

November 25, 2013

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley, Director 
Division of Risk Management Supervision

SUBJECT: Change of Submission Dates for Resolution Plans of Certain Covered Companies and Certain Covered Insured Depository Institutions, under Title I of the Dodd-Frank Act, and 12 C.F.R. § 360.10

I. SUMMARY OF RECOMMENDATIONS:

Staff recommends that the Board of Directors of the Federal Deposit Insurance Corporation (the "Board"):

A. Authorize the Director, Division of Risk Management Supervision ("Director, RMS"), to change – from July 1 to December 31 – the date by which covered companies that are New Third Wave Filers (as defined below) must submit an initial resolution plan, in order to align the New Third Wave Filers' annual filing cycle with that of their similarly sized peers;

B. Authorize the Director, RMS, to change – from July 1 to December 31 – the date by which covered insured depository institutions that are New Third Wave Filers must submit an initial resolution plan, in order to align the New Third Wave Filers' annual filing cycle with that of their similarly sized peers; and

C. Authorize the Director, RMS, or designee, to execute and transmit:

1. Jointly with the Board of Governors of the Federal Reserve System ("FRB"), a letter to each covered company that is a New Third Wave Filer to effectuate any such date change; and

2. A letter to each covered insured depository institution that is a New Third Wave Filer to effectuate any such date change.

II. BACKGROUND:

Section 165(d) of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (the “Dodd-Frank Act”) requires that certain nonbank financial companies and bank holding companies periodically report to the FRB, the Federal Deposit Insurance Corporation (the “FDIC”) and the Financial Stability Oversight Council (“FSOC”), the plan of such company for its rapid and orderly resolution in the event of material financial distress or failure (“§165(d) Plan”). On November 1, 2011, the FDIC and the FRB jointly issued a Final Rule implementing section 165(d), codified at 12 C.F.R. § 381 (FDIC) and 12 C.F.R. § 243 (Reg. QQ) (FRB) (“§165(d) Rule”). The §165(d) Rule defines a “covered company” generally as any nonbank financial company supervised by the FRB and any bank holding company that has \$50 billion or more in total consolidated assets (“Covered Company”).²

On January 23, 2012, acting under authority of the Federal Deposit Insurance Act, the FDIC issued a final rule, codified at 12 C.F.R. § 360.10 (“IDI Rule”), which requires a covered insured depository institution to prepare and submit annually a plan for its resolution under the Federal Deposit Insurance Act in the event of its failure (“IDI Plan”). Under the IDI Rule, a covered insured depository institution (“CIDI”) is an insured depository institution with \$50 billion or more in total assets.³ The IDI Rule was effective April 1, 2012.

¹ 12 U.S.C. § 5301 *et seq.*

² *See* 12 C.F.R. § 381.2(f).

³ 12 C.F.R. § 360.10(b)(4).

Submission Dates for Inaugural Covered Companies and CIDs

The §165(d) Rule established submission deadlines (each, an “Initial Submission Date”) for the initial resolution plans of each financial company that was a Covered Company on November 30, 2011, the §165(d) Rule’s effective date. A Covered Company’s Initial Submission Date depended upon the size of its nonbank assets (or, for a foreign-based Covered Company, its U.S. nonbank assets) as of the §165(d) Rule’s effective date:

- i. “First Wave Companies”: Initial submissions from Covered Companies that had \$250 billion or more in nonbank assets (or, for foreign-based Covered Companies, in U.S. nonbank assets) were due on July 1, 2012;
- ii. “Second Wave Companies”: Initial submissions from Covered Companies (other than First Wave Companies) that had \$100 billion or more in nonbank assets (or, for foreign-based Covered Companies, in U.S. nonbank assets) were due on July 1, 2013; and
- iii. “Third Wave Companies”: Initial submissions from all other Covered Companies are due on December 31, 2013.⁴

Thereafter, each Covered Company must submit a plan annually on or before the anniversary of its Initial Submission Date.

Like the 165(d) Rule, the IDI Rule established Initial Submission Dates that depended on the CIDI’s parent company asset size as of the IDI Rule’s effective date:

⁴ 12 C.F.R. § 381.3(a)(1).

- i. “First Wave CIDs”: Initial submissions from CIDs whose parent company had \$250 billion or more in nonbank assets (or, for a parent company that is a foreign-based company, in U.S. nonbank assets) were due on July 1, 2012;
- ii. “Second Wave CIDs”: Initial submissions from CIDs (other than First Wave CIDs) whose parent company had \$100 billion or more in nonbank assets (or, for a parent company that is a foreign-based company, in U.S. nonbank assets) were due on July 1, 2013; and
- iii. “Third Wave CIDs”: Initial submissions from all other CIDs are due on December 31, 2013.⁵

As under the §165(d) Rule, subsequent annual IDI Plan submissions are due on or before the anniversary date of the CIDI’s Initial Submission Date.

