

October 15, 2019

MEMORANDUM TO: The Board of Directors

FROM: Ricardo R. Delfin, Director
Division of Complex Institution Supervision and
Resolution

SUBJECT: Amendments to 12 C.F.R. Part 381 –
Final Rule

I. SUMMARY OF RECOMMENDATIONS:

This Memorandum concerns a proposed final rule (“Final Rule”)¹ amending the initial joint resolution plan rule (“Initial Rule”) implementing section 165(d) (“Section 165(d)”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The Final Rule is intended to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (“EGRRCPA”)³ and reflect improvements to the Initial Rule identified over the more than seven years since the Initial Rule was adopted. The amendments comprise: (1) a final rule by the Board of Governors of the Federal Reserve System (“FRB”) to establish asset and risk-based categories for determining the application of the resolution planning requirement to certain U.S. and foreign banking organizations, consistent with section 401 of EGRRCPA,⁴ and (2) an amendment of the Initial Rule by the Federal Deposit Insurance Corporation (“FDIC”) and the FRB to (a) tailor plan content requirements to reflect the varying degrees of systemic risk posed by different types of

¹ The Final Rule proposed to be published in the *Federal Register* includes both the regulatory text and a preamble section (“Preamble”).

² Codified at 12 C.F.R. Part 381 and 12 U.S.C. § 5365(d), respectively.

³ Pub. L. No. 115-174, 132 Stat. 1296 (2018).

⁴ *Id.* § 401(a)(1)(C) (to be codified at 12 U.S.C. § 5365(a)(2)(C)).

firms; (b) introduce a new plan type and formalize an additional plan type; (c) specify new plan submission schedules; and (d) make improvements to other aspects of the Initial Rule. This Memorandum also discusses staff's recommendation to address a technical timing issue regarding the submission of an interim update by Northern Trust Corporation ("NTC").

Staff recommends that the Board of Directors of the FDIC (the "Board") take the following actions:

A. Approve the Final Rule, attached to this Memorandum as **Attachment 2**, and authorize its publication in the *Federal Register*.

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 Final Rule to prepare it for publication in the Federal Register.

C. Determine that the interim update previously required from NTC, described below, must be submitted on or before January 31, 2020, rather than December 31, 2019.

D. Authorize the Director, Division of Complex Institution Supervision and Resolution ("CISR"), or designee, to communicate this change to NTC.

II. DISCUSSION:

A. Background

The Dodd-Frank Act resolution planning process is intended to help ensure that a firm's failure would not have serious adverse effects on financial stability in the United States. Accordingly, Section 165(d) and the jointly-issued Initial Rule require certain financial companies ("covered companies") to report periodically to the FRB and the

FDIC (together, the “Agencies”) the companies’ plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure. The Initial Rule prescribes the format and informational content of a resolution plan and directs each covered company to submit a resolution plan for review by the Agencies annually, or at such other frequency as the Agencies jointly direct.

EGRRCPA and Tailoring

EGRRCPA revised the resolution plan requirement as part of changes the law made to the application of the enhanced prudential standards set forth in section 165 of the Dodd-Frank Act. Specifically, EGRRCPA raised the \$50 billion minimum asset threshold for general application of enhanced prudential standards, including the resolution planning requirement, to \$250 billion in total consolidated assets (or global assets, for a foreign banking organization).⁵ However, EGRRCPA also provides the FRB with the discretionary authority to apply resolution planning requirements to firms with \$100 billion or more and less than \$250 billion in total consolidated (global) assets.⁶

Consistent with section 401 of EGRRCPA, on October 10, 2019, the FRB finalized separate proposals to revise the framework for determining the prudential

⁵ The first asset threshold increase occurred immediately on the date of enactment, May 24, 2018. Firms with total consolidated (global) assets of less than \$100 billion were as of this date no longer subject to the resolution planning requirement. Pub. L. No. 115-174, § 401(d)(2). The second threshold increase will occur 18 months after the date of EGRRCPA’s enactment, at which time the threshold rises to \$250 billion in total consolidated (global) assets. *Id.* § 401(d)(1).

