Guidance reorganizes the derivatives and trading guidelines from the 2016 Guidance to focus on five areas: booking practices, inter-affiliate risk monitoring and controls, portfolio segmentation and forecasting, prime brokerage customer account transfers and derivatives stabilization and de-risking strategy.

- The Proposed Guidance eliminates the requirements from the 2016 Guidance that a dealer firm’s resolution plan contain passive and active wind-down analyses, agency-specified data templates and rating agency playbooks.

Clarification to the Guidance

- The Agencies evinced a focus on clarifying previous guidance and ensuring that the newly proposed recommendations were sufficiently clear. In their questions to commenters, they asked repeatedly whether the guidelines they proposed were “sufficiently clear.”
- The Agencies continued their push for clarity and ease of use by noting that they are considering consolidating all applicable guidance into a single document. This document would incorporate the remaining applicable sections of previously issued guidance: (i) the 2016 Guidance; (ii) the Guidance for 2013 §165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012; (iii) firm-specific feedback letters issued in 2014 and 2016; (iv) the February 2015 staff communication regarding the 2016 plan submissions and (v) the Resolution Plan

Frequently Asked Questions from May 2017.

Comparison with 2016 Guidance

- We have highlighted below the key differences between the requirements of the Proposed Guidance and the 2016 Guidance. A more detailed comparison matrix between the two is included as Appendix A.

The Proposed Guidance

In response to the 2017 submissions by the U.S. G-SIBs, the Agencies released the Proposed Guidance to provide clarification and additional recommendations and requirements focused on the firms' PCS and DER activities.

Payment, Clearing, and Settlement Activities⁴

The Agencies significantly revised their previous guidance with respect to PCS services, increasing the requirements to provide a more thorough explanation to the regulators of the methods of interaction with key clients, FMUs and agent banks. This includes significant changes to playbook requirements for FMUs and agent banks.

The Proposed Guidance requires the U.S. G-SIBs to identify key clients (including affiliates), FMUs and agent banks. In making these determinations, the firms are directed to use qualitative and quantitative criteria (the latter including aggregate volumes and values of all transactions processed through an FMU, assets under custody with an agent bank, the value of assets settled through an agent bank and extensions of intraday credit). Additionally, U.S. G-SIBs should map material entities, critical operations, CBLs and key clients to both key FMUs and agent banks.

Playbooks.⁵ The Proposed Guidance requires the U.S. G-SIBs to create a playbook for each key FMU and agent bank reflecting the U.S. G-SIBs' role(s) as users and/or providers of PCS services. In these playbooks, the firms must address their direct and indirect relationships with the FMUs and agent banks.

- The U.S. G-SIBs are not required to incorporate a loss of FMU or agent bank access into their preferred resolution strategies or RCEN/RLEN estimates. However, the firms should provide

analyses of financial and operational impacts on material entities and key clients due to loss of access to FMUs or agent banks. Additionally, the Proposed Guidance notes the firms must address alternative arrangements to maintain PCS access in resolution.

- *As Users.* Under the Proposed Guidance, playbooks should include descriptions of firms' relationships as users of PCS services and map their uses to material entities, critical operations and CBLs. Firms should also include discussion of adverse actions FMUs and agent banks can take and their operational and financial impact, along with firms' contingency arrangements. Firms should also include discussions of PCS liquidity sources, PCS liquidity uses and intraday liquidity inflows and outflows. Finally, the Proposed Guidance requires the U.S. G-SIBs to discuss these sources and uses in business as usual, in stress and in resolution.
- *As Providers.* The Proposed Guidance notes that playbooks should include mapping of PCS services to material entities, critical operations and CBLs that provide those PCS services, along with mapping of PCS services to key clients that rely on the firm to provide those services. U.S. G-SIBs should discuss a range of contingency arrangements to minimize disruption of PCS services provided to clients. The firms should also describe potential contingency actions concerning provision of intraday credit to clients. Additionally, the Proposed Guidance requires communication of impacts of implementation of contingency

arrangements or alternatives to key clients. Playbooks should further describe the methodology for determining whether a firm should provide additional communication to some or all key clients, and the expected timing and form of such communication.

Derivatives and Trading Activities⁶

The Agencies also revised their previous guidance on the U.S. G-SIBs' derivatives and trading activities. The Agencies organized the DER portion of the Proposed Guidance in five sections, the first four of which should be commensurate with the size, scope and complexity of the firms' derivatives portfolios. The fifth, derivatives stabilization and de-risking strategy, describes the expectations of firms' management of their derivatives portfolios in an orderly resolution.

