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ALERT MEMORANDUM

New Resolution Plan Guidance for 2018 Plans for Largest Foreign Banks & Feedback for December 2017 Plans for 16 Domestic Banks

March 27, 2017

On March 24, 2017, the Federal Reserve and the FDIC (the "Agencies") released guidance for the 2018 resolution plan submissions (the "2018 Foreign Guidance") for the four foreign banking organizations that filed plans on July 1, 2015 (the "Foreign Banks").[1] The Agencies also provided individual feedback on the 2015 resolution plans of 16 domestic banks.[2] The Foreign Banks must file their next plans by July 1, 2018. The domestic banks must file their next plans by December 31, 2017.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

WASHINGTON D.C.

Michael Krimminger
T: +1 202 974 1720
mkrimminger@cgsh.com

Derek M. Bush
T: +1 202 974 1526
dbush@cgsh.com

NEW YORK

Seth Grosshandler
T: +1 212 225 2542
sgrosshandler@cgsh.com

Lisa M. Schweitzer
T: +1 212 225 2629
lschweitzer@cgsh.com

Sean A. O'Neal
T: +1 212 225 2416
soneal@cgsh.com

Knox L. McIlwain
T: +1 212 225 2245
kmcilwain@cgsh.com

[1] Those Foreign Banks are Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG and UBS AG.
[2] The 16 domestic banks are: Ally Financial Inc., American Express Company, BB&T Corporation, Capital One Financial Corporation, Comerica Incorporated, Discover Financial Services, Fifth Third Bancorp, Huntington Bancshares Incorporated, KeyCorp, M&T Bank Corporation, Northern Trust Corporation, The PNC Financial Services Group, Inc., Regions Financial Corporation, SunTrust Banks, Inc., U.S. Bancorp and Zions Bancorporation.

Key Takeaways

Foreign Banks

— No credibility determinations were made with respect to the 2015 resolution plans of the Foreign Banks. Therefore, Foreign Banks do **not** have to file interim targeted submissions in October to address any deficiencies or shortcomings (as did the largest domestic banks).

— The resolution plan due date for the Foreign Banks was deferred by one year until July 1, 2018. The Agencies noted that implementation of the U.S. intermediate holding company ("U.S. IHC") requirements, and related restructuring, capital, liquidity and other requirements, had affected the Foreign Banks' resolution plans.

— No guidance was provided to foreign banks that are December filers, and no feedback was provided on the due date for their resolution plans.

— The 2018 Foreign Guidance broadly parallels the guidance issued to U.S.-based covered companies in April 2016 (the "2017 Domestic Guidance"), including requirements for much more granular analyses and steps addressing capital, liquidity, governance playbooks, legal entity rationalization and derivatives and trading activities.[3] However, the 2018 Foreign Guidance recognizes differences made necessary by the U.S. IHC requirements and foreign ownership.

— For the first time, the Agencies explicitly allow reliance, in part, on liquidity available through a "mechanism for planned foreign parent support." However, the 2018 Foreign Guidance does not include the specific discussion and components for contractually binding mechanisms ("CBMs") included in the 2017 Domestic Guidance. Of course, the requirements for relying on a term lending facility with the foreign parent may include similar elements.

— The Agencies explicitly permit a Foreign Bank to include continued operation of its U.S. branches as part of its resolution plan. However, the continued operation of the branches must be supported analytically. For any branch significant to critical operations, the plan must demonstrate that the branch will continue to facilitate financial market utility ("FMU") access for those operations, comply with applicable supervisory requirements (including maintaining a net due to position and meeting heightened asset maintenance requirements), and maintain sufficient funding. To maintain appropriate liquidity, filers should include a liquidity buffer sufficient to meet cash flow needs, on an aggregate basis, for the first 14 days of a 30-day stress horizon.

— The Agencies require that a Foreign Bank assume the bankruptcy of, at a minimum, its U.S. IHC. This is somewhat counter factual, though consistent with the resolution planning rule. Nonetheless, the 2018 Foreign Guidance highlights the importance of integrating the U.S. resolution strategy with the global strategy, which is usually based on bail-in and recapitalization of the foreign parent. In this context, a U.S. IHC bankruptcy would require assumptions that the foreign parent refuses to provide support and that the Federal Reserve fails to trigger recapitalization using internal TLAC.

