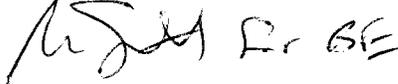


January 3, 2012

TO: Board of Directors

FROM: Sandra L. Thompson 
Director
Division of Risk Management Supervision

James Wigand 
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Division of Resolutions and Receiverships

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General Counsel

SUBJECT: Resolution Plans Required for Insured Depository Institutions
with \$50 Billion or More in Total Assets—Final Rule

RECOMMENDATION

The Division of Risk Management Supervision, the Office of Complex Financial Institutions and the Division of Resolutions and Receiverships recommend that the Board of Directors approve and adopt the attached Final Rule (“Final Rule”) and authorize its publication in the *Federal Register* with an effective date of April 1, 2012. The General Counsel concurs in such recommendation.

EXECUTIVE SUMMARY

Staff recommends that the Board approve and adopt the Final Rule and authorize its publication in the *Federal Register* with an effective date of April 1, 2012. This Final Rule requires an insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure (“Resolution Plan”). This Final Rule establishes the requirements

for submission and content of a Resolution Plan as well as procedures and standards for review by the FDIC. The Final Rule requires a covered insured depository institution (“CIDI”) to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. §§ 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution’s creditors. Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. The Final Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning. The Final Rule enables the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails.

This Final Rule complements separate rulemaking pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) that requires certain systemically important nonbank financial companies and bank holding companies to prepare Resolution Plans for such entities to be resolved in an orderly manner under the Bankruptcy Code (“Section 165(d) rule”).¹

¹ See Resolution Plans Required, 76 FR 67323 (November 1, 2011) (proposed 12 CFR part 381).

Currently, 37 insured depository institutions are covered by the Final Rule. Those institutions held approximately \$4.14 trillion in insured deposits or nearly 61 percent of all insured deposits as of September 30, 2011.

The Interim Final Rule, which preceded this Final Rule, will be effective January 1, 2012², and will remain in effect until superseded by this Final Rule on April 1, 2012.

DISCUSSION

I. Background

The FDIC originally proposed a resolution plan rule through a Notice of Proposed Rulemaking (“NPR”) published in the *Federal Register* on May 17, 2010.³ The NPR solicited public comment on all aspects of the NPR. The comment period ended on July 16, 2010, and eight comments were received. On September 21, 2011, the FDIC caused to be published in the *Federal Register* an Interim Final Rule (the “IFR”).⁴ The FDIC invited public comment on all aspects of the IFR and posed specific questions to the public regarding the scope of coverage, definitions of terms used in the IFR, strategic analysis, governance, informational elements and process. The comment period ended on November 21, 2011.

II. Comment Summary for IFR

The FDIC received seven comment letters from individuals and banking organizations, as well as industry and trade groups representing the banking, insurance and financial services industry. Six of these comments specifically address provisions of

² 76 FR 58379 (September 21, 2011).

³ 75 FR 27464, entitled “Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Depository Institutions” (the “Proposed Rule”).

⁴ 76 FR 58379.

the IFR. The comment letters generally expressed support for the broader goals of the IFR to require CIDs to provide the FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures, and to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved under the FDI Act in an orderly and timely manner in the event of receivership. Some comment letters expressed concern that the IFR did not conform closely enough with the Section 165(d) rule, and others suggested that the Final Rule more specifically describe certain information that a CIDI must provide. By and large, the comments received fit within several of the categories of questions posed by the FDIC to the public in the IFR. One comment addressed the FDIC's burden estimate. These comments are summarized below.

Scope

The IFR requires each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. The \$50 billion in asset threshold was an increase from the \$10 billion in asset threshold proposed in the NPR although the NPR also required the CIDI to be owned by a holding company with \$100 billion or more in assets. One commenter agreed that only insured depository institutions with \$50 billion or more in assets should be subject to the Final Rule while those insured depository institutions with less than \$50 billion in assets should not be because their holding company structures and affiliate relationships are simple enough that they would not impede resolution under the FDI Act.