⁶ *Id.* § 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. § 5365(a)(2)(C)). EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a global systemically important bank holding company (“U.S. GSIB”) under the FRB’s U.S. GSIB surcharge rule shall be considered a bank holding company with \$250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement. *Id.* § 401(f).

standards that should apply to large U.S. banking organizations⁷ and to large foreign banking organizations⁸ in a single final rule (“final tailoring rule”).⁹ In the Final Rule, consistent with the notice of proposed rulemaking (“Proposal”), the FRB determined to exercise its discretion under EGRRCPA to apply resolution planning requirements to U.S. bank holding companies with (a) average total consolidated assets equal to \$100 billion or more and less than \$250 billion and (b) \$75 billion or more in any of four risk-based indicators adopted in the final tailoring rule: average cross-jurisdictional activity, average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure. Similarly, in the Final Rule and consistent with the notice of proposed rulemaking, the FRB determined to apply resolution planning requirements to foreign banking organizations with (a) total global assets equal to \$100 billion or more and less than \$250 billion, (b) average combined U.S. assets equal to \$100 billion or more, and (c) \$75 billion or more in any of the four risk-based indicators measured based on combined U.S. operations. Among other provisions and consistent with the notices of

⁷ The notice of proposed rulemaking for a domestic tailoring rule, titled “Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies,” may be found at 83 FR 61408 (November 29, 2018).

⁸ The notice of proposed rulemaking for a FBO tailoring rule, which also presented proposed revisions to the domestic tailoring notice of proposed rulemaking, is titled “Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies,” and may be found at 84 FR 21988 (May 15, 2019).

⁹ See Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a2.pdf>. The notices of proposed rulemaking for the final tailoring rule also set forth an alternative proposal for tailoring, which the FRB has determined not to use in the final tailoring rule and to determine which firms with total consolidated (global) assets equal to \$100 billion or more and less than \$250 billion should be subject to the resolution plan requirement. Similarly, the Final Rule does not adopt the alternative methodology for purposes of categorizing firms with respect to resolution plan content and submission schedules.

proposed rulemaking, the final tailoring rule also uses specified risk-based indicators to separate the firms into categories (Categories I through IV) for the purpose of calibrating prudential requirements.

The Proposal and Public Comments

On May 14, 2019, the Agencies published in the *Federal Register* a Proposal to amend the Initial Rule and invited public comments.¹⁰ The Agencies received 14 comment letters on the Proposal, two of which were submitted to the FRB only. Commenters included financial services trade associations, covered companies, public interest groups, and individuals.¹¹

The Agencies' staffs reviewed, analyzed, and discussed each of the individual comments included in the comment letters, a total of approximately 130 items. The comments addressed many aspects of the Proposal and, in some cases, items outside of the Proposal's scope. A number of commenters generally supported the Proposal, including its efforts to tailor resolution planning requirements to a firm's size, complexity, and risk profile. Some of these commenters also asserted that the Proposal would preserve and improve upon key elements of resolution planning while enhancing transparency and meaningfully reducing burden. Several other commenters, however, expressed general concerns about the Proposal. These commenters generally asserted

¹⁰ Resolution Plans Required, 84 FR 21600 (May 14, 2019).

¹¹ Comments were received from the following commenters: (i) Bank Policy Institute, Institute of International Bankers, and the Securities Industry and Financial Markets Association; (ii) Bank Policy Institute and the Securities Industry and Financial Markets Association; (iii) Barclays plc; (iv) Americans for Financial Reform Education Fund; (v) Stanford Graduate School of Business, Corporations and Society Initiative; (vi) Better Markets; (vii) Capital One Financial Corp., PNC Financial Services Group, and U.S. Bancorp; (viii) Institute of International Bankers; (ix) Bank Policy Institute, the Securities Industry and Financial Markets Association, and the American Bankers Association; (x) Credit Suisse Holdings (USA), Inc.; (xi) Center for Capital Markets Competitiveness; (xii) The Systemic Risk Council; (xiii) Charity Coleen Crouse (FRB only); and (xiv) Christine Mehling (FRB only).

that the Proposal would inappropriately weaken financial regulations put in place after the 2008 financial crisis and thereby increase systemic risk. In addition, certain commenters asserted that the Proposal inappropriately relied on burden reduction as a rationale for the proposed changes, was inconsistent with administrative law because the Agencies did not provide sufficient justification for reducing the frequency and content of resolution plans, and was inconsistent with the Dodd-Frank Act. One commenter also asserted that the Agencies should delay modifying the Initial Rule until it has been tested in an economic downturn, and another commenter asserted that the Agencies should be cognizant of the effect of regulations on non-financial companies and small business lending.

