August 29, 2023

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| MEMORANDUM TO: | The Board of Directors |
| FROM: | James L. McGraw, Acting Director<br>Division of Complex Institution Supervision & Resolution |
| SUBJECT: | Publication of Proposed Guidance for Resolution Plan Submissions of Triennial Full Filers |

## I. SUMMARY OF RECOMMENDATIONS:

This memorandum concerns the publication in the *Federal Register* for public comment of two notices of proposed guidance regarding resolution plans that are to be submitted pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 165(d)") and its implementing rule ("Section 165(d) Rule").[1] One notice concerns the resolution plans of certain domestic banking organizations (the "Domestic Triennial Full Filers"), while the second concerns the resolution plans of certain foreign banking organizations (the "Foreign Triennial Full Filers"). Staff of the Federal Deposit Insurance Corporation ("FDIC") developed each of the proposed guidance notices jointly with staff of the Board of Governors of the Federal Reserve System ("FRB" and, together with the FDIC, "Agencies"). If both are approved by the Board of Directors of the FDIC ("Board") and the FRB, the staffs will submit the two notices for simultaneous publication in the *Federal Register*. While the proposed guidance is consistent in many respects with guidance previously issued to banking organizations required to submit

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

resolution plans pursuant to Section 165(d) and the Section 165(d) Rule, the proposed guidance also reflects recent developments, as discussed in more detail below.

Staff recommend that the Board take the following actions:

A. Authorize publication of *Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers* ("Proposed Domestic TFF Guidance") and the associated preamble ("Domestic Guidance Preamble," together with the Proposed Domestic TFF Guidance, "Proposed Domestic Guidance Notice") substantially in the form of **Attachment 2,** in the *Federal Register* with a request for public comment, for a comment period ending November 30, 2023.

B. Authorize publication of *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers* ("Proposed Foreign TFF Guidance"), and the associated preamble ("FBO Guidance Preamble," together with the Proposed Foreign TFF Guidance, the "Proposed FBO Guidance Notice") substantially in the form of **Attachment 3,** in the *Federal Register* with a request for public comment, for a comment period ending on November 30, 2023.

C. Authorize the General Counsel, or designee, and the Executive Secretary, or designee, to make technical, non-substantive, or conforming changes to the text of **Attachment 2** and **Attachment 3** to prepare them for publication.

## II. BACKGROUND:

### A. Key Authorities

The requirement to submit a resolution plan pursuant to Section 165(d) and the Section 165(d) Rule applies to each "covered company," as defined in the Section 165(d)

Rule.[2] The goal of the Section 165(d) resolution planning process is to help ensure that a failed covered company could be resolved under the ordinarily applicable insolvency regime (in many cases, the U.S. Bankruptcy Code) without serious adverse effects on U.S. financial stability. The resolution planning process requires covered companies to demonstrate that they have assessed the challenges that their structures and business activities pose to resolution, and that they have taken adequate actions to address those challenges.

The Section 165(d) Rule establishes a different scope for the resolution plans of domestic covered companies and foreign-based covered companies. For a domestic covered company, the resolution plan must address the firm's global operations. For a foreign-based covered company, all foreign banking organizations ("FBO"), the resolution planning process focuses on its U.S. subsidiaries and their operations. The Section 165(d) Rule also provides that an FBO's resolution plan may not assume that the covered company takes resolution actions outside the United States that would eliminate the need for any of its U.S. subsidiaries to enter into resolution proceedings.[3]

The Section 165(d) Rule also distinguishes among covered companies of different size and complexity. Different resolution plan content requirements and submission schedules apply to each of the three categories of covered companies. The proposed guidance concerns the resolution plan submissions of one category, the triennial full

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[2] 12 C.F.R. § 381.2.
[3] 12 C.F.R. § 381.4(h).

filers. The triennial full filers are the Category II and Category III banking organizations as determined under the FRB's tailoring rules.[4]

### B. Previously Issued Guidance

The Agencies have previously issued guidance concerning resolution plan submissions to two groups of covered companies. The first issued guidance concerns submissions by the U.S. global systemically important banks ("U.S. GSIBs"). The Agencies published the current version of this guidance (the "U.S. GSIB Guidance") in the *Federal Register* in 2019, following public notice and comment.[5] Although the U.S. GSIB Guidance does not so state explicitly, it addresses resolution only under a single point of entry ("SPOE") resolution strategy – which each of the U.S. GSIBs had selected as its preferred resolution strategy prior to issuance of the U.S. GSIB Guidance.