— The 2018 Foreign Guidance, like the 2017 Domestic Guidance, requires continuing development of granular analyses of capital, liquidity and operational requirements for the companies' resolution plans, as well as resolution-focused legal entity and support services restructuring. While the 2018 Foreign Guidance continues an appropriate progression towards integration of the global resolution plan with U.S. planning processes, the Foreign Banks are required to support each element of that integrated resolution plan with thorough legal and financial analyses.

[3] Our Alert Memo on the 2017 Domestic Guidance is available at: https://www.clearygottlieb.com/~/media/cgsh/files/alert-memos/2016-rp-feedbackalert-memo.pdf.

December Filers

— The 16 domestic banks evaluated are all December filers. Notably, the Agencies did not provide any feedback or guidance for the foreign banks that file their resolution plans in December.

— The Agencies did not find that the resolution plans of any of the 16 domestic banks were not credible, but they did identify shortcomings in Northern Trust Corporation's ("NTC") 2015 resolution plan.

2018 Foreign Bank Guidance

Implications for Other Foreign Filers

The 2018 Foreign Guidance is silent about its possible application to December filers who are foreign banks. As we have seen in the past, it is likely that the Agencies will require such December filers to focus on the requirements emphasized in the 2018 Foreign Guidance (*i.e.*, liquidity, governance, branch continuity and cross-border issues associated with continuity of services). However, it is also likely that the rigor of the analytical support required may be moderated. We understand that the precise contours of guidance to December filers are still being developed.

Comparison with 2017 Domestic Guidance

Similar to the 2017 Domestic Guidance, the 2018 Foreign Guidance focuses on "key vulnerabilities in resolution . . . that apply across resolution plans," which include: (i) capital; (ii) liquidity; (iii) governance mechanisms; (iv) operational; (v) legal entity structure, including rationalization and separability and (vi) derivatives and trading activities.

We have outlined below each section of the 2018 Foreign Guidance and highlighted key differences between the requirements of the 2017 Domestic Guidance and the 2018 Foreign Guidance. A more detailed comparison matrix between the two is included as Appendix A.

1. **Capital**

— *Resolution Capital Adequacy and Positioning ("RCAP") and Resolution Capital Execution Need ("RCEN")*. RCAP and RCEN requirements are consistent with the 2017 Domestic Guidance.

2. **Liquidity**

— *Capabilities*. The Foreign Bank is expected to maintain a comprehensive understanding of liquidity and funding needs across the group and with respect to individual operating entities.

— *Resolution Liquidity Adequacy and Positioning ("RLAP") and Resolution Liquidity Execution Need ("RLEN")*. RLAP and RLEN requirements are generally consistent with the 2017 Domestic Guidance.

- Foreign Banks are required to calculate liquidity positions with affiliates separately from liquidity positions with third parties.
- In a departure from the 2017 Domestic Guidance, the Agencies permit liquidity to be transferred between affiliates, so long as such transfers are consistent with Regulation W[4] and the supporting analyses address financial and legal issues potentially implicated by a transfer.
- In addition, for non-surviving entities, an analysis is required regarding wind-down mechanics and timeframes, with a particular emphasis on potential broader systemic effects.

3. **Governance Mechanisms**

— The 2018 Foreign Guidance emphasizes coordination and communication between both the boards of the foreign parent and U.S. IHC, and the boards of significant operating subsidiaries.

— The 2018 Foreign Guidance does not require the specific triggers based on capital, liquidity, and market metrics included in the 2017 Domestic Guidance. However, it does require "clearly identified triggers linked to specific actions" like

[4] *E.g.*, there is no outward flow of liquidity from insured depository institutions ("IDIs") to non IDI-affiliates.

that earlier guidance. It remains to be seen whether specific triggers like those required by the 2017 Domestic Guidance will be imposed in practice.

— While Foreign Banks must still analyze creditor challenges and appropriate mitigants, there is no requirement for Foreign Banks to consider the effectiveness of a CBM as a mitigant. Nonetheless, putting in place a legally binding term lending facility with the foreign parent may require similar elements.

— The 2018 Foreign Guidance adds the requirement of including key motions to be filed in the context of the broader proceedings.