In addition to these general views, commenters also provided input on many specific aspects of the Proposal. Based on the staffs' review, analysis, and discussion of the individual comments, the staffs agreed to recommend a number of changes to the Proposal and prepared the Final Rule accordingly. The Preamble describes each individual comment, any change to the Proposal reflected in the Final Rule in response to the particular comment, and the reason for the resulting modification or rejection of the comment.¹²

¹² At a high level, the individual comments concerned the following topics: filing cycle (23), waiver of full resolution plan content requirements (17), guidance/feedback (16), risk-based indicators/ tailoring categories (13), general opposition (11), general support (10), other (9), critical operations (8), transition period (8), full resolution plan content (7), firms subject to the Final Rule (including FRB discretion) (5), targeted resolution plan content (5), tailored resolution plans (5), extraordinary events (3), material change definition (3), administrative law analysis (2), reduced resolution plan content (2), resolution strategy (2), filing groups (1), and non-responsive (1). A number of the approximately 130 individual comments addressed more than one topic.

The Final Rule

Staff believes that the Final Rule, as revised, will streamline, clarify, and improve the resolution plan submission review processes and timelines, taking into account the relative risks to U.S. financial stability that a firm's failure may pose. The Final Rule preserves key elements of the Proposal, including:

- Dividing the firms that have resolution planning requirements, including those identified by the FRB pursuant to EGRRCPA, into groups of filers for plan content tailoring and submission cycle purposes: biennial filers, triennial full filers, and triennial reduced filers.¹³
- Establishing multi-year submission cycles for each group of filers, as further explained in the diagram set forth in **Attachment 4**.
- Introducing a new category of resolution plan, known as the “targeted plan,” differentiated from other plan types by informational content.¹⁴
- Formalizing the current reduced resolution plan type.
- Introducing a process by which certain covered companies may request a waiver of certain informational content requirements of a full resolution plan.
- Presenting a formal process for covered companies and the Agencies to identify critical operations.¹⁵
- Updating certain procedural elements of the Initial Rule.

The Preamble discusses comments received concerning these items and provides a rationale for either maintaining the approach set forth in the Proposal or making any

¹³ The chart set forth in **Attachment 3** lists the indicators for determining each group and provides an indicative list of the covered companies in each group.

¹⁴ **Attachment 5** presents a comparison of the informational elements required in a full resolution plan and in a targeted resolution plan under the Final Rule.

¹⁵ As defined in Section __.2 of the Final Rule, “critical operations” are those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

modifications. The following discussion highlights the most significant changes that have been incorporated in the Final Rule.

B. Final Rule -- Key Changes from the Proposal¹⁶

1. Firm-initiated Waiver of Informational Content Requirements

The Proposal would have continued to permit the Agencies to waive certain informational content requirements for one or more firms on the Agencies' joint initiative. The Proposal also introduced a process whereby a covered company that had previously submitted a resolution plan would have been able to request a waiver of certain informational content requirements for a full resolution plan submission.

The Final Rule retains the Agencies' ability to waive certain informational content requirements on their joint initiative. Staff proposes that the Final Rule also retain the firm-initiated informational content waiver request process introduced in the Proposal, with two important modifications made in response to concerns raised about the firm-initiated waiver request process, and to suggestions that the Agencies should take additional steps to tailor the informational content requirements between biennial filers and triennial full filers. First, after having further considered the issue and with the benefit of comments from the public, the staffs have concluded that the firm-initiated

¹⁶ Other changes from the Proposal are discussed in the Preamble. These include: (i) providing that a granted waiver from the requirement to have a process for identifying critical operations is effective until the firm is required to submit a full resolution plan (*see* section II.C.1 of the Preamble); (ii) requiring a firm to state affirmatively in its resolution plan that no material change has occurred since its prior resolution plan submission if the resolution plan does not identify any material changes (*see* section III.B.2 of the Preamble); (iii) clarifying that a firm-initiated waiver of informational content requirements applies to the submission of only a single full resolution plan and that the Agencies may approve or deny a waiver request in whole or in part (*see* section III.B.4 of the Preamble); (iv) eliminating use of the term "economic function" in the description of a firm's methodology for identifying critical operations (*see* section III.C.1 of the Preamble); and (v) other technical and conforming changes (*see* section III.E of the Preamble).

waiver process should not be extended to biennial filers in light of the additional risks that these firms present. Because these concerns outweigh the advantages of a firm-initiated waiver process for biennial filers, staff proposes, and the Final Rule reflects, limiting firm-initiated waiver requests to triennial full filers and triennial reduced filers.¹⁷ The Agencies would continue to have the authority to jointly waive one or more of the resolution plan requirements for any filer, including any biennial filer, on their own initiative. Staff believes that this procedural change will help to address commenters' concerns by ensuring that, absent the Agencies granting a waiver on their own initiative, all informational content requirements will remain in place for biennial filers' full resolution plan submissions.