In 2020, the Agencies issued written guidance ("2020 FBO Guidance") to a subset of the Foreign Triennial Full Filers.[6] This guidance also was issued following public notice and comment.[7] The 2020 FBO Guidance is similar to the U.S. GSIB Guidance, with modifications necessary to reflect the different resolution plan scopes, resolution challenges and risk to U.S. financial stability posed by the two groups of firms. Like the U.S. GSIB Guidance, the 2020 FBO Guidance implicitly assumes SPOE as the

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[4] *See* 12 CFR § 381.4(b)(1) and 12 CFR § 252.2 (FRB tailoring regulation).
[5] The U.S. GSIB Guidance appears at 84 Fed. R. 1438 (Feb. 4, 2019).
[6] Namely, each FBO that is subject to Category II standards according to tits combined U.S. operations in accordance with the FRB's tailoring rules and that is required to form an intermediate holding company. *See* 85 Fed. R. 83,557, 83,571 (Dec. 22, 2020).
[7] The U.S. GSIB Guidance and the 2020 FBO Guidance were preceded by generally similar guidance issued in 2016 and 2017.

applicable U.S. resolution strategy for the firms in scope, albeit with the single point of entry being the top tier U.S. intermediate holding company.[8]

**C. Development of the Proposed Guidance**

The Proposed Domestic TFF Guidance and the Proposed Foreign TFF Guidance (the "Proposed Guidance") follows staff's review and assessment of resolution plans submitted by the triennial full filers in December 2021. Staff concluded that a number of these plans failed to address with sufficient rigor a number of challenges to the implementation of their resolution strategies. Some plans also relied on simplifying assumptions that reduced or eliminated resolution obstacles. The feedback letters approved by the Board and issued to these firms stated the expectation that the Agencies would issue for public comment proposed guidance for the triennial full filers addressing these and other issues generally.[9]

FDIC and FRB staff began working on the Proposed Guidance in January 2023. As part of their analysis, the staffs considered the events of March and April 2023; specifically, the failures of Silicon Valley Bank, Signature Bank and First Republic Bank and the Swiss government-facilitated agreement to merge Credit Suisse Group AG into UBS AG. Although none of the three failed domestic banks was part of a firm required to submit a resolution plan under the Section 165(d) Rule and Credit Suisse Group AG's

[8] All of the FBOs that were in scope of the 2020 FBO Guidance for purposes of their 2021 resolution plan submissions previously had selected SPOE as their U.S. resolution strategy.

[9] *See* "Agencies Announce Forthcoming Resolution Plan Guidance for Large Banks and Deliver Feedback on Resolution Plan of Truist Financial Corporation, " https://www.fdic.gov/news/press-releases/2022/pr22070.html (Sept. 30, 2022) (joint FDIC – FRB press release concerning the first-issued feedback letter to a triennial full filer).

U.S. resolution strategy was not implemented, certain aspects of the Proposed Guidance reflects observations from these events.

## III. DISCUSSION:

### A. Overview of Proposed Guidance

The Proposed Domestic TFF Guidance and the Proposed Foreign TFF Guidance both begin with the proposed scope and then are organized into several substantive topical areas, each discussed below. Each substantive topic is bifurcated, with separate guidance for an SPOE strategy and for a multiple point of entry ("MPOE") strategy. This reflects the fact that each resolution strategy poses distinct risks and requires its own type of planning and capabilities development for successful strategy execution.