4. **Operational**

— Although it does not specifically cite to the Federal Reserve's SR Letter 14-1[5] (the "Letter") the 2018 Foreign Guidance incorporates directly the requirements of the Letter on payment, clearing and settlement services, managing and valuing collateral, management information systems ("MIS") and shared and outsourced services. So, in effect, the 2018 Foreign Guidance now applies the Letter to the Foreign Banks through the resolution planning process.

— The 2018 Foreign Guidance includes specific requirements for MIS, and mandates that Foreign Banks complete MIS infrastructure projects by 2018.

— Like the 2017 Domestic Guidance, the 2018 Foreign Guidance requires Foreign Banks to ensure the continuity of shared services, focusing on cross-border issues (*e.g.*, the cooperation of regulators and the governing law of service level agreements). Foreshadowing the 2018 Foreign Guidance's legal entity rationalization requirements, this section requires that mapping of service level agreements be incorporated into legal entity rationalization criteria.

— The 2018 Foreign Guidance also adds a section regarding qualified financial contracts, focusing on early termination rights and progress made by the Foreign Bank in implementing contractual stays.

5. **Legal Entity Structure**

— *U.S. Branches*. The 2018 Foreign Guidance adds a new section regarding branches that is focused on the financial and operational interconnections between the U.S. branch and the other U.S. Material Entities ("MEs"). Most significantly, this section details the analyses required to support continuity of the branch, including how it would meet funding and supervisory requirements, and maintain a liquidity buffer sufficient to meet net cash outflows for the first 14 days of a 30-day stress period.

— *Group Resolution Plan*. The 2018 resolution plan should explain how the Foreign Bank integrates resolution planning for its U.S. operations with its broader resolution planning efforts, worldwide contingency planning and resolution processes.

— *Legal Entity Rationalization & Separability*. Though broadly consistent with the 2017 Domestic Guidance, the 2018 Foreign Guidance includes a legal entity rationalization requirement that the Foreign Bank's U.S. operations be organized "to support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution." As with the 2017 Domestic Guidance, the legal entity rationalization criteria are defined as intended to "govern the corporate structure and arrangements" between U.S. entities.

6. **Derivatives and Trading Activities**

— For 2018 resolution plans that contemplate continued derivatives and trading activities at a subsidiary after a U.S. IHC bankruptcy filing, the 2018 Foreign Guidance, like the 2017 Domestic Guidance, includes passive and active wind-down

[5] *See* SR 14-1, Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies - Supplemental Guidance on Consolidated Supervision Framework for Large Financial Institutions (SR letter 12-17/CA letter 12-14), *available at*: https://www.federalreserve.gov/bankinforeg/srletters/sr1401.pdf.

analysis requirements, as well as a residual derivatives portfolio risk profile assessment.

— *Non-surviving Entities*. Mirroring the addition to the Liquidity section, the 2018 Foreign Guidance also includes analytical requirements with respect to any non-surviving entities' existing derivatives portfolios as well as the process for portfolio wind-down through insolvency proceedings.

7. **Public Section**

— Like the 2017 Domestic Guidance, the new guidance provides additional requirements for the Foreign Banks' public sections. The most significant new requirement is that the public section demonstrate how the strategy provides for the continuity, transfer or orderly wind-down for each ME and its operations, as well as a description of the resulting organization.

Domestic Bank Feedback

— The Agencies provided feedback on the December 2015 filings of 16 domestic banks.

— The Agencies did not find that any of these 16 domestic banks' resolution plans were not credible, and they identified shortcomings only in the filing of one bank, NTC.

— The Agencies identified three shortcomings in NTC's 2015 resolution plan:

- *Liquidity*. The Agencies concluded that NTC's 2015 resolution plan did not sufficiently demonstrate that NTC has the ability to calculate the liquidity its resolution strategy requires, or fully consider potential obstacles, such as adverse ring fencing by foreign authorities, to funding flows among NTC's domestic and international MEs.

- *Transfer of Uninsured and Foreign Deposits to Bridge Bank*. NTC's bridge bank strategy depends upon the transfer of uninsured London branch deposits to an FDIC-organized bridge institution. However, the Agencies found that NTC's 2015 plan did not adequately address whether such a transfer would be consistent with the FDIC's least-cost requirements, nor whether U.K. authorities would take adverse ring-fencing action to protect these depositors.

