

Federal Reserve and FDIC Find Resolution Plans of Five U.S. Financial Institutions to be “Not Credible”

The Federal Reserve and the FDIC today provided feedback on the 2015 resolution plans filed by the eight “first-wave” domestic filers, and issued Guidance to govern their 2017 resolution plans. Most significantly, the Federal Reserve and the FDIC jointly determined that the resolution plans of five financial companies were “not credible” as required by the joint resolution planning rule, 12 C.F.R. Parts 243 and 381. Those five companies were Bank of America, Bank of New York Mellon, JP Morgan Chase, State Street, and Wells Fargo. The agencies were unable to agree on a joint determination for the 2015 resolution plans of Goldman Sachs and Morgan Stanley. The Federal Reserve, but not the FDIC, found Morgan Stanley’s plan to be “not credible”, while the agencies reached the reverse judgment on Goldman Sachs’ resolution plan. Finally, the Federal Reserve and the FDIC identified “shortcomings”, but not “deficiencies” in the resolution plan by Citigroup, and so did not find the plan to be “not credible.”

The Federal Reserve and the FDIC issued varied instructions for follow-up to the eight companies. The five filers whose plans were determined to be “not credible” must provide a targeted submission by October 1, 2016 addressing the deficiencies identified by the agencies. However, other than addressing the specified “deficiencies”, those filers are not required to complete “full submissions” of their resolution plans for 2016. Morgan Stanley, Goldman Sachs, and Citigroup only have to provide a status report by October 1, 2016 on their actions to address the specified “shortcomings” and a public section explaining, at a high level, their action plans to address

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those issues. As a result, full resolution plans complying with the new guidance issued today are not required until July 1, 2017.

The agencies did not provide feedback to any of the foreign banking organizations, simply noting that they are “continuing to assess the plans for the four foreign banking organizations that filed resolution plans on July 1, 2015—Barclays PLC, Credit Suisse Group, Deutsche Bank AG, and UBS.”

— *Assessment of Domestic First-Wave Filers.*

The Federal Reserve and FDIC effectively divided first-wave filers into four categories:

- *Bank of America, Bank of New York Mellon, JP Morgan Chase, State Street, and Wells Fargo*
 - Their 2015 resolution plans were determined by the Federal Reserve and the FDIC to be “not credible” or not able to “facilitate an orderly resolution under the U.S. Bankruptcy Code”.
- *Goldman Sachs and Morgan Stanley*
 - Because the Federal Reserve and the FDIC did not agree as to whether the plans of these two filers were deficient, the joint letters sent to these filers identified shortcomings that need to be addressed in their 2017 plans.
- *Citigroup*
 - Neither regulator identified deficiencies in Citigroup’s plan, but identified lesser “shortcomings” that need to be addressed in its 2017 plan.
- *Barclays PLC, Credit Suisse Group, Deutsche Bank AG and UBS*
 - The Federal Reserve and the FDIC announced that they are continuing to

assess the 2015 plans of the four non-U.S. first-wave that filed resolution plans. They did not provide any indication as to when these filers should expect to receive feedback, or what change might be made to their filing deadline.

— *Regulatory Focus.* Along with the public release of redacted feedback letters to each filer, the agencies summarized their feedback in “Resolution Plan Assessment Framework and Firm Determinations.” As discussed in that document, in assessing the 2015 resolution plans, the Federal Reserve and FDIC focused on seven key elements in the feedback letters:

- Capital
- Liquidity
- Governance
- Operational capabilities
- Legal entity rationalization
- Derivatives and trading activities
- Responsiveness (i.e., compliance with prior feedback).

In addition, the Federal Reserve and the FDIC released “*Guidance for 2017 §165(d) Annual Resolution Plan Submissions*” for the domestic first-wave filers. This Guidance focused attention for the 2017 plan submissions on the first six of the foregoing elements, while replacing “responsiveness” with guidance on the public section.

- *Response to GAO Recommendations.* The agencies' actions today are consistent with recommendations made in the GAO Resolution Plan report issued on April 12, 2016 for greater transparency. The agencies:
- Released the feedback letters publicly, with limited redactions. Until now, feedback letters to all filers were treated as confidential supervisory information; and
 - Issued *Resolution Plan Assessment Framework and Firm Determinations (2016)*, which for the first time publicly discusses determinations and the agencies' processes for reviewing the plans.

The GAO also recommended that the Federal Reserve and FDIC provide both filers and the agencies additional time to prepare and review plans by revising the annual filing requirement. Requiring a full submission of the plans in 2017, rather than again in 2016, appears broadly consistent with that recommendation.

We will be circulating a more in-depth summary and analysis in the coming days.

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