Successful execution of an SPOE strategy relies on the firm's ability to provide sufficient capital and liquidity to material entities, the existence of a governance structure that can timely identify the onset of financial stress events, and the capability to ensure the timely execution of the strategy and the ability to maintain continuity of operations throughout resolution. The capabilities necessary for orderly SPOE resolution under the Bankruptcy Code depend on the characteristics and complexity of the failed financial institution (or the U.S. entities and operations of an FBO). Nonetheless, any firm that selects SPOE as its preferred resolution strategy (or, for an FBO, its U.S. resolution strategy) will need certain baseline competencies, and its resolution plan should adequately addresses the substantive topics identified in the Proposed Guidance.

The SPOE aspects of the Proposed Domestic TFF Guidance are based on the U.S. GSIB Guidance, with modifications that reflect the specific characteristics of and potential risks posed by the failure of a triennial full filer. With the exceptions noted below, the SPOE aspects of the Proposed Foreign TFF Guidance for Foreign Triennial Full Filers are similar to the 2020 FBO Guidance.

By contrast, the Agencies have not previously issued guidance explicitly directed toward an MPOE strategy. The Proposed Guidance for firms that utilize an MPOE strategy incorporates aspects of the SPOE guidance that are relevant to an MPOE strategy, with appropriate modifications. The proposed MPOE guidance also contains new text specific to an MPOE strategy, including to address resolution by the FDIC of a material entity[10] subsidiary that is a U.S. insured depository institution ("IDI").

The Proposed Guidance is intended to facilitate development of the triennial full filers' resolution plans and thereby increase the likelihood that a firm or a firm's U.S operations, as applicable, could be resolved in an orderly manner. The Proposed Guidance is not, however, meant to limit firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy, and that should be factored into the firm's resolution plan submission.

1. Scope of Application.

The Domestic Guidance Preamble states the Agencies propose to apply the guidance set forth in that notice to all Domestic Triennial Full Filers. Similarly, the Foreign Guidance Preamble indicates that the guidance contained in that notice would apply to all Foreign Triennial Full Filers. The Foreign Guidance Preamble also

[10] A "material entity" is "a subsidiary or foreign office of the covered company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company." A "critical operation" is an operations of the covered company that, if it were to fail or be discontinued, would pose a threat to U.S. financial stability. A "core business line" is a business line that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value. *See* 12 CFR 381.2.

indicates that the Proposed Foreign TFF Guidance would supersede the 2020 FBO Guidance, thus becoming the sole guidance applicable to the Foreign Triennial Full Filers.

2. Capital.

For firms with an SPOE resolution strategy, the agencies propose guidance regarding capital that is generally similar to the U.S. GSIB Guidance or the 2020 FBO Guidance, as applicable, except as noted below. The ability to provide sufficient capital to material entities is important in order to ensure that material entities can continue to maintain operations as the firm is resolved. The Proposed Guidance describes expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (e.g., debt that a parent or intermediate holding company may forgive or convert to equity) among the material entities within the firm (resolution capital adequacy and positioning, or "RCAP"). The Proposed Guidance also describes expectations regarding firms having a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The 2020 FBO Guidance did not include expectations concerning RCAP. The Proposed Foreign TFF Guidance includes expectations concerning RCAP that were part of the proposal that preceded the 2020 FBO Guidance.[11] Having reviewed the 2021 submissions of the FBOs in scope for the 2020 FBO Guidance, and in light of recent experience with Credit Suisse Group AG, staff believes that expectations concerning RCAP are appropriate to increase the likelihood that the capital needs of an FBO within

[11] *See* 85 Fed. R. 15,449 (March 18, 2020) ("2020 Proposed FBO Guidance").

the United States will be sufficient to support the SPOE resolution of its U.S. entities and operations.[12]

Importantly, the Proposed Guidance reflects modifications to align it with the pending rulemaking concerning long-term debt. The Proposed Guidance states that positioning of capital resources within the firm should be consistent with any applicable rules requiring prepositioned resources in IDIs in the form of long-term debt.