Second, relative to the Proposal, the Final Rule changes the procedure by which the Agencies act on waiver requests to make it more consistent with the continuing joint Agency decision-making regarding the resolution planning process. Under the Proposal, a waiver request would have been automatically approved if the Agencies did not jointly deny it before a certain date. Staff recommends, and the Final Rule reflects, a modification such that a waiver request is denied unless the Agencies jointly approve it before a certain date. Staff believes that this change from the Proposal will be more consistent with other provisions of the Final Rule, and prior process, that require joint agreement of the Agencies.

¹⁷ Waiver requests will generally have limited application to triennial reduced filers under the Final Rule because waiver requests do not apply to a covered company's initial full resolution plan or reduced resolution plans. However, the firm-initiated waiver request process could apply to a triennial reduced filer if the Agencies were to require it to submit a full resolution plan with at least 18 months' prior notice.

2. Initial Post-Final Rule Submission by Triennial Full Filers

The Final Rule directs triennial full filers to submit, as their initial post-Final Rule submissions, targeted resolution plans on or before July 1, 2021. The Proposal would have required these firms to submit full resolution plans on or before July 1, 2021. A foreign firm may not first determine the category of standards to which it is subject (and, accordingly, whether it is a triennial full filer or a triennial reduced filer) until after the date by which a triennial full filer would need to submit a firm-initiated informational content waiver request for a full resolution plan due on or before July 1, 2021. To provide clarity to covered companies during the transition period, staff recommends adopting, and the Final Rule requires, all triennial full filers to submit a targeted resolution plan on or before July 1, 2021. Thereafter, the triennial full filers will alternate between submitting full and targeted resolution plans on a triennial basis, commencing with a full resolution plan in 2024.

For firms in this filing group with outstanding shortcomings or deficiencies, the Final Rule provides that Agencies' expectations regarding remediation and related timelines continue to apply. For example, the four foreign banking organizations that received individual feedback letters on December 20, 2018 (Barclays plc, Credit Suisse Group AG, Deutsche Bank AG, and UBS Group AG) are expected to address their shortcomings and complete their respective project plans by July 1, 2020, as provided in the Agencies' individual feedback letters. Consistent with prior communications to these firms, they are required to submit resolution plans on or before July 1, 2020 that may be limited to describing changes that the firms have made to their July 2018 resolution plans to address shortcomings identified in those resolution plans.

Similarly, consistent with previous communications to NTC, that firm is being required to provide an interim update, as specified in the Agencies' joint March 29, 2019 individual feedback letter, concerning its projects to address the liquidity shortcoming identified in its 2015 resolution plan, as further discussed below.

3. General Guidance and Firm-Specific Feedback

The Agencies received several comments related to prior resolution planning guidance directed to groups of firms ("general guidance") and to the feedback issued to specific covered companies concerning their individual resolution plans following the plans' review by the Agencies ("firm-specific feedback"). Some commenters suggested that existing resolution planning general guidance directed to groups of firms should be consolidated and tailored among the different categories of firms, that any future general guidance should be subject to notice and public comment, and that the Agencies should commit to providing firm-specific feedback on resolution plans and any general guidance no later than 12 months prior to a covered company's resolution plan submission date. These commenters asserted in particular that triennial full filers (Category II and III firms) should not receive general guidance that is similar to the general guidance that is directed to the biennial filers (Category I firms). A few commenters suggested that the Agencies should clarify to whom existing general guidance is directed, and one commenter suggested incorporating existing general guidance into the Final Rule.

Staff recommends some changes to the Proposal be made in the Final Rule to address these comments. The Final Rule provides that, absent extenuating circumstances, the Agencies will provide a firm with notice of any deficiency or shortcoming identified by the Agencies and any other firm-specific feedback regarding its resolution plan no later than 12 months after the later of (1) the date when the firm submitted the resolution

plan and (2) the date by which the firm was required to submit the resolution plan. The Preamble explains that due to firms' strong interest in prompt firm-specific feedback from the Agencies and having sufficient time to respond thereto, the Agencies would expect to exercise their authority to provide firm-specific feedback after the one-year period only when it would be impractical to do so due to circumstances outside of the Agencies' control.