- *Shared and Outsourced Services*. NTC's 2015 resolution plan revealed that key service contracts with affiliates and third parties contain termination or anti-assignment provisions and that NTC's affiliates rely on certain of NTC's service contracts with third parties, without formal agreements or contracts with the NTC contracting entity.

- The Agencies are requiring that NTC's 2017 plan, in addition to addressing the shortcomings discussed above, provide: (i) a detailed analysis, including a remediation timeline, of the legal and operational issues and impediments associated with the transfer of custodial assets to the bridge bank; (ii) a progress update on its key personnel playbook; (iii) an identification of each FMU key to continuity of critical operations and (iv) a discussion of discontinuity of FMU access.

— The Agencies provided feedback, which did not rise to the level of a shortcoming, to all 16 domestic filers:

- *Stress Scenario, Financial Projections, Shared Services and Public Section*. All filers received guidance that 2017 resolution plans should: (i) apply the severely adverse stress test scenario for the first quarter of 2017; (ii) include financial statements for each ME at key junctures of the resolution process; (iii) provide progress reports on addressing the risks to MEs from shared services disruptions and (iv) include a separate public section.

— The Agencies provided further feedback to some, but not all, banks:

- *Material Financial Distress*. The Agencies found that three of the filers' 2015 plans (American Express Company, Capital One Financial Company and Zion Bancorporation) did not demonstrate a state of sufficient material financial distress to precipitate a bankruptcy filing.

- The Agencies challenged the following assumptions, upon which certain filers relied:
  - *Runway Period*. The Agencies informed The PNC Financial Services Group, Inc. and U.S. Bancorp that their 2017 resolution plans must take into account the likelihood of the elimination of the liquidity buffer prior to default, and avoid a "jump to default" assumption, because the Agencies considered the assumption of entering the runway period with significant liquidity could oversimplify disruptions that can be caused by insufficient liquidity.
  - *ME Classification*. The Agencies found that Fifth Third Bancorp's 2017 resolution plan must explain why Fifth Third Bank is not an ME, if it is not treated as an ME.
  - *Other Assumptions*. The Agencies found that Ally Financial Inc.'s 2015 resolution plan did not adequately support its assumptions underlying its resolution strategy, including the size and terms of debtor-in-possession financing, effect on franchise value of a FDIC receivership sale, timing of reorganization and sale, separability of Ally Financial Inc. and Ally Bank and ability to eliminate obstacles to resolution prior to resolution.

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Appendix A

Comparison Chart: Guidance for 2017 §165(d) Annual Resolution Plan Submissions By Domestic Covered Companies ("2017 Domestic Guidance") vs. Guidance for 2018 §165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies ("2018 Foreign Guidance")[1]

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
I. Introduction		
Prior Guidance Still in Effect	Prior guidance to the Foreign Banks remains in effect, except to extent superseded or supplemented by the 2018 Foreign Guidance.	3
U.S. IHC Bankruptcy Scenario	The Foreign Banks' 2018 Plans must address the scenario in which the Foreign Bank's U.S. operations experience "material financial distress and the foreign parent was unable or unwilling to provide sufficient financial support for the continuation of U.S. operations." In such a scenario, at least the U.S. IHC would have to file for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. This, of course, implies that the foreign parent does not provide support and that the Federal Reserve does not trigger conversion of the Foreign Bank's TLAC until after the bankruptcy filing.	4
II. Capital		
Resolution Capital Adequacy and Positioning ("RCAP")	No material changes. 2017 Domestic Guidance requirements for firm TLAC are applied to U.S. IHC TLAC in the 2018 Foreign Guidance.	5
Resolution Capital Execution Need ("RCEN")	2017 Domestic Guidance requirements for firm RCEN are applied to U.S. IHC RCEN in the 2018 Foreign Guidance. Foreign Banks are not required to incorporate RCEN estimates that produce aggregate losses	6

[1] While the formal description for holding companies subject to the joint resolution planning rules is "covered companies", for simplicity we refer to them throughout either as Domestic Banks (with respect to the first-wave domestic filers) or Foreign Banks, as applicable.