Submission Dates for Subsequent Covered Companies and CIDs

Both the §165(d) Rule and the IDI Rule contemplate that additional companies and insured depository institutions may become subject to the respective rule after its effective date (“New Entrants”). However, both rules impose on all such New Entrants a July 1 Initial Submission Date, without regard to asset size.⁶

Thus, all New Entrants whose assets would have placed them among the Third Wave Companies or Third Wave CIDs (“New Third Wave Filers”) will submit their

⁵ 12 C.F.R. § 360.10(c)(1)(i).

⁶ 12 C.F.R. § 381.3(a)(2) and 12 C.F.R. § 360.10(c)(1)(ii). Under both rules, the initial resolution plan is due no later than the next July 1 following the date the company becomes a Covered Company or the insured depository institution becomes a CIDI (each such date, the “Qualifying Date”), provided such July 1 occurs no earlier than 270 days after the Qualifying Date. The authority requested herein to align the due dates for the initial plans of New Third Wave Filers with the date for all other similarly sized filers maintains the 270-day minimum window between the Qualifying Date and the Initial Submission Date.

plans each year in July, not December. All New Third Wave Filers, therefore, will be on an annual filing cycle that is different from that of their similarly situated peers.⁷ Five companies (as identified on **Attachment 2**, “Current New Entrants”) have become subject to one of the rules after its effective date and have assets below the \$100 billion threshold. All have an Initial Submission Date of July 1, 2014.

Authority under the Rules to Change Submission Dates

The §165(d) Rule authorizes the FDIC and the FRB to jointly determine that a Covered Company shall file its initial or annual resolution plan by a date other than the date provided in the rule.⁸ If the agencies so determine, they must provide written notice of the determination to the Covered Company no later than 180 days prior to the date by which the agencies have determined the §165(d) Plan must be submitted.⁹ Similarly, the FDIC may determine to change the date under the IDI Rule by which a CIDI shall file its initial or annual resolution plan so long as the FDIC provides written notice no later than 180 days prior to the date by which the IDI Plan must be submitted.¹⁰

⁷ At this time, staff does not anticipate changing the Initial Submission Date for any New Entrant that is a nonbank financial company designated by FSOC for supervision by the FRB pursuant to Title I of the Dodd-Frank Act. Initial plan submissions are due July 1, 2014, from the nonbank financial companies designated to date.

⁸ 12 C.F.R. § 381.3(a)(4).

⁹ Under the §165(d) Rule, an initial plan is due for a new Covered Company on the next July 1 to occur after its Qualifying Date, so long as such July date occurs no earlier than 270 days after the Qualifying Date. The five Current New Entrants became Covered Companies based upon assets reported on their Federal Reserve Form Y-7Q for the year ended December 31, 2012, and thus are required to file their initial plans on or before July 1, 2014. The authority requested herein includes aligning the due date for these Covered Companies’ initial plans with the date for all other similarly sized filers, which will involve moving their initial filing date from July 2014 to December 2014. While none of the five Current New Entrants has requested additional time to file, staff believes it would be more appropriate to require them to file their initial plans in December, on a filing cycle with all other similarly situated filers.

¹⁰ 12 C.F.R. § 360.10(c)(1)(iv).

This Memorandum seeks authority to move the Initial Submission Date for New Third Wave Filers to the next December 31 to occur following the July 1 Initial Submission Date provided for such New Third Wave Filers under the applicable rule. The Director, RMS, or designee, shall periodically report to the Board the identities of any New Third Wave Filers as soon as practicable after their Qualifying Dates, which will typically fall at year-end or, in certain cases, quarter-end. At that time, any Board member may request Board consideration of whether a New Third Wave Filer's Initial Submission Date should be postponed.

III. DISCUSSION:

Covered Companies and CIDs that, respectively, were “covered companies” and “covered insured depository institutions” as of the respective rule’s effective date, are grouped by asset size (or, for foreign-based Covered Companies, U.S. asset size) into one of two annual plan filing cycles: a July 1 filing date (\$100 billion or more) or a December 31 filing date (less than \$100 billion). However, neither rule applies any distinction based on asset size to New Entrants. All New Entrants are assigned an Initial Submission Date of July 1, which, in effect, means that all New Third Wave Filers will be on an annual filing cycle that is not aligned with that of their similarly sized peers. As a result, some of the smallest Covered Companies and CIDs will file plans alongside some of the largest and most complex Covered Companies and CIDs.