The Proposed Guidance does not include expectations concerning capital for firms whose plans contemplate an MPOE resolution strategy. These firms' material entities are not expected to remain open and operating in resolution and accordingly would not need to meet regulatory capital minimums. At the same time, staff notes that some of the challenges of resolving a subsidiary IDI under an MPOE strategy may be addressed by the pending rulemaking proposing to require certain IDIs to issue long-term debt in that such instruments may be available to recapitalize and facilitate the exit from resolution of a bridge depository institution.

3. Liquidity.

A firm's ability to reliably estimate and meet its liquidity needs prior to, and in, resolution is important to the execution of an SPOE resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows the subsidiaries to continue

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[12] In connection with Credit Suisse, staff observed the challenges a firm may face in trying to raise capital while under stress. Articulating expectations about the placement of capital in U.S. material entities may help alleviate the need of U.S. material entity subsidiaries for additional capital at a time when it may be challenging to obtain.

to operate while the firm is being resolved in accordance with its resolution strategy. Thus, the Proposed Guidance for triennial full filers that select an SPOE strategy includes proposed expectations concerning both resolution liquidity adequacy and positioning ("RLAP") – that is, measuring a firm's available liquidity resources – and resolution liquidity execution need ("RLEN") – estimating the amounts of liquidity material entities will need to remain open and operating in resolution in accordance with the firm's strategy. For FBOs that adopt an SPOE resolution strategy, the Proposed Foreign TFF Guidance includes expectations concerning RLAP. This is consistent with the 2020 Proposed FBO Guidance regarding liquidity but not the 2020 FBO Guidance.[13]

For any filer that adopts an MPOE resolution strategy, the Proposed Guidance proposes that the firm should have the liquidity capabilities necessary to execute its resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution. Staff believes that these expectations would provide important information about liquidity-related challenges and the feasibility of the proposed strategy.

4. Governance Mechanisms.

An adequate governance structure with triggers capable of identifying the onset of financial stress events is important to ensure that there is sufficient time to allow a firm to prepare for and execute an SPOE strategy. Key expectations in this section of

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[13] More specifically, the Proposed Foreign TFF Guidance proposes expectations concerning RLAP that were included in the 2020 Proposed FBO Guidance but not the final FBO Guidance. The proposed expectations concerning RLEN are as proposed in the 2020 Proposed FBO Guidance and finalized in the 2020 FBO Guidance. Staff has concluded that expectations concerning RLAP are appropriate for these FBOs because the ability to raise funding within or transfer resources to the United States when the firm is under stress may present challenges that are difficult or impossible to overcome. This risk can be appropriately mitigated through pre-positioning resources in the United States.

the Proposed Domestic TFF Governance for an SPOE strategy include that the firms (1) have a playbook that details the board and senior management actions necessary to execute the strategy; (2) have triggers that are linked to specific actions outlined in the playbook to ensure the timely escalation of information to senior management and the board so that key actions required for successful strategy implementation can be taken when needed; and (3) identify and analyze potential key legal issues associated with the pre-bankruptcy provision of capital and liquidity to subsidiaries. A plan's content concerning these items, including the presentation of mitigants, would be part of the overall assessment of whether the plan meets the statutory standard.

The proposed guidance concerning governance mechanisms for FBOs using an SPOE strategy is substantially similar to the 2020 Proposed FBO Guidance regarding governance mechanisms. This proposed guidance also is generally similar to the guidance proposed for the Domestic Triennial Full Filers, with modifications to reflect that an FBO's resolution plan concerns the resolution of the firm's U.S. entities and operations rather than the entire firm. For example, the triggers should be linked to specific actions outlined in a playbook to ensure the timely escalation of information to both the U.S. intermediate holding company and foreign parent governing bodies. The Proposed Foreign TFF Guidance also contains a newly clarified expectation specific to FBOs: to the extent the preferred global resolution strategy for the firm is a home country-led resolution in which its U.S. entities and operations remain open, the firm should design their governance mechanisms in a way that does not inadvertently interfere with the execution of a global strategy. This expectation reflects staff's recent experience in the resolution of Credit Suisse Group AG. During the run-up to that resolution, as the