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
	greater than the amount of the IHC TLAC required under the TLAC Rule. Unlike the 2017 Domestic Guidance, the 2018 Foreign Guidance does not require that the RCEN estimates be incorporated into the Foreign Banks' governance framework.	
	III. Liquidity	
Capabilities	No material changes. The required liquidity capabilities described in the SR Letter 14-1,[2] referenced in the 2017 Domestic Guidance, are enumerated in the 2018 Foreign Guidance.	7-8
Resolution Liquidity Adequacy and Positioning ("<u>RLAP</u>")	2017 Domestic Guidance requirements for firm RLAP and HQLA are applied to a Foreign Bank's U.S. non-branch material entities ("<u>MEs</u>") in the 2018 Foreign Guidance. Unlike Domestic Banks, Foreign Banks may be able to transfer liquidity between U.S. IHC subsidiaries that are not insured depository institutions ("<u>IDI</u>").[3] • However, with respect to any liquidity surplus at an IDI, the Foreign Banks "should not assume that a net liquidity surplus . . . could be moved to meet net liquidity deficits at an affiliate or to augment U.S. IHC resources." Additionally, a U.S. IHC should: • Calculate its liquidity position with respect to its affiliates separately from its liquidity position with respect to third parties, and should not offset inflows from affiliated parties against outflows to external parties. • Use cash-flow sources from its affiliates to offset cash-flow needs of its affiliates only to the extent that the term of the cash-flow source from its affiliates is the same as, or shorter than, the term of the cash-flow need of its affiliates.	8-10

[2] Board of Governors' January 24, 2014 "Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies – Supplemental Guidance on Consolidated Supervision Framework for Large Financial Institutions."

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
Resolution Liquidity Execution Need ("RLEN")	2017 Domestic Guidance requirements for RLEN methodology and minimum operating liquidity estimates are applied to U.S. IHC subsidiaries in the 2018 Foreign Guidance. Foreign Banks are not required to incorporate RLEN estimates into their governance framework to ensure that the U.S. IHC files for bankruptcy prior to the HQLA falling below the RLEN estimate. For non-surviving U.S. IHC subsidiaries, Foreign Banks should: • Provide analysis and an explanation of how the ME's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.	10-11
	IV. Governance Mechanisms	
Playbook Foreign Parent Support and Triggers	The 2018 Foreign Guidance focuses less on the execution of required board actions at the appropriate time and more on communication and coordination between the boards of the U.S. IHC, U.S. IHC subsidiaries and the foreign parent. In addition to 2017 Domestic Guidance playbook topics, the 2018 Foreign Guidance requires that Foreign Banks include descriptions of any limitations on authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. The 2018 Foreign Guidance also added provisions regarding liquidity needs to this section. In order to meet liquidity needs at the U.S. non-branch MEs, the Foreign Bank may either: (i) fully pre-position liquidity in the U.S. non-branch MEs or (ii) develop a mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms may include a term liquidity facility between the U.S. IHC and the foreign parent that	11-13

[3] The language of the 2018 Foreign Guidance is not explicit on this point; the inference is made based on explicit language against assuming applicability of transfers with respect to IDI group entities, as well as the discussion regarding branch and affiliate support with respect to RLAP.

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
	can be drawn as needed.[4] • The sufficiency of the liquidity should be informed by the Foreign Bank's RLAP and RLEN estimates for the U.S. non-branch MEs. • Additionally, the 2018 Plan should include analysis of the potential challenges to the planned foreign parent support mechanism, including where applicable non-U.S. law and cross-border contractual enforcement challenges. The Foreign Bank should identify the mitigant(s) to these challenges that it finds most effective. Triggers in the 2018 Foreign Guidance focus on the escalation of information and coordination with appropriate governing bodies. A Foreign Bank's 2018 Plan must include triggers for: • Escalation of information to U.S. senior management, the U.S. risk committee and U.S. governing bodies;[5] and • Escalation of information to appropriate governing bodies to determine ability and willingness to provide financial resources to support U.S. operations. Triggers should now take into account changes in the foreign parent's condition from business-as-usual conditions through resolution. The following triggers, included in the 2017 Domestic Guidance, have been removed from the 2018 Foreign Guidance: • Successful recapitalization of subsidiaries prior to parent's filing for bankruptcy; • Funding of subsidiaries during parent's bankruptcy; and	