The Preamble also contains several statements responding to comments concerning general guidance. It states that the Agencies intend:

- To make any future resolution planning-related general guidance available for public comment.
- To finalize any future general guidance at least one year prior to the due date for the first resolution plan submission to which it applies.
- To consolidate and request public comment in the near future on all aspects of the detailed general guidance that certain foreign banking organizations have received from the Agencies.¹⁸

The Preamble also confirms that existing general guidance is not modified by the Final Rule and explains that because general guidance sets forth non-binding expectations as opposed to rule-based requirements, it is not necessary or appropriate to incorporate general guidance into the Final Rule beyond changes reflected in the Proposal.

4. Changes in Timing Provisions

In response to comments received, staff recommends, and the Final Rule reflects, a number of changes to the Proposal concerning the timing of certain actions. A number

¹⁸ See Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf>.

of commenters asserted that covered companies need at least a year to prepare their resolution plans. Accordingly, the timing changes are intended to ensure that a covered company is advised of decisions that affect informational content at least one year before the resolution plan's submission date.

(1) Informational Content Waiver Requests

Under the Proposal, firms would have been able to submit one request to waive specified informational content of each full resolution plan. These requests would have been required to be submitted at least 15 months before the plan submission date. An informational content waiver request would have been automatically granted on the date that was nine months prior to the submission date for the resolution plan to which it related if the Agencies did not jointly deny the waiver prior to that date. The Proposal would have enabled the Agencies in their discretion to deny a waiver.

Two commenters suggested that the deadline for a waiver request to be jointly denied by the Agencies should be moved from nine months to 12 months prior to the submission deadline to better align with filers' resolution plan preparation timelines. These commenters suggested that the Final Rule should provide for waiver requests to be submitted 15 months prior to a full resolution plan submission date and allow the Agencies 90 days within which to consider and act upon waiver requests, thereby reducing the time period for Agency review from six months to 90 days.

Staff recommends, and the Final Rule provides, that an informational content waiver request is automatically denied on the date that is 12 months prior to the submission date for the resolution plan to which it relates if the Agencies do not jointly

approve the waiver request prior to that date.¹⁹ However, staff continues to believe that a minimum of six months is the appropriate period for the Agencies to review a waiver request. Accordingly, the Final Rule requires a waiver request to be submitted at least 18 months before the related resolution plan submission date.

(2) Altering Plan Submission Dates or Requiring a Full Resolution Plan

The Proposal would have provided the Agencies with the flexibility to adjust covered companies' resolution plan submission dates in several respects, to require updates between submissions, and to require submission of a full resolution plan with advance notice.

The Agencies received several comments on these aspects of the Proposal. Commenters asserted that the Agencies should provide a minimum of 12 months' notice prior to requiring a full resolution plan or an off-cycle submission and six or 12 months' notice prior to an interim update between plan submissions. Commenters also asserted that the Agencies should clarify that a "reasonable amount of time" for prior notice of a full resolution plan submission (the approach set forth in the Proposal) would be at least 12 months' notice.

Staff recommends certain changes from the Proposal in response to these comments. Specifically, staff recommends and the Final Rule specifies that the Agencies will provide at least 12 months' notice prior to requiring a full resolution plan submission or an off-cycle submission (i.e., a submission on a date other than the regularly scheduled

¹⁹ The change from automatic approval to automatic denial is discussed in section II.B.1 of this Memorandum.

The Preamble notes that if the Agencies waive informational content requirements for one or more firms on the Agencies' own initiative, the Agencies will endeavor to provide those firms with notice of the waiver at least 12 months before their next resolution plan submission date.

date for the covered company's filing group).²⁰ Furthermore, the Final Rule provides that the Agencies may require a covered company to submit a full resolution plan instead of the targeted or reduced resolution plan that the covered company would otherwise be required to submit. The full resolution plan's submission date will be the submission date for the replaced targeted or reduced resolution plan.²¹ The submission of such a full resolution plan will not change the type of resolution plan the covered company is otherwise thereafter required to submit.²²

Staff believes that these changes will enhance the predictability of resolution plan submission dates, provide appropriate time for resolution plan preparation, and help facilitate covered companies' resource allocation decisions.²³ However, consistent with the Proposal and the Initial Rule, staff recommends and the Final Rule provides that the Agencies may require a covered company to submit an interim update within a reasonable amount of time, as jointly determined by the Agencies. While a six- or 12-month period may be appropriate in certain circumstances, a shorter time period may be

²⁰ The Preamble clarifies that if the Agencies were to require an off-cycle submission from a covered company, the covered company's next resolution plan submission date after the off-cycle submission date would be determined based on the off-cycle submission date. The Preamble also states that the Agencies will consider the impact on the covered company's future resolution plan submission dates and any deadlines related to those submission dates when requiring an off-cycle submission.