Please note this section of the Proposed Guidance applies only to dealer firms, which "share many quantitative and qualitative characteristics," including that they: (i) have total derivatives notional value over \$5 trillion; (ii) have global gross market value of derivatives greater than \$20 billion; (iii) have sum of global trading assets and trading liabilities greater than \$110 billion; (iv) are subject to the G-SIB Surcharge and all components of the CCAR quantitative assessment and (v) are parents to designated primary dealers. As such, the derivatives section of the Proposed Guidance does not apply to BNY Mellon or State Street.

Booking Practices.⁷ The Proposed Guidance requires that dealer firms have booking practices commensurate with the size, scope and complexity of the dealer firms' derivatives portfolios. Dealer firms should have capabilities to monitor market, credit and liquidity risk transfers between entities. They should also have a booking model framework, undergirded by

internal controls, procedures, systems and processes, that can show: (i) what is booked; (ii) where it is booked; (iii) by whom it is booked; (iv) why it is booked that way and (v) what controls are in place to monitor and manage those practices.

Derivatives Entity Analysis and Reporting.⁸ The Proposed Guidance also requires a dealer firm to be able to report on every affiliated entity with a derivatives portfolio (a “derivatives entity”). The plans should first describe the methodology used for evaluating derivatives entities under a dealer firm’s current activities and with respect to its preferred resolution strategy. The plan should also demonstrate a dealer firm’s ability to generate current derivatives entity profiles that cover all relevant entities, are reportable in a consistent manner, and include information regarding current legal ownership structure, business activities/volume, and risk profile.

Inter-Affiliate Risk Monitoring and Controls.⁹ The Proposed Guidance requires a dealer firm to have the capability to assess how the management of inter-affiliate risks would be affected in resolution. Dealer firms should maintain an inter-affiliate market risk framework that includes methods to (i) measure the market risk exposures of material derivatives entities from the termination of a specific counterparty and (ii) identify and evaluate a re-hedge strategy in resolution put on by the same material derivatives entity.

Portfolio Segmentation and Forecasting.¹⁰ The Proposed Guidance also requires a dealer firm to have the capability to produce a variety of portfolio segmentation analyses across a minimum of eight enumerated segmentation dimensions of their derivatives portfolio. The firm should also be able to provide:

- *“Ease of exit” position analysis.* Dealer firms must have and describe methods for categorizing and ranking the ease of exit for their derivatives positions, based on a number of different categories.
- *Application of exit cost methodology.* Dealer firms must be able to forecast the cost and liquidity needed to exit their derivatives positions.
- *Analysis of operational capacity.* Dealer firms must be capable of assessing the resources and forecasting the costs associated with the firms’ derivatives activities under their preferred resolution strategies.
- *Sensitivity analysis.* Dealer firms must apply sensitivity analyses to the key drivers of derivatives-related costs and liquidity flows under their preferred resolution strategies.

Prime Brokerage Customer Account Transfers.¹¹ Expanding on prior requirements in the 2016 Guidance, the Agencies also included in the Proposed Guidance requirements for dealer firms to have the operational capabilities to assist in the transfer of prime brokerage accounts to peer prime brokers during material financial distress and in resolution. Dealer firms should be able to segment prime brokerage accounts based on identifiable characteristics that determine the speed at which accounts could be transferred.

Derivatives Stabilization and De-Risking Strategy.¹² According to the Proposed Guidance, dealer firms should have in their resolution plans detailed analyses of their plans to stabilize and de-risk their derivatives portfolios. This can include a going-concern strategy, an active wind-down strategy, a combination of the two, or another

strategy, as long as the strategies are justified in the resolution plans.

- In assessing their stabilization and de-risking strategies, dealer firms should assume, among other things, (i) a reduced ability to access the OTC derivatives market, (ii) counterparties that exercise every contractual termination right available to them and (iii) a time horizon of the resolution period extending between one and two years.
- The dealer firms' preferred resolution strategies should incorporate the forecasts of capital and liquidity needs in resolution into their RCEN and RLEN estimates for their overall resolution strategy.
 - o The Proposed Guidance does not include changes to their expectations of RLAP or RLEN models. The Agencies indicated that major changes are not expected to firms' RLAP and RLEN models while the Agencies complete a review and provide further feedback.¹³
- Resolution plans should also estimate the composition of any residual portfolio of derivatives remaining after execution of the preferred resolution strategies. Resolution plans should also provide analyses of the impacts on funding markets and underlying asset markets for any material derivatives entities that enter their own resolution proceedings under the preferred resolution strategy.