Swiss authorities were considering various paths to resolution, staff observed that the measurement systems and criteria used to evaluate the condition of the U.S. operations and the global operations were inconsistent, complicating the judgments necessary to successfully execute a resolution,

The Proposed Domestic TFF Guidance does not contain guidance concerning governance mechanisms for an MPOE strategy. Staff believes this is appropriate because entry of material entities into resolution would be determined by criteria prescribed in the applicable statutes and/or dependent to some extent on actions taken by regulatory authorities.

By contrast, the Proposed Foreign TFF Guidance proposes adopting limited governance mechanisms expectations concerning communication and coordination between the governing body of the firm's U.S. operations and the foreign parent for the purpose of facilitating preparations for an orderly resolution. Staff believes these expectations are appropriate to ensure that any implementation of the U.S. resolution strategy occurs at the appropriate time in the event the foreign parent is unwilling or unable to support the U.S. operations.

5. Operational Capabilities.

The development and maintenance of effective operational capabilities is important to support and enable execution of a firm's resolution strategy, including providing for the continuation of identified critical operations and thereby preventing or mitigating adverse effects on U.S. financial stability. This section includes proposed guidance concerning payment, clearing and settlement activities; collateral; management information systems; and shared and outsourced services. Additional aspects proposed only for an SPOE strategy are qualified financial contracts and certain potential legal obstacles.[14] For firms that utilize an SPOE resolution strategy, among other things, the Proposed Domestic TFF Guidance would adopt portions of the operational expectations of the U.S. GSIB Guidance and SR letter 14-1,[15] with modifications to reflect the characteristics of these firms. The Proposed Foreign TFF Guidance would adopt portions of the 2020 FBO Guidance and SR letter 14-1, likewise with modifications that reflect the specific characteristics and complexities of these firms. For firms that utilize an MPOE resolution strategy, the Proposed Guidance would adopt expectations based on the draft SPOE guidance, with adjustments to reflect the difference in strategy.

6. Legal Entity Rationalization and Separability.

For firms that utilize an SPOE resolution strategy, the Proposed Guidance substantively adopts the U.S. GSIB Guidance or the 2020 FBO Guidance, as applicable, regarding legal entity rationalization and separability. It is important that firms maintain a structure that facilitates orderly resolution. To achieve this, the proposal states that a firm should develop and describe in its plan criteria supporting its resolution strategy (for an FBO, the U.S. resolution strategy) and integrate them into day-to-day decision-making processes. The criteria would be expected to consider the best alignment of

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[14] The Proposed Domestic TFF Guidance would set the expectation that a firm describe and support its strategy for addressing the potential disruptive effects in resolution of early termination provisions and cross-default rights in existing qualified financial contracts. However, instead of including the specific text of the U.S. GSIB Guidance addressing the ISDA protocol and associated actions necessary to prevent early termination of qualified financial contracts, the Proposed Domestic TFF Guidance sets out broader guidance. This recommended approach for Domestic Triennial Full Filers reflects technical differences in the scope and application of the ISDA resolution stay protocols and associated U.S. regulations to the Domestic Triennial Full Filers, as compared to the U.S. GSIBs.

[15] SR letter 14-1, "Principles and Practices for Recovery and Resolution Preparedness" (Jan. 24, 2014), *available at* https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm. The U.S. GSIBs are subject to this letter as a supervisory matter, making the proposed expectations for Domestic Triennial Full Filers in practice equivalent to the U.S. GSIB landscape.

legal entities and business lines and facilitate resolvability as a firm's activities, technology, business models, or geographic footprint change over time. In addition, the Proposed Guidance provides that the firm should identify discrete and actionable operations (for an FBO, U.S. operations) that could be sold or transferred in resolution to provide meaningful optionality for the resolution strategy under a range of potential failure scenarios and include this information in their plans.