Another commenter advocated a coverage threshold using the aggregate assets of all consolidating and non-consolidating entities in the holding company group in order to

mitigate the risk that assets are allocated among smaller entities to avoid being subject to the Final Rule. This commenter suggested that an insured depository institution should be covered if the group's aggregate assets exceed \$50 billion.

One commenter was critical of the inclusion of savings association subsidiaries of savings and loan holding companies because savings associations typically focus on consumer and retail lending rather than commercial banking and do not present the complexity and the kind of threat to the deposit insurance fund or financial system that the Final Rule attempts to address. This commenter suggests that the Final Rule should be imposed only on savings associations in financial distress, if other factors present a threat to the deposit insurance fund or the economy, or if the parent company has been designated as a systemically important financial institution by the Financial Stability Oversight Council; or, alternatively, only if the savings association is over \$50 billion and receives a CAMELS rating of 3 or worse or its parent receives an equivalent low rating. Additionally, this commenter suggests that the FDIC modify the Final Rule in a manner that would base a subsidiary insured depository institution's duty to file a Resolution Plan upon the requirement that the subsidiary's parent financial company file a 165(d) Plan.

After careful consideration of the comments regarding scope of covered institutions, staff recommends no changes be made in the Final Rule. The FDIC needs the information required by the Final Rule before an institution is in financial distress. The purpose of the Final Rule is to enable the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails. History instructs us that

the financial condition of a large institution can deteriorate rapidly, and such deterioration is exacerbated in illiquid markets. Additionally, requiring all insured depository institutions of significant size to focus on resolution planning will focus attention on hidden or nascent vulnerabilities that healthy institutions may have.

Strategic Analysis

With respect to strategic analysis, one commenter suggested that the FDIC consider a recapitalization of a CIDI as an alternative to traditional resolution methods, believing that such a strategy would be more effective during financial panic than would be a liquidation of assets or sale to a third party pursuant to a traditional purchase and assumption agreement. After considering this comment, staff does not recommend a change be made in the Final Rule. A CIDI may consider a post-appointment recapitalization in its Resolution Plan and a CIDI should address this option if it believes a recapitalization would be among the resolution options that are least costly to the deposit insurance fund.

The same commenter recommended eliminating the requirement that the CIDI demonstrate the resolution strategy as “least-costly” because only the FDIC can make such a determination and it does not have to be made until failure. Further, according to this commenter, a requirement that the CIDI demonstrate that the strategy is least costly dissuades the CIDI from considering other resolution strategies as only one strategy could be “least-cost.” Staff does not agree with this commenter. A CIDI can demonstrate a strategy is the least costly of all resolution methods by offering a range of transactions and by ensuring that the transactions are offered broadly to the market, competitive bids

are taken and bids are evaluated carefully. The CIDI can apply those strategies, or other it may develop, for demonstrating that the option ultimately selected will be least costly.

The IFR requires that a Resolution Plan provide a detailed description of the processes the CIDI employs for assessing the feasibility of the plan under idiosyncratic and industry-wide stress scenarios. One commenter requests clarification of this terminology in light of the requirement that the Resolution Plan strategies should take into account that the failure of the CIDI may occur under baseline, adverse and severely adverse economic conditions. This commenter believes that the IFR's reference to "idiosyncratic and industry-wide stress scenarios" be deleted to avoid internal inconsistency and to better harmonize the relevant provisions of the Final Rule. Staff agrees with this commenter and the Final Rule has been revised accordingly.

Another commenter suggests that the Final Rule take into account the differences among organizations and the range of strategies that each may consider. This commenter requests that less complex institutions be given the ability to submit streamlined Resolution Plans tailored to nature and risk profile of the CIDI. Staff does not agree with this commenter. Less complex institutions will naturally have more streamlined Resolution Plans than more complex institutions, as there will be fewer intricacies to address and more straightforward resolution options. Thus, no revision to the Final Rule is required.