²¹ Accordingly, a firm could be required to submit a full resolution plan while the other members of the firm's filing group are required to submit targeted or reduced resolution plans on that submission date. Thereafter, the firm that was required to submit a full resolution plan will revert to its filing group's regular resolution plan type submission schedule.

²² The Preamble explains that the Agencies do not expect to regularly exercise this authority. However, it may be necessary to require a full resolution plan instead of a targeted or reduced resolution plan under unusual circumstances, and the Agencies have preserved this authority as a means for the agencies to receive additional information from firms when appropriate. The Agencies could, for example, exercise their discretion to require a triennial reduced filer whose activities have evolved gradually (rather than as the result of a single material event) to submit full resolution plan in lieu of a reduced resolution plan if the aggregate effect of those changes might meaningfully increase the risk that the firm's failure could have serious adverse effects on U.S. financial stability.

²³ Should exigent circumstances arise, the Agencies would continue to have the authority to obtain information during the 12-month notice period by requiring an interim update.

appropriate in other circumstances.²⁴ Accordingly, staff does not believe that it would be appropriate to introduce a fixed notice period for an interim update.

(3) Agencies' Joint Identification of Critical Operations

Under the Proposal, the Agencies would have reviewed the operations of covered companies at least every six years to determine whether any new operations should be identified as critical or any prior identifications should be rescinded. The Proposal provided that, when the Agencies identified an operation as critical, the covered company would have been required to treat the operation as a critical operation in future resolution plans, unless the identification occurred within six months of a firm's resolution plan submission date.

Commenters were generally supportive of efforts to codify the critical operations identification processes. One commenter suggested that the deadline for the Agencies to identify a new critical operation be 12 months prior to a submission deadline, instead of six months, as proposed.

Staff recommends, and the Final Rule includes, revisions to the Proposal to address this concern. Consistent with the Proposal, the Final Rule permits the joint identification and rescission of critical operations by the Agencies at any time and specifies that the Agencies will review all identified critical operations and the operations of firms for consideration as critical operations at least every six years. Consistent with commenters' feedback, however, under the Final Rule, a covered company will be

²⁴ An interim update is intended to be a flexible tool for the Agencies to obtain information between resolution plan submission dates. Because the Agencies will specify the portions or aspects of a previously submitted resolution plan that a firm is required to update, the informational content requirements for an interim update are not fixed, making it difficult to identify a specific period that is necessary to prepare every interim update.

required to address a critical operation in its resolution plan submission only if the Agencies' joint identification is made at least 12 months before the resolution plan submission date. Moreover, to align with this notice period, the Preamble provides that the Agencies will endeavor to complete their first joint review under the Final Rule of the operations of covered companies at least 12 months prior to the 2021 resolution plan submission date.

(4) Firm Requests for Reconsideration of Jointly Identified Critical Operations

The Proposal would have permitted a covered company to request that the Agencies reconsider a jointly made critical operation identification. The Agencies generally would have been required to complete their assessment of the request within 90 days after its receipt, if the request were made at least 270 days before the firm's next resolution plan submission deadline. Some commenters suggested that the Agencies modify the timeline for de-identification of a critical operation identified by the Agencies.²⁵

Staff recommends adopting, and the Final Rule reflects, a modified process for firms to request that the Agencies reconsider a jointly identified critical operation. Under the Final Rule, a firm may request reconsideration of a jointly identified critical operation at any time. If a firm requests reconsideration at least 18 months prior to its next resolution plan submission date, the Agencies will generally complete their review 12 months before that resolution plan submission date. However, the Agencies may request

²⁵ Specifically, the commenters suggested requiring a request for de-identification to be filed no later than 15 months before the next resolution plan submission is due; mandating that the Agencies make a decision within 90 days of receipt of the request; and deeming the request approved if not denied by one year prior to the resolution plan submission date.

additional information, in which case the Agencies will complete their review no later than the later of (a) 90 days after the submission of all requested information and (b) 12 months before the resolution plan submission date.