For both Domestic and Foreign Triennial Full Filers that utilize an MPOE strategy, the Proposed Guidance would clarify that the firms should have legal entity structures that support their preferred resolution strategy (for an FBO, the U.S. resolution strategy) and describe those structures in their plans. The proposal also provides that to the extent a material entity IDI relies upon other affiliates during resolution, the resolution plan should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants. In addition, these firms' resolution plans should include options for the disposal in resolution of significant assets, portfolios, legal entities, or business lines (for domestic firms) or U.S. assets (for FBOs).

7. Derivatives and Trading Activities.

The Proposed Guidance requests comment on whether to provide guidance on derivatives and trading activities for triennial full filers that utilize an SPOE resolution strategy. Although these firms have limited derivatives and trading operations compared to the U.S. GSIBs, it remains important that their derivatives and trading activities can be stabilized and de-risked during resolution without causing significant market disruption. The Proposed Foreign TFF Guidance also notes that resolution challenges that may be posed by transactions that originate from and may be managed in the U.S. but are booked outside of the U.S. remain under consideration. The Proposed Guidance concludes that if the Agencies provide guidance on derivatives and trading activities, it likely would adopt aspects of the U.S. GSIB Guidance or the Proposed 2020 FBO Guidance, as applicable.[16]

The Proposed Guidance indicates that the Agencies do not anticipate providing derivatives and trading activities guidance to triennial full filers that utilize an MPOE resolution strategy. Staff believes this is appropriate because none of these firms' operations would be expected to continue in resolution or to be separately wound down outside of resolution, thus eliminating the need for advance continuity planning.

8. IDI Resolution Guidance (MPOE Strategy Only).

As noted above, the Proposed Guidance includes new information relating to the resolution of a material entity U.S. IDI. The Proposed Guidance would clarify the expectations for how a firm may address two important constraints. The first is the resolution plan requirement to demonstrate that the IDI can be resolved in a manner that is consistent with substantial mitigation of the risk that the failure of the firm (or, for an FBO, its U.S. entities and operations) would have serious adverse effects on U.S. financial stability. The second is the need to adhere to the requirements of the Federal Deposit Insurance Act ("FDI Act") regarding failed bank resolutions.

[16] In the U.S. GSIB Guidance, the Agencies specified the covered companies to which the derivatives and trading activities guidance was directed. This recognized a distinction between the U.S. GSIBs that had large broker-dealer subsidiaries and those that did not and fundamental differences in the business and operations of the two types of firms. Among the challenges in developing guidance for triennial full filers is the potential for the current set of triennial full filers to change and the need for the guidance to remain applicable and relevant. These circumstances make any determination of the scope of application of derivatives and trading guidance difficult, in addition to the challenge of developing appropriate substance.

Importantly, the Proposed Guidance would not dictate the approach a resolution plan should present for resolving a material entity IDI. For a firm that chooses a payout liquidation as the method for resolving the IDI, the Proposed Guidance states that the plan should demonstrate how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For a firm that chooses an approach that employs a bridge depository institution, the Proposed Guidance outlines the expectation that the plan include an analysis demonstrating that the IDI could be resolved without use of the systemic risk exception to the least-cost requirement.[17]

9. <u>Branches (Proposed Foreign TFF Guidance only)</u>.

U.S. branches of FBOs can play a critical role in a firm's U.S. operations and may present unique issues in a resolution of its U.S. entities and operations. The proposed guidance regarding branches is similar to the 2020 FBO Guidance. Under the proposal, Foreign Triennial Full Filers would be expected to show how branches would continue to facilitate the firm's access to financial market utilities for identified critical operations and to meet funding needs. The proposal also outlines expectations that a firm analyzes the effects on the firm's financial market utility access and identified critical operations of the cessation of operations of any U.S. branch of the foreign bank that is a material entity for purposes of the Section 165(d) Rule.