The IFR allows a CIDI to submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. One commenter believes that the FDIC should not allow a CIDI to submit its initial Resolution Plan assuming the baseline conditions only and

recommends that CIDs be required to assume adverse and severely adverse economic conditions for their initial Resolution Plans in order to increase confidence in, and the integrity of, the resolution planning process. Staff does not agree with this commenter. Staff believes that the first iteration of a CID's Resolution Plan should assume a baseline economic scenario in recognition of the burden that the Final Rule imposes on CIDs and the challenge that CIDs face in preparing their initial Resolution Plans. As the CIDs gain experience with resolution planning, the Final Rule requires subsequent Resolution Plans to assess feasibility under baseline, adverse and severely adverse economic condition scenarios.

One commenter recommends adopting language directing CIDs to identify and discuss "potential barriers to effective resolution and actions to mitigate these" in order to conform to the FSB's key attributes of effective resolution regimes for financial institutions. Staff agrees with this commenter and the Final Rule has been revised accordingly.

Governance

One commenter suggests that the Final Rule clearly permit a committee, rather than a single "senior management official," to be responsible for development, maintenance, implementation and filing of the Resolution Plan. This commenter suggests that the Final Rule clarify that it would be appropriate for the CID to divide such responsibilities among multiple senior management officials or assign them to a committee, and points out that the Section 165(d) rule recognizes that the responsibility need not be vested in an individual by referring to "senior management official(s)" responsible for resolution planning. Staff disagrees with the commenter and recommends

minor changes to the governance provision to make clear what information is requested. While it may be appropriate to divide up the responsibilities, to assure appropriate oversight, the primary responsibility and accountability for the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with the Final Rule should be assigned to one senior management official.

Informational Elements

The IFR sets forth a number of informational elements that a CIDI should include in its plan. One commenter notes that the IFR required a description of material effects that any material event may have on the Resolution Plan and summary of changes that are required to the Resolution Plan, whereas the Section 165(d) rule only requires an explanation of why the event may require changes. This commenter recommends that the FDIC not require more detailed information with the notice of material events than would be required under the Section 165(d) rule. Staff agrees with the commenter and the Final Rule has been modified to be consistent with the requirements of the Section 165(d) rule.

The IFR requires identification in the Resolution Plan of each payment, clearing and settlement system of which a CIDI is a member. A commenter suggests that the Final Rule require identification of "material" payment, clearing and settlement systems, and recommends that the Final Rule be conformed to the Section 165(d) rule, which limits disclosure to systems on which a covered company conducts a material number or value amount of trades or transactions. Staff does not agree with the commenter's proposed change and believes the preamble to the Final Rule makes clear that systems that are immaterial in resolution planning, such as a local check clearing house, do not need to be identified.

The same commenter recommends that the Final Rule qualify the common or shared personnel, facilities, or systems requirements so that the Resolution Plan only need identify “key” common or shared personnel, facilities, or systems. This commenter argues that, without a qualifier, the Final Rule would require exhaustive lists of personnel and systems that would be of little practical use to the FDIC. The commenter points out the limitation of the scope of a parallel informational requirement in the Section 165(d) rule, which requires identification of interconnections and interdependencies that, if disrupted, would materially affect funding or operations. Staff agrees with the commenter with respect to personnel, but believes that knowledge of a CIDI’s common or shared facilities or systems is an important component in resolution planning. The Final Rule has been modified to require the CIDI to identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems. In addition, the preamble has been modified to advise CIDs that personnel may be identified by a department name or other identifier (for example, the accounting department personnel) when the names of such personnel are retrievable, upon request, using such identifier.

This commenter also requests that the requirement to describe non-U.S. components of the CIDI’s structure and operations be limited to material or key components because it believes it would be more useful to focus on the assets, operations, interrelationships and exposures that are material to the resolution of the CIDI. Staff agrees with the commenter and the Final Rule has been revised accordingly.

Another commenter thought that the IFR overlooks contingent liabilities for correspondent banking and unfunded lending commitments to government subdivisions

and social service agencies. This commenter believes that these entities would suffer if CIDI fails and the receiver repudiates its funding obligation, and such action could lead to public panic or distrust in the event that the agency is unable to find another source of liquidity. This commenter suggests that the reporting of unfunded commitments would enable FDIC to develop an action plan to mitigate the adverse effects resulting from the cessation of funding. Staff has revised the Final Rule to make clear that material unfunded commitments are intended to be identified as material off-balance sheet exposures.