Under the Final Rule, the Agencies retain discretion to defer consideration of a reconsideration request submitted less than 18 months before a resolution plan submission date until after the submission. The Preamble notes that if the Agencies do not defer consideration of the request, the Agencies intend to communicate with the firm regarding the timing of the Agencies' response. If the Agencies defer consideration of a request submitted less than 18 months before a resolution plan submission date, the Agencies will complete their review no later than 12 months before the next resolution plan submission date that follows that resolution plan submission date.²⁶

(5) Firm Requests for Waiver of Critical Operations Process and Methodology Requirement

In the Proposal, the Agencies proposed requiring biennial filers and triennial full filers to maintain a process for identifying critical operations on a scale that reflected the nature, size, complexity, and scope of their operations. The Proposal would have established a process whereby firms that at that time did not have identified critical operations could request a waiver from the requirement to maintain a self-identification process and methodology. Consistent with the Proposal, the Final Rule allows a covered company that has previously submitted a resolution plan to request a waiver of the

²⁶ Staff recommends rejecting, and the Final Rule does not adopt, some commenters' request for an automatic rescission of a critical operations identification if a request is submitted at least 15 months before the firm's next resolution plan is due and the Agencies have not acted within three months. A firm's initial request for de-identification may be incomplete or unclear, and critical operations identifications may raise complex issues that require substantial time to consider. Accordingly, the Agencies may require more than 90 days to make an informed decision regarding whether an operation should be de-identified.

process and methodology requirement if it does not have an identified critical operation as of the date the waiver request is submitted. Under the Proposal, the covered company would have needed to apply for such a waiver at least 15 months before the submission date for that resolution plan, and waivers would have been automatically granted on the date that was nine months prior to the date that the resolution plan it relates to was due if the Agencies did not jointly deny the waiver prior to that date.

In response to the timing comments noted above and consistent with the changes to the firm-initiated waiver request process for resolution plan informational content requirements, staff recommends, and the Final Rule provides, that a waiver request is automatically denied on the date that is 12 months prior to the submission date for the resolution plan to which it related if the Agencies do not jointly approve the waiver prior to that date. However, the Agencies continue to believe that a minimum of six months is the appropriate period for the Agencies to review a waiver request. Accordingly, the Final Rule requires a waiver request to be submitted at least 18 months before the submission date.²⁷ This timing is consistent with the timing for firm-initiated waiver requests of informational content requirements under the Final Rule. Moreover, requiring joint approval of waiver requests will be more consistent with other provisions of the Final Rule that require joint Agency approval.

²⁷ To provide firms with an appropriate period to prepare a waiver request with respect to a resolution plan due on or before July 1, 2021, the Final Rule provides that a waiver request must be submitted at least 17 months before that submission date. However, a foreign firm may not initially be able to determine the category of standards to which it is subject (and, accordingly, whether it is a triennial full filer or a triennial reduced filer) until after the date by which a triennial full filer would need to submit a waiver request with respect to its resolution plan due on or before July 1, 2021. Therefore, the Final Rule exempts each foreign triennial full filer from the requirement to establish and implement a process and methodology designed to identify their critical operations with respect to its resolution plan due on or before July 1, 2021 if the foreign firm does not have an identified critical operation as of the date by which the waiver would have had to be submitted for this resolution plan submission (i.e., 17 months before the resolution plan submission date).

5. Critical Operations Process and Methodology Requirement for Certain Firms

As noted above, consistent with the Proposal, under the Final Rule, biennial filers and triennial full filers must establish and implement a process designed to identify their critical operations. However, the Final Rule also requires a triennial reduced filer that has an identified critical operation after July 1, 2022 to establish and implement a process designed to identify its critical operations.

The staffs believe, and the Final Rule provides, that where a firm has an identified critical operation, it may be the case that it has additional critical operations such that a periodic review by the firm of its operations commensurate with the nature, size, complexity, and scope of its operations could be beneficial. The 2022 timing for reduced plan filers will provide the Agencies the opportunity to complete their first joint review of critical operations under the final rule and triennial reduced filers with the opportunity to request reconsideration of any currently identified critical operation in anticipation of their next resolution plan submission.

