

Agencies Simplify 2018 Resolution Plan Requirements for Many Foreign Banks

February 1, 2018

On January 29, 2018, the Federal Reserve and the FDIC (the “Agencies”) released feedback letters to 19 foreign banking organizations (“FBOs”) that last filed plans by December 31, 2015 (the “FBO Feedback”).¹ The most significant take-away is that the resolution planning requirements for these FBOs have been substantially reduced from those previously required. Many of the FBOs now are permitted to file reduced or more limited plans by incorporating by reference information from their prior plans and by addressing more streamlined requirements in other areas. The FBOs must file their next plans by December 31, 2018.

The FBO Feedback grouped the FBOs into two broad categories:

- Eleven banks are permitted to file “reduced” plans (“Reduced Plans”), which have the same reduced requirements as those for the 84 FBOs with under \$50 billion in total U.S. assets that received feedback in June 2016.
- The other FBOs are permitted to file more “limited” plans (“Limited Plans”), which have requirements similar to those permitted for the 16 domestic third-wave filers that received feedback letters in March 2017. In some instances, the FBO Feedback included varying firm-specific requirements.

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¹ Federal Reserve and FDIC Joint Press Release, Jan. 29, 2018, available at <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180129a.htm>.



Key Takeaways

- No credibility determinations were made with respect to the 2015 resolution plans of the FBOs. The Agencies did not identify any formal “shortcomings” as they have for first-wave filers and one third-wave domestic filer.
- The FBO Feedback did not include the much more demanding requirements contained in the formal guidance and individual feedback given to the four FBOs (Barclays, Credit Suisse, Deutsche Bank and UBS) who file their plans by July 1st (“2018 Guidance”). The 2018 Guidance imposed stringent and specific requirements for capital, liquidity, governance, contribution frameworks, branch operations and wind-down scenarios for payments and market operations. These requirements, in many areas, have to be supported through detailed capital and liquidity analyses denominated as Resolution Liquidity Adequacy and Positioning, Resolution Liquidity Execution Need, Resolution Capital Adequacy and Positioning, and Resolution Capital Execution Need.
- In contrast, the FBO Feedback focuses on incorporating by reference from prior plans where information or strategies had not changed and, in some cases, on funding sources, legal entity structures, the continuity of services, and the orderly wind-down of clearing and settlement operations. Even those FBOs with more items to address are not required to undertake the rigorous analytical proofs required in the 2018 Guidance.
- The 2018 plans will be the first plans filed by the FBOs since their implementation of the U.S. intermediate holding company (“U.S. IHC”) requirements. For the FBOs that are not able to file a Reduced Plan, addressing how this and related restructuring, capital, liquidity and other requirements have affected their resolution plans is likely to be the most significant of the various requirements.
- A comparison of the FBO Feedback with the 2018 Guidance and prior guidance to the largest U.S.

financial institutions underscores the division of the resolution planning process into two groups: (i) the July filers, including the largest U.S. financial institutions and the four largest FBO filers and (ii) the December filers. The latter group broadly is not viewed as potentially systemically important to the U.S. financial system and generally may file much more streamlined resolution plans without the detailed and often prescriptive analytical and structural requirements imposed on the July filers.

- This bifurcation of the resolution planning requirements reflects a long-standing trend that pre-dated the confirmation of a new Vice Chairman for Supervision at the Federal Reserve and the pending nomination of a new FDIC chairman, and is a reasonable response to the cost and burden imposed on all filers irrespective of their potential systemic importance to the U.S. financial system. However, it is reasonable to conclude that the emphasis by the Administration on moderation of many of the Dodd-Frank Act requirements may play a role in the future towards a broader moderation of requirements and greater consideration of the balance of costs and benefits for some prior resolution planning requirements. While it can be expected that the emphasis will remain on the July filers for obvious reasons, there may be a prospect of reconsideration of some requirements even for them going forward.

Reduced Plans

- The filers instructed to file Reduced Plans may do so for their next three submissions (*i.e.*, through 2020) as long as (i) their total U.S. non-branch assets remain below \$50 billion and (ii) they do not experience a “material event”.
- A Reduced Plan need only describe:
 - Any material changes to the resolution plan;
 - Any actions taken to improve the effectiveness of the plan; and

- If applicable, the strategy to protect any of the filer’s U.S. insured depository institutions (“IDIs”).

Limited Plans

1. Feedback

- The Agencies provided feedback to all of the FBOs that 2018 resolution plans should: (i) apply the severely adverse stress test scenario for the first quarter of 2018, (ii) describe changes to resolution plans resulting from the implementation of U.S. IHCs and (iii) include a separate public section.
- The Agencies provided further feedback to some banks:
 - *Material Entity Designation*. The Agencies asked certain filers to address decisions made by these banks to designate—or not designate—entities as material entities.
 - *Shared and Outsourced Services*. The Agencies asked several filers to discuss the continuity of shared services that support the filer’s operations once the filer enters resolution.
 - *Repurchase Agreements; Payments, Clearance and Settlement*. The Agencies asked one filer to strengthen its support, through specified analyses, for assumptions regarding actions taken by repo and reverse repo counterparties at failure if it chooses to continue to rely on this assumption. The Agencies asked another filer to provide significantly more detailed information on the continuity of its payments, clearance and settlement activities.
 - *Capital and Liquidity*. One filer is required to describe its methodology for estimating capital needs and to provide a comprehensive understanding of funding sources. These capital and liquidity requirements, however, are significantly less demanding than those placed on first-wave filers.

2. Contents of Limited Plan

- In addition to addressing the relevant feedback described above, Limited Plans must, at a minimum, meet the following elements:
 1. The executive summary and strategic analysis sections of the Limited Plans may be narrowed to include only any content changed from the filers’ 2015 resolution plans as a result of the feedback;
 2. The Limited Plans must also discuss material changes from the filers’ 2015 resolution plans, including any material changes to: (i) resolution strategies, (ii) funding, liquidity and capital needs and (iii) provisions for continuity of shared and outsourced services; and
 3. The 2018 Limited Plans must further discuss any actions taken to improve the resolution plan’s effectiveness and the strategy for ensuring any IDI subsidiary is protected from activities of nonbank subsidiaries.
- Limited Plan filers are instructed to incorporate by reference information in their 2015 plans that does “not require any change or clarification”. This reflects a change from the regulations, which permit, but do not require, filers to do so.
- Limited Plans have a narrower scope than that of “tailored plans” (“Tailored Plans”), which limit many of the rule’s requirements to a filer’s parent and its non-banking material entities and operations. FBOs with under \$100 billion in total U.S. non-bank assets and U.S. banking assets that comprise 85% or more of the filer’s total U.S. consolidated asset have been eligible to file a Tailored Plan.

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LINKS TO LETTERS FOR SPECIFIC INSTITUTIONS

[Banco Bilbao Vizcaya Argentaria, S.A.](#)

[Banco Santander, S.A.](#)

[Bank of China Limited](#)

[Bank of Montreal](#)

[The Bank of Nova Scotia](#)

[BNP Paribas USA, Inc.](#)

[BPCE](#)

[Coöperatieve Rabobank, U.A.](#)

[Crédit Agricole](#)

[HSBC Holdings plc](#)

[Industrial and Commercial Bank of China Ltd.](#)

[Mitsubishi UFJ Financial Group, Inc.](#)

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[The Norinchukin Bank](#)

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[Standard Chartered PLC](#)

[Sumitomo Mitsui Financial Group, Inc.](#)

[The Toronto-Dominion Bank](#)