Process

The IFR requires a CIDI to demonstrate its capability to promptly produce the information and data underlying its plan in a format acceptable to the FDIC. One commenter believes that this requirement would be better addressed through the FDIC's ongoing review of Resolution Plans than through a rule-based requirement, and points out how the Section 165(d) rule eliminated a similar data-production requirement in favor of a supervisory approach. This commenter also states that informational requirements are being developed and data capabilities are evolving, and such improvement and evolution should be part of the supervisory process. Staff disagrees with most of these comments. The CIDI's ability to produce the information and data underlying its resolution rapidly and on demand is a vital element in a credible Resolution Plan. Without up-to-date information on the CIDI, the FDIC, as receiver, would be hampered in implementing the Resolution Plan. Staff does recommend that the CIDI's supervisor be involved in this evaluation. Therefore, changes have been made to the Final Rule to require the FDIC to consult with the appropriate Federal banking agency before finding a

CIDI's capability to promptly produce the information and data underlying its plan is unacceptable.

One commenter points out several date discrepancies between the IFR and the Section 165(d) rule. First, there is a difference in effective dates between the IFR, which is effective on January 1, 2012, and the Section 165(d) rule, which is effective on November 30, 2011. The commenter believes that the measurement date should be the same to ensure that any company subject to the Section 165(d) rule and any of its subsidiary insured depository institutions subject to the Final Rule will have the same initial and subsequent Resolution Plan submission dates. A change in size during the gap between effective dates could result in Resolution Plans under the two rules being due on different dates. Second, there is a discrepancy between the plan submission dates for an insured depository institution that becomes subject to the IFR after its effective date and a company that becomes subject to the Section 165(d) rule after its effective date. Under the Section 165(d) rule, a company that becomes covered after the effective date must submit its initial plan by July 1 of the following year, provided that July 1 of the following year is at least 270 days after the date on which the company becomes covered. Under the IFR, an insured depository institution that that becomes covered after the effective date must submit its initial plan by July 1 of the following year, without any proviso ensuring that the CIDI have 270 days from the date it becomes covered to submit its plan. The commenter urges the FDIC to add a similar proviso to the Final Rule to ensure consistency between the rules and to avoid the potential for different submission dates for a company subject to the Section 165(d) rule and its CIDI subsidiary. Staff

agrees with the commenter and the Final Rule reflects the changes proposed by the commenter.

This commenter also noted that it is possible that an insured depository institution that becomes a CIDI after the effective date could have a different initial submission date than if it had been covered as of the effective date because it would presumably have to file on July 1 of the following year, rather than in accordance with the staggered schedule. The commenter suggests that the FDIC use its discretionary authority to permit a new CIDI additional time to submit its initial plan in these circumstances to avoid differential treatment of similarly situated insured depository institutions. Staff notes that, if such a change is appropriate, the Final Rule gives the FDIC the discretion to change the filing date. Thus, no change in the Final Rule is proposed.

One commenter points out that, under both the IFR and the Section 165(d) rule, CIDs and covered companies are required to file a notice within 45 days of any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan. The Section 165(d) rule provides that such notice is not required if the date by which the notice must be submitted is within 90 days of the annual Resolution Plan submission date, while the IFR only provides a 45-day window. The commenter requests that the two requirements be conformed. Staff agrees with the commenter and has modified this provision of the Final Rule to be consistent with the Section 165(d) rule.

A commenter suggests the Final Rule provide that the FDIC will consult with the appropriate federal banking agency for the CIDI and its parent company before determining that a Resolution Plan is not credible. This commenter also suggests that the

Final Rule provide the FDIC will consult with the appropriate foreign supervisors, including the relevant home-country supervisor for the foreign-based parent of the CIDI, before issuing any notice of deficiencies, imposing any requirements or restrictions, or taking any other similar remedial action. Staff agrees that consultation with the appropriate federal bank agency for the CIDI would be appropriate and the Final Rule has been revised accordingly.