Future Steps

The Proposed Guidance seeks to provide greater clarity to the U.S. G-SIBs, in part through the guidance itself and in part through seeking

comments from firms and the public on the guidance as prompted by specific questions. In the future, we can anticipate consolidation of past guidance with the Proposed Guidance, as noted in the public proposal, so that the complete resolution planning requirements will be more easily accessible and understandable.

Moving forward, we can reasonably expect the Agencies to provide an opportunity for notice and comment on future guidance to the non-U.S. G-SIBs following evaluation of their resolution plans filed by July 1, 2018.

Similarly, we can expect similar notice and comment review of future guidance to resolution plan filers who normally file their plans by December 31st of the required year. Just this week, the Agencies announced they were extending the deadlines for the next resolution plans for fourteen domestic firms from 2018 until December 31, 2019. It is likely that additional extensions may be in store for other "December filers". This would give time for the Agencies to propose new guidance for the December filers and issue it, as well, for public comment.

Further differentiation between the resolution planning standards applied to U.S. G-SIBs and other filers, particularly December filers, also can be expected. The public notice and comment process certainly will assist in providing greater transparency and, hopefully, clarity to those requirements.

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¹ Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, *Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations* (June 29, 2018), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180629a.pdf> (the “Proposed Guidance”).

² Proposed Guidance, Section V.a. at 42.

³ Proposed Guidance, Section VII.a at 54.

⁴ Proposed Guidance, Section V.a. at 42

⁵ *Id.* at 43.

⁶ Proposed Guidance, Section VII at 54.

⁷ Proposed Guidance, Section VII.a at 54

⁸ *Id.*

⁹ Proposed Guidance, Section VII.b at 56.

¹⁰ Proposed Guidance, Section VII.c at 58.

¹¹ Proposed Guidance, Section VII.d at 61.

¹² Proposed Guidance, Section VII.e at 62.

¹³ Proposed Guidance, Supplementary Information at 10, footnote 8.

Comparison Chart: Guidance for 2016 §165(d) Annual Resolution Plan Submissions By Domestic Covered Companies (“2016 Guidance”) vs. Proposed Guidance for 2019 §165(d) Annual Resolution Plan Submissions By U.S. G-SIBs (“Proposed Guidance”)

Sub-Section/Topic	Material Differences Between 2016 Guidance and Proposed Guidance	Page Number
I. Introduction		
<i>Prior Guidance Still in Effect</i>	The 2013 §165(d) Guidance, the 2014 feedback letters and the 2015 staff communication regarding the 2016 plan submissions, as described in the 2016 letters to the firms, continue to be applicable, except to the extent superseded or supplemented by the Proposed Guidance.	32
II. Capital		
<i>Resolution Capital Adequacy and Positioning “(RCAP)”</i>	No material changes.	33
<i>Resolution Capital Execution Need “(RCEN)”</i>	No material changes.	34
III. Liquidity		
<i>Resolution Liquidity Adequacy and Positioning “(RLAP)”</i>	No material changes.	36
<i>Resolution Liquidity Execution Need “(RLEN)”</i>	No material changes.	37
IV. Governance Mechanisms		
<i>Playbooks and Triggers</i>	No material changes.	38
<i>Pre-bankruptcy Parent Support</i>	No material changes.	40
V. Operational		
<i>Payment, Clearing, and Settlement Activities</i>	<p>The 2016 Guidance required domestic banks to continue to develop playbooks that would ensure continued access to payment, clearing and settlement activities in a manner that would support an orderly resolution.</p> <p>The Proposed Guidance would now require U.S. G-SIBs to specifically develop playbooks for continued access to PCS services, which should both:</p>	42