6. Comments Related to the FDIC's IDI Resolution Plan Rule

The Agencies received several comments asserting that the filing cycle or resolution plan content requirements under the Final Rule should align with the requirements under the FDIC's rule requiring certain insured depository institutions to submit resolution plans (the "IDI rule").²⁸ Staffs do not recommend any modifications to the Proposal on the basis of these comments. As the Preamble notes, the Final Rule and the IDI rule are separate requirements with different purposes and goals, and that the IDI rule is administered by only the FDIC. In part because a resolution plan submitted

²⁸ 12 C.F.R. § 360.10.

pursuant to the IDI rule is submitted to only the FDIC, incorporating by reference such information into a resolution plan submitted pursuant to the Final Rule is more challenging than incorporation by reference of such information into a resolution plan submitted pursuant to the IDI rule. Finally, as the Board is aware, the FDIC has issued an advanced notice of proposed rulemaking regarding the IDI rule²⁹ in which it indicates that , “[t]o promote efficiency and reduce burden, the FDIC is encouraging the use [in IDI plan submissions] of incorporation by reference to [resolution plan submissions required under Section 165(d) of the Dodd-Frank Act] where practicable.”

7. One-month Extension of Time for NTC to Submit Interim Update to the Agencies

As noted above, the Board previously required NTC to provide an interim update, as specified in the Agencies’ joint March 29, 2019 individual feedback letter, concerning its projects to address the liquidity shortcoming identified in its 2015 resolution plan.³⁰ The submission date specified for this interim update was December 31, 2019. The Agencies subsequently jointly extended the next resolution plan submission date for NTC to July 1, 2021 or such other date that may be specified when the Agencies adopt the Final Rule, as specified in the Agencies’ joint letter of July 26, 2019 (the “Extension Letter”). In this same letter, the Agencies also communicated to NTC that notwithstanding this plan submission date extension, the firm may be required to provide the interim update concerning its pending liquidity projects on or before December 31, 2019.³¹ To address a technical timing issue under the Final Rule, staff recommends

²⁹ Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets, 84 FR 16620 (April 22, 2019).

³⁰ See Resolution of the Board No. 085714 (March 29, 2019).

³¹ See Resolution of the Board No. 086072 (June 18, 2019).

requiring the interim update to be provided one month later, on or before January 31, 2020.³²

The effective date of the Final Rule will be 60 days after publication in the *Federal Register*. If the Board approves the Final Rule at the October Board meeting, and if the process of preparing the Final Rule for publication takes more than approximately two weeks, the Final Rule will not be effective until after December 31, 2019. As of June 30, 2019, NTC had total consolidated assets of \$126.6 billion. Because this figure is less than \$250 billion, under EGRRCPA, NTC will cease to be a covered company on November 24, 2019 unless the FRB has exercised its authority to apply resolution planning requirements to NTC.³³ Extending NTC's interim update submission date to January 31, 2020 would ensure that the Final Rule is effective and that NTC is subject to the resolution planning requirement when the interim update must be submitted.

³² Paragraph __.3(b) of the Initial Rule permits the Agencies to jointly require an interim update to a previously-submitted resolution plan.

³³ The Extension Letter was drafted to state that NTC "may be required to provide on or before December 31, 2019 an update" because the FRB had not yet exercised its authority over NTC with regard to resolution planning requirements and accordingly NTC might not be obligated to submit an interim update if it ceased to be a covered company on November 24, 2019.

CONCLUSION:

Staff recommends that the Board:

- A. Approve the Final Rule, and authorize its publication in the Federal Register.
- 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 Final Rule to prepare it for publication in the Federal Register.
- C. Determine that the interim update previously required from NTC, described above, must be submitted on or before January 31, 2020.
- D. Authorize the Director, CISR, or designee, to communicate this change to NTC.

CONCUR:

Nicholas J. Podsiadly
General Counsel

10/8/19

Date

CONTACTS:

CISR: Lori J. Quigley (x83799); Alexandra S. Barrage (x83671); Robert C. Connors (x83834)

Legal: Celia Van Gorder (x86749); Dena S. Kessler (x83833); Ryan M. Rappa (x86767); Esther Rabin (x86860)

ATTACHMENTS:

Attachment 1: Draft Board Resolution

Attachment 2: Final Rule

Attachment 3: Chart of Expected Resolution Plan Filing Groups and Filers

Attachment 4: Chart of Resolution Plan Submission Dates

Attachment 5: Chart of Full and Targeted Resolution Plan Requirements