One commenter states that, in determining whether a Resolution Plan is credible, the FDIC should consider whether the resolution strategy envisions breaking the entity into subcomponents for sale. This commenter believes that any Resolution Plan that excludes breakup as an option only perpetuates the risk that the Final Rule intends to mitigate. Staff agrees that a breakup may be a resolution strategy that can be considered. However, the “least cost” strategy should be the strategy adopted.

Burden

One commenter states that the burden on CIDs whose parent company is not required to file a Resolution Plan under the Section 165(d) rule could be significant and likely exceeds the FDIC’s published estimate. Although this commenter does not provide a specific burden estimate, it anticipates that the resources required to produce a Resolution Plan is several times the FDIC’s 7,200 hours estimate. The commenter believes the FDIC’s estimate may be accurate for CIDs, whose parent is filing a plan under the Section 165(d) rule, but it does not account for the additional burden on savings associations whose parent would not be filing a plan under the Section 165(d) rule. Staff utilized averages to calculate the burden on a per institution basis. This is an acceptable methodology for making burden estimates.

The FDIC has carefully considered the comments and has made appropriate revisions to the Final Rule as described below.

III. Summary of Changes to the Text of the Final Rule

Based upon comments received, the text of the IFR was changed in various respects for the Final Rule. The changes are summarized as follows:

- The effective date for calculating the nonbank assets of a CIDI's parent company for purposes of determining when a CIDI is required to file its initial Resolution Plan was changed from January 1, 2012 to November 30, 2011. This change was made to align the filing date of a CIDI's initial Resolution Plan with the filing date of its parent company's Resolution Plan under the Section 165(d) rule.
- The date for filing of an initial plan by an insured depository institution that becomes a CIDI after the effective date of the Final Rule was also changed to align that filing date with that of its parent company under the Section 165(d) rule.
- The provision regarding notice of material events has been revised to be consistent with the similar provision in the Section 165(d) rule.
- The Final Rule requires a CIDI to identify potential barriers or other material obstacles to an orderly resolution, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.
- The Final Rule requires the CIDI to provide a detailed description of the processes the CIDI employs for assessing the feasibility of the CIDI's plans, under baseline, adverse and severely adverse economic condition scenarios for executing

any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the CIDI's Resolution Plan.

- The Final Rule makes clear that the CIDI should identify material unfunded commitments as part of its disclosure of material off-balance sheet exposures.
- The Final Rule requires the CIDI to describe material components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices and provide detail on the location and amount of foreign deposits and assets.
- The Final Rule requires the CIDI to identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems.
- The Final Rule makes clear that the FDIC will consult with the appropriate Federal banking agency for the CIDI before finding a Resolution Plan not credible.
- The Final Rule makes clear that the FDIC will consult with the appropriate Federal banking agency for the CIDI before finding a CIDI's capability to produce the information and data underlying its Resolution Plan is unacceptable.

IV. Summary of the Final Rule

The Final Rule requires a CIDI to file with the FDIC its initial Resolution Plan. Initial filings are staggered. In order to reduce the burden on CIDs by allowing them to utilize information and data compiled for their parent company's Dodd-Frank Act Resolution Plan, the groupings of the institutions and the associated timing of the filings are coordinated with the groupings and timing of filings to be utilized for resolution plans filed under the Section 165(d) rule ("DFA Resolution Plans"). The schedule of filings also allows the FDIC to focus on the most complex or largest institutions first. The Final

Rule requires the first filing group, which consists of each CIDI whose parent company, as of November 30, 2011, had \$250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), to file their initial Resolution Plans on July 1, 2012. The Final Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of November 30, 2011, had \$100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Final Rule requires the third filing group, which consists of the remaining CIDs, to file their initial Resolution Plans on or before December 31, 2013. Thereafter, each CIDI is required to submit a new Resolution Plan annually on or before the anniversary date of the date for the submission of its initial plan. In addition, a notice must be filed no later than 45 days following the occurrence of a material event that impacts the Resolution Plan unless such notice would be required to be filed within 90 days of the date for submission of the CIDI's annual resolution plan.