There are both substantive and practical advantages to having comparably sized Covered Companies and CIDs file their resolution plans at the same time each year. The most important consideration is that it promotes consistency in staff’s substantive review of plans submitted by comparably sized companies. Consistent treatment is more likely

to occur if the resolution plans of comparably sized firms are reviewed concurrently, and aligning the annual filing cycle of New Third Wave Filers with their similarly sized peers will help ensure an evenhanded, unbiased review process. Moreover, such treatment will act to guard against potential claims that the FDIC is arbitrarily holding similarly situated firms to different standards.

In addition, resource allocation is adversely affected when New Third Wave Filers are not submitting their plans in the December cycle alongside other similarly sized filers. RMS is responsible for a large number of Plans, all of which currently will be submitted in the December cycle. To facilitate the review of the 139 Plans anticipated in December 2013, RMS spent several months planning and preparing for the review process and related procedures. Undertaking two rather than one annual review cycles thus represents an additional strain on Corporation resources.

Finally, moving the Initial Submission Date to a later date has the effect of remedying misaligned filing deadlines in the §165(d) Rule for those New Third Wave Filers that are foreign-based Covered Companies eligible to file tailored resolution plans. Under the §165(d) Rule, a foreign-based New Third Wave Filer becomes a Covered Company based upon its total consolidated assets as reported in its most recent annual, or four most recent quarterly (as applicable), Federal Reserve form FR Y-7Q (“Y-7Q Report”).¹¹ A foreign-based company’s Y-7Q Report is due 90 days following the end of the reporting period. The §165(d) Rule provides that (a) a New Third Wave Filer’s Initial Submission Date must be *at least* 270 days after its Qualifying Date, and

¹¹ 12 C.F.R. § 381.2(f)(1)(iii).

(b) if the firm is eligible to file a tailored plan, its notice of intent (“TP Notice”) is due *no later than 270 days* prior to its Initial Submission Date.¹² In the case of a foreign-based Third Wave Filer with a Qualifying Date of September 30, the effect of the above three timing elements is that the firm’s TP Notice will be due within days of it becoming a Covered Company, and potentially *prior to* the firm even knowing that it has become a Covered Company, as its qualifying Y-7Q Report will not be due for another 90 days. By moving the Initial Submission Date to the next December 31, a foreign-based New Third Wave Filer will have the time necessary to complete and file its Y-7Q Report, to become aware of its status as a Covered Company, and to file a timely TP Notice – in that order.¹³

Staff understands that FRB staff has delegated authority to take the action proposed in this Memorandum, and that FRB staff intends to take such action.

IV. CONCLUSION:

Staff recommends that the Board:

- A. Authorize the Director, RMS, in her discretion, to exercise the authority to determine that a Covered Company that is a New Third Wave Filer, including the Current New Entrants, shall submit its initial §165(d) Plan on or before the

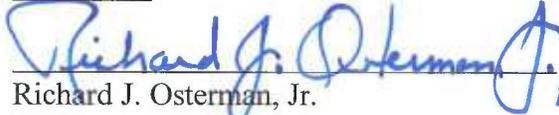
¹² 12 C.F.R. § 381.4(a)(3)(iii).

¹³ Each of the Current New Entrants provided notice of its intent to submit a tailored resolution plan pursuant to section 4(a)(3)(iii) of the §165(d) Rule (“notice of intent”), the due date of which was based upon an anticipated Initial Submission Date of July 1, 2014. The letter that staff anticipates sending to each such firm will notify it of the change in its Initial Submission Date, and direct it to submit a new notice of intent if the firm is eligible to do so for the December 31, 2014 plan submission. Eligibility for such filing date will be based upon the firm’s December 31, 2013 financial information. Upon receipt of any new notices of intent, and following staff’s review, staff may request that the Board take action objecting to a firm’s notice of intent based upon staff’s findings with respect to eligibility and/or other factors.

next December 31 to occur following the July 1 Initial Submission Date provided for such New Third Wave Filer under the §165(d) Rule;

- B. Authorize the Director, RMS, in her discretion, to exercise the authority to determine that a CIDI that is a New Third Wave Filer shall submit its initial IDI Plan on or before the next December 31 to occur following the July 1 Initial Submission Date provided for such New Third Wave Filer under the IDI Rule; and
- C. Authorize the Director, RMS, or designee, to execute and transmit:
 - 1. Jointly with the FRB, a letter to each Covered Company that is a New Third Wave Filer to effectuate any such date change; and
 - 2. A letter to each CIDI that is a New Third Wave Filer to effectuate any such date change.

CONCUR:


Richard J. Osterman, Jr.
Acting General Counsel

11/25/13

CONTACTS:

RMS: Lori Quigley (x83799); Robert C. Connors (317-576-5785, x8810)

Legal: Pauline Calande (x86744); Francesca Muratori (x86652); Celia Van Gorder (x86749)

V. ATTACHMENTS:

Attachment 1: Board Resolution

Attachment 2: List of Current New Entrants