10. <u>Group Resolution Plan (Proposed Foreign TFF Guidance only)</u>.

The FBO Guidance Preamble recognizes that the preferred resolution outcome for FBOs is often a successful home country resolution. U.S. operations of an FBO are

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[17] 12 U.S.C. § 1823(c)(4).

often highly interconnected with the broader, global operations of the financial institution. The Proposed Foreign TFF Guidance outlines expectations for Foreign Triennial Full Filers to describe the impact of executing the firm's global, group-wide resolution plan on U.S. operations and detail the extent to which resolution planning under the Section 165(d) Rule relies on different assumptions, strategies, and capabilities from the global plan. The Proposed Foreign TFF Guidance also indicates that a Foreign Triennial Full Filer's broader resolvability framework is expected to consider the objectives of both the group-wide resolution strategy and the U.S. resolution strategy, with complementary efforts to enhance resolvability across both the group-wide plan and the U.S. plan.

11. Format and Structure of Plans; Assumptions.

The Proposed Guidance concludes with a section setting forth a preferred presentation regarding the format, assumptions, and structure of resolution plans. The proposed format, structure, and assumptions are generally similar to those in the U.S. GSIB Guidance or 2020 FBO Guidance, as applicable, with a few modifications. First, the Proposed Guidance clarifies expectations relating to assumptions concerning access to the FRB's Discount Window and other borrowings during the period immediately prior to entering bankruptcy. In addition, the Proposed Guidance indicates that a triennial full filer should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt an MPOE resolution strategy, the Proposed Guidance includes the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress, including consideration of the likelihood of the diminution of liquidity and capital prior to bankruptcy. This clarification is intended to address staff's observation that some of the 2021 resolution plans submitted by triennial full filers did not reflect the condition of a failed firm.

### B. Publication for Public Comment

As noted above, staff recommends publishing the Proposed Domestic Guidance Notice and the Proposed FBO Guidance Notice in the *Federal Register* for solicitation of public comment for a period ending November 30, 2023, prior to issuance of the final guidance.[18] Doing so would be consistent with the Agencies' prior statements, notably the preamble to revisions to the Section 165(d) Rule made in 2019. This preamble states that the Agencies intend to make any future guidance concerning resolution planning available for public comment.[19] Staff recommend seeking public comment on the Proposed Domestic Guidance Notice and the Proposed FBO Guidance Notice so that the Agencies can consider the views of interested parties, which will assist the Agencies in effectively implementing their joint Section 165(d) responsibilities. Moreover,

[18] The Proposed Domestic Guidance Notice and the Proposed FBO Guidance Notice will be made available to the public on the FDIC's website shortly after approval by the Board and the FRB. FDIC staff understands that FRB staff is taking similar steps.

[19] *Resolution Plans Required*, 84 Fed. Reg. 59,194, 59,204 (November 1, 2019).

publication for comment increases transparency in government and, by doing so, promotes good governance and accountability in issuing guidance.

Staff understand that FRB staff intends to make recommendations to the FRB consistent with those outlined above.

## IV. <u>CONCLUSION</u>:

Staff recommend that the Board take the following actions:

A. Authorize publication of Proposed Domestic Guidance Notice substantially in the form of **Attachment 2,** in the *Federal Register* with a request for public comment, for a comment period ending on November 30, 2023.

B. Authorize publication of Proposed FBO Guidance Notice substantially in the form of **Attachment 3,** in the *Federal Register* with a request for public comment, for a comment period ending November 30, 2023.

C. Authorize the General Counsel, or designee, and the Executive Secretary, or designee, to make technical, non-substantive, or conforming changes to the text of **Attachment 2** and **Attachment 3** to prepare them for publication.

**<u>CONCUR</u>**:

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Harrel M. Pettway Date
General Counsel

**CONTACTS:**

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**ATTACHMENTS:**

**Attachment 1: Draft Resolution**

**Attachment 2: Proposed Domestic Guidance Notice**

**Attachment 3: Proposed FBO Guidance Notice**