Each Resolution Plan will be reviewed by the FDIC to determine if it meets the informational, analytical and strategic planning requirements set forth in the Final Rule. The Final Rule provides a process for remediation of a Resolution Plan that is found to be not credible.

A Resolution Plan is a plan to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from

the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. §§ 1821 and 1823.

Each Resolution Plan must be credible. A Resolution Plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

The CIDI may incorporate data and other information from, or include specific references to, a DFA Resolution Plan filed by its holding company.

Section 360.10(c)(2) of the Final Rule specifies the minimum content of the Resolution Plan including, but not limited to:

- A description of the CIDI's, parent company's, and affiliates' legal and functional structures and core business lines, and a discussion of how the structure would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI.
- A description of remediation or mitigating steps that could be taken to eliminate or mitigate obstacles to the separation of the CIDI from its parent company and affiliates.
- A mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities, that identifies which legal entities are utilized in the conduct of such business lines.

- A discussion of the CIDI’s overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC or result in extraordinary resolution expenses in the event of failure, and a description of the branch organization, both domestic and foreign.
- A description of critical services and providers of critical services and the CIDI’s strategy for continuing critical services in the event of the CIDI’s failure.⁵
- A strategy for the sale or disposition of the deposit franchise, including branches, core business lines, and major assets of the CIDI, in a manner that can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI as required by Section 13(c)(4)(A) of the FDI Act, 12 U.S.C. § 1823(c)(4)(A).
- A listing of major counterparties and material off-balance sheet exposures.
- A description of the interconnections, interdependencies and relationships with such major counterparties and an analysis of whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI..
- A description of the practices of the CIDI and its core business lines related to the booking of trading and derivative activities and a listing of each

⁵ “Critical Services” means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operation of the CIDI.

payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member.

- A description of material hedges and hedging strategies of the CIDI.
- A detailed description of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material subsidiaries, which should be mapped to core business lines and critical services.
- A description of any material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI and any of its subsidiaries have with its parent or any parent company affiliate.
- A description of systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role.
- A discussion of the nature and extent of the CIDI's cross-border assets, operations, interrelationships, and exposures, which should be mapped to legal entities and core business lines.
- A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries.

The Final Rule requires that the Resolution Plan be approved by the CIDI's board of directors. Such approval must be noted in the Board minutes.

The Final Rule includes a process that the FDIC will follow in reviewing a Resolution Plan and notifying the CIDI of any deficiencies therein. The CIDI is afforded the opportunity to submit additional information or make changes to its Resolution Plan.

The Final Rule includes a provision regarding access to information that parallels the access to information provision in the Section 165(d) rule. The Final Rule states that, in order to allow evaluation of the Resolution Plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the Resolution Plan and the ability of the CIDI to implement the Resolution Plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

The Final Rule provides that, within a reasonable period of time, as determined by the FDIC, following the CIDI's initial Resolution Plan submission, the CIDI must demonstrate its capability to promptly produce, in a time frame and format acceptable to the FDIC, the data underlying the key aspects of the Resolution Plan. The Final Rule provides that the FDIC will consult with the appropriate Federal banking agency for the CIDI before finding the CIDI's capability is unacceptable.

The Final Rule provides that a Resolution Plan shall include a public section and a confidential section. The public section is required to include an executive summary of the Resolution Plan that provides a description of the business of the CIDI, specific information elements and a description of, at a high level, the CIDI's resolution strategy. In addition, the Final Rule provides that, to the extent permitted by law, the information comprising the confidential section of a Resolution Plan will be treated as confidential.

CONCLUSION

This Final Rule requires an insured depository institution with \$50 billion or more in total assets to submit annually to the FDIC a contingent plan for the resolution of such institution in the event of its failure. Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution and the processing of developing such plans needs to begin promptly. Thus, staff recommends that the Board approve and adopt the attached Final Rule and authorize its publication in the *Federal Register* and an effective date of April 1, 2012.

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