4 The 2018 Plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent.

5 The 2017 Domestic Guidance requires escalation of information only to senior management.

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
	• Timely execution of bankruptcy filing and pre-filing actions.	
Support within the United States	The 2017 Domestic Guidance and 2018 Foreign Guidance both require a detailed legal analysis of state and bankruptcy law challenges and mitigants to planned provision of capital and liquidity to subsidiaries prior to a parent's or U.S. IHC's bankruptcy filing. However: • The 2018 Foreign Guidance does not require that Foreign Banks consider the effectiveness of a contractually binding mechanism as a mitigant; and • The 2018 Foreign Guidance adds the requirement of a description of key motions to be filed at the initiation of a U.S. IHC's bankruptcy proceeding. The 2017 Domestic Guidance stated that the Agencies "do not object" to "appropriate collaboration" with law firms, experts, trade organizations and the academic community in preparation of this analysis. This express "no objection" language is not included in the 2018 Foreign Guidance.	13-14
V. Operational		
Payment, Clearing and Settlement ("PCS") Activities	The 2018 Foreign Guidance maintains the 2017 Domestic Guidance requirements. The requirements in the SR Letter 14-1, incorporated by reference in the 2017 Domestic Guidance, are enumerated in the 2018 Foreign Guidance.	14
Managing, Identifying and Valuing Collateral	No material change. The requirements in the SR Letter 14-1, incorporated by reference in the 2017 Domestic Guidance, are enumerated in the 2018 Foreign Guidance.	16
Management Information Systems ("MIS")	No material change. The requirements in the SR Letter 14-1, incorporated by reference in the 2017 Domestic Guidance, are enumerated in the 2018 Foreign Guidance.	17

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
Shared and Outsourced Services	The 2018 Foreign Guidance retains the requirements of the 2017 Domestic Guidance, and enumerates the requirements of SR Letter 14-1, which were incorporated by reference in the 2017 Domestic Guidance. The 2018 Foreign Guidance additionally provides: • 2018 Plan must discuss arrangements to ensure the operational continuity of shared services that support critical operations ("COs") in resolution in the event of the disruption of those shared services. • If an ME provides shared services that support COs conducted at least in material part in the United States, and continuity of the shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the 2018 Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. • If an ME providing shared services that support COs is located outside of the United States, the 2018 Plan should discuss how the Foreign Bank will ensure the operational continuity of such shared services through resolution. • The Foreign Bank should consider whether service level agreements ("SLAs") should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the U.S. • SLAs should be stored in a repository located in or immediately accessible from the United States at all times, including in resolution (and subject to enforceable access arrangements).	18-20

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
Qualified Financial Contracts (“QFCs”)	This section was added to the 2018 Foreign Guidance and the 2017 Domestic Guidance has no equivalent section. The 2018 Plan should reflect: • How the early termination of QFCs could impact the resolution of the Bank's U.S. operations; and • The Foreign Bank's progress in implementing the applicable domestic and foreign requirements regarding contractual stays in QFCs as of the date the Foreign Bank submits its 2018 Plan or as of a specified earlier date. The Foreign Bank may also separately discuss the impact on the resolution, assuming: (1) the "Regulatory Compliance Date" (as defined in the ISDA 2015 Universal Resolution Stay Protocol) has occurred and Section 2 of the Universal Protocol is effective, and (2) all external counterparties of the Foreign Bank’s entities that are "Adhering Parties" (also as defined in the protocol) are also "Adhering Parties."	20-21
Legal Obstacles Associated with Emergency Motions	This section has been deleted from the 2018 Foreign Guidance.[6]	
VI. Branches[7]		
Mapping	For U.S. branches that are MEs, the 2018 Plan must identify and map the financial and operational interconnections to COs, core business lines (“CBLs”) and other MEs. Mapping should identify any interconnections that, if disrupted, would materially affect COs, CBLs, other U.S. non-branch MEs, or the U.S. resolution strategy.	21

[6] This section requires a 2017 Plan to consider legal issues associated with the implementation of the stay on cross-default rights described in Section 2 of the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol with respect to covered agreements for which an affiliate in Chapter 11 proceedings has provided a credit enhancement.