Sub-Section/Topic	Material Differences Between 2016 Guidance and Proposed Guidance	Page Number
	<ul style="list-style-type: none"> • Ensure continued access to PCS services as a user; and • Ensure continued access to PCS services to other firms and affiliates as a provider. <p>In developing the playbook, the firm should:</p> <ul style="list-style-type: none"> • Identify key clients (and affiliates), financial market utilities (“FMUs”) and agent banks. • Include mapping material entities, critical operations, core business lines and key clients to both key FMUs and agent banks. 	
<i>Managing, Identifying, and Valuing Collateral</i>	No material changes.	46
<i>Management Information Systems</i>	No material changes. The requirement to implement infrastructure projects by July 2017 has expired.	47
<i>Shared and Outsourced Services</i>	No material changes.	47
<i>Legal Obstacles Associated with Emergency Motions</i>	<p>The 2016 Guidance required plans to address the stay on cross-default rights described in Section 2 of the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol.</p> <p>The Proposed Guidance would require the plan to also consider any other similar provisions of any U.S. legal protocol or other provisions that comply with the Agencies’ rules regarding stays from the exercise of cross-default rights in qualified financial contracts.</p>	48
VI. Legal Entity Rationalization and Separability		
<i>Legal Entity Rationalization Criteria (LER Criteria)</i>	No material changes.	52
<i>Separability</i>	No material changes.	53
VII. Derivatives and Trading Activities		
<i>2016 Guidance Sections</i>	Each of the 2016 Guidance sections have been removed and replaced by the Proposed Guidance.	54
<i>Applicability</i>	This section of the proposed guidance applies to Bank of America Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley and Wells Fargo & Company.	54
<i>Booking Practices</i>	The firm should develop a derivatives booking framework that includes derivatives entity analysis and reporting.	54

Sub-Section/Topic	Material Differences Between 2016 Guidance and Proposed Guidance	Page Number
<i>Inter-Affiliate Risk Monitoring and Controls</i>	<p>The firm should establish capabilities to manage risk transfers between affiliates that include, at least:</p> <ul style="list-style-type: none"> • a method for measuring, monitoring and reporting the market risk exposures for a given material derivatives entity resulting from the termination of a specific counterparty or a set of counterparties; and • a method for identifying, estimating associated costs of, and evaluating the effectiveness of, a re-hedge strategy in resolution put on by the same material derivatives entity. 	56
<i>Portfolio Segmentation and Forecasting</i>	<p>The firm should have system capabilities that would allow it to produce a portfolio segmentation analysis using multiple segmentation dimensions, including:</p> <ul style="list-style-type: none"> • (1) legal entity (and material entities that are branches); • (2) trading desk and/or product; • (3) cleared vs. clearable vs. non-clearable trades; • (4) counterparty type; • (5) currency; • (6) maturity; • (7) level of collateralization; and • (8) netting set. <p>The firm should also have a method and supporting systems to analyze the ease of exit for a given position.</p> <p>Each firm should have a methodology for forecasting the cost and liquidity needed to exit positions, and the operational resources related to those exits, under the firm’s preferred resolution strategy.</p> <p>Each firm should have the capabilities to forecast the incremental operational needs and expenses related to executing specific aspects of its preferred resolution strategy.</p> <p>Each firm should describe its method for:</p> <ul style="list-style-type: none"> • (i) evaluating the materiality of assumptions; and • (ii) identifying those assumptions (or combinations of assumptions) that constitute the key drivers for its forecasts of operational and financial resource needs under the preferred resolution strategy. 	58
<i>Prime Brokerage Customer Account Transfers</i>	<p>The plan should include an assessment of how it would transfer peer prime brokerage accounts.</p>	61

Sub-Section/Topic	Material Differences Between 2016 Guidance and Proposed Guidance	Page Number
<i>Derivatives Stabilization and De-risking Strategy</i>	<p>Each firm should include a detailed analysis of the strategy to stabilize and de-risk its derivatives portfolios that incorporates defined assumptions regarding OTC derivatives market access, early exits (break clauses) and time horizon.</p> <p>The analysis should take into account:</p> <ul style="list-style-type: none"> • (i) the starting profile of its derivatives portfolios; • (ii) the profile and function of the derivatives entities during the resolution period; • (iii) the means, challenges and capacity for managing and de-risking its derivatives portfolios; • (iv) the financial and operational resources required to effect the derivatives strategy; and • (v) any potential residual portfolio. <p>Forecasts of resource needs should be incorporated into the firm's RCEN and RLEN.</p> <p>The plan should also include:</p> <ul style="list-style-type: none"> • A method for estimating the potential residual derivatives portfolio under the preferred scenario. • If applicable, the plan should include a non-surviving entity analysis. 	62
VIII. Public Section		
	No material changes.	66