[7] This section was added to the 2018 Foreign Guidance and the 2017 Domestic Guidance has no equivalent section.

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
Continuity of Operations	If the 2018 Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the 2018 Plan must support that assumption. For any U.S. branch that is significant to the activities of a CO, the 2018 Plan should describe and demonstrate how the branch would: • Continue to facilitate FMU access for COs and meet funding needs; • Meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements; and • Protect its third-party creditors such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations. To maintain appropriate liquidity for the purposes of resolution planning, a Foreign Bank should maintain a liquidity buffer sufficient to meet the net cash outflows for its U.S. branches and agencies on an aggregate basis for the first 14 days of a 30-day stress horizon. In determining the aggregate need of the branches and agencies, a Foreign Bank should calculate its liquidity position with respect to its foreign parent, U.S. IHC and other affiliates separately from its liquidity position with respect to external parties, and cannot offset inflows from affiliated parties against outflows to external parties. In addition, a Foreign Bank may use cash-flow sources from its affiliates to a branch or agency to offset cash-flow needs of its affiliates from a branch or agency only to the extent that the term of the cash-flow source from the affiliates is the same as, or shorter than, the term of the cash-flow need of the affiliate.	21-22
Impact of the Cessation of	A Foreign Bank must provide an analysis of the impact of the cessation of operations of any U.S. branch that is significant to the activities of a CO or the Foreign Bank's FMU access and COs, even	22

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
Operations	if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how COs could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support COs provided by any U.S. branch that is an ME, and mitigants that could address such obstacles in a timely manner.	
VII. Group Resolution Plan[8]		
A Foreign Bank's 2018 Plan should include a detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and COs and CBLs of the Foreign Bank that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the Foreign Bank's overall contingency planning process. In particular, the 2018 Plan should describe the impact on U.S. operations of executing the global plan.		23
VIII. Legal Entity Rationalization		
Legal Entity Rationalization Criteria ("LER")	In addition to complying with the 2017 Domestic Guidance requirements, a Foreign Bank should ensure that the allocation of activities across its U.S. branches and U.S. non-branch MEs support the Foreign Bank's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution. The 2017 Domestic Guidance requirement of "minimal use of multiple intermediate holding companies" has been deleted.	23-24
Separability	No material changes.	24
IX. Derivatives and Trading Activities		
Capabilities	No material changes.	25
Stabilization	No material changes. Required only if the U.S. strategy assumes the continuation of a U.S. IHC	25

8 This section was added to the 2018 Foreign Guidance and the 2017 Domestic Guidance has no equivalent section.

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
	subsidiary with a derivatives portfolio after the entry of the U.S. IHC into a U.S. bankruptcy proceeding.	
Passive Wind-Down Analysis	No material changes. Required only if the U.S. strategy assumes the continuation of a U.S. IHC subsidiary with a derivatives portfolio after the entry of the U.S. IHC into a U.S. bankruptcy proceeding.	26
Active Wind- Down Analysis	No material changes. Required only if the U.S. strategy assumes the continuation of a U.S. IHC subsidiary with a derivatives portfolio after the entry of the U.S. IHC into a U.S. bankruptcy proceeding.	26-27
Residual Derivatives Portfolio	No material changes. Required only if the U.S. strategy assumes the continuation of a U.S. IHC subsidiary with a derivatives portfolio after the entry of the U.S. IHC into a U.S. bankruptcy proceeding.	27
Nonsurviving Entities	This section was added to the 2018 Foreign Guidance and the 2017 Domestic Guidance has no equivalent section. To the extent the U.S. strategy assumes a U.S. IHC subsidiary with a derivatives portfolio does not survive after the entry of the U.S. IHC into a U.S. bankruptcy proceeding (*i.e.*, enters a SIPA proceeding), the Foreign Bank should provide an analysis and an explanation of: • How the entity's resolution can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability; • The potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution; and • The risk profile of the derivatives portfolio that remains when the entity enters a proceeding, including its size, composition, complexity, and potential counterparties.	27-28

Sub-Section / Topic	Material Differences Between 2017 Domestic Guidance and 2018 Foreign Guidance	Page Number
X. Public Section		
No material changes.		28