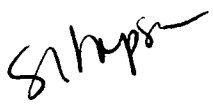
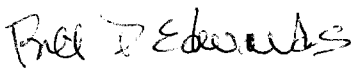



September 9, 2011

**TO:** Board of Directors

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

James Wigand   
Director  
Office of Complex Financial Institutions

Bret D. Edwards   
Director  
Division of Resolutions and Receiverships

Michael H. Krimminger   
General Counsel

**SUBJECT:** Resolution Plans Required for Insured Depository Institutions  
with \$50 Billion or More in Total Assets—Interim 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 Interim Final Rule (“IFR”) and authorize its publication in the *Federal Register* with a 60-day comment period and an effective date of January 1, 2012. The General Counsel concurs in such recommendation.

#### **EXECUTIVE SUMMARY**

Staff recommends that the Board approve and adopt the IFR and authorize its publication in the *Federal Register* with a 60-day comment period and an effective date of January 1, 2012. This IFR 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 IFR

establishes the requirements for submission and content of a Resolution Plan as well as procedures and standards for review by the FDIC. The IFR 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 IFR 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 IFR 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 IFR 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”).<sup>1</sup>

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<sup>1</sup> See Notice of Proposed Rulemaking- Resolution Plans and Credit Exposure Reports Required, 78 FR 22648 (April 22, 2011)(proposed 12 CFR part 381). The Final Rule regarding Resolution Plans under Section 165(d) of the Dodd-Frank Act is being issued concurrently with the IFR.

Currently, 37 insured depository institutions are covered by the IFR. Those institutions held approximately \$3.6 trillion in insured deposits or nearly 60 percent of all insured deposits as of December 31, 2010.

## **DISCUSSION**

### **I. Background**

On May 17, 2010, the FDIC caused to be published in the *Federal Register* a Notice of Proposed Rulemaking (“NPR”) requiring Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Depository Institutions (the “Proposed Rule”).<sup>2</sup> The Proposed Rule would have required each insured depository institution with greater than \$10 billion in total assets that is owned or controlled by a holding company with more than \$100 billion in total assets to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the insured depository institution’s ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion.

The NPR solicited public comment on all aspects of the Proposed Rule. The comment period ended on July 16, 2010, and eight comments were received. Most of the commenters suggested that the FDIC withdraw, or delay the implementation of, the Proposed Rule in anticipation of Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which was signed into law on July 21, 2010, as well as ongoing international efforts related to contingent resolution planning. Commenters were concerned that the FDIC’s separate rulemaking would result in significant additional costs, duplicated efforts and excessive burdens on covered

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<sup>2</sup> 75 Fed Reg. 27464.

institutions. Commenters felt that the FDIC should coordinate with other regulators, both domestically and internationally. Some commenters felt that the resolution plan requirements of the Dodd-Frank Act would be sufficient and there was no need for the preparation of a specific resolution plan by an insured depository institution owned by a bank holding company that was required to prepare a resolution plan under the Dodd-Frank Act.

In response to the comments related to passage of the Dodd-Frank Act, action on the Proposed Rule was delayed to allow staffs of the Federal Reserve Board and the FDIC to implement the resolution plan requirements of Section 165(d) through issuance of the Section 165(d) rule. FDIC staff sought to make the two rules complementary and avoid duplication of costs, efforts and burdens on the covered institutions. In that regard, the Resolution Plan required by the IFR differs from the resolution plan the insured depository institution's parent holding company will be required to prepare under the Section 165(d) rule (the "DFA Resolution Plan"). The IFR requires a plan to resolve the insured depository institution under the Federal Deposit Insurance Act ("FDI Act") with the FDIC acting as receiver. The Section 165(d) rule requires the parent holding company to submit a plan for it to be resolved in an orderly manner under the Bankruptcy Code. The IFR is focused on ensuring depositors receive access to their insured deposits rapidly, minimizing the costs to the Deposit Insurance Fund and maximizing recovery for creditors in the resolution of insured depository institution. The Section 165(d) rule is focused on minimizing systemic risk in the resolution of the parent holding company in order to protect the financial stability of the United States while maximizing recovery for creditors. To further align the IFR with the Section 165(d) rule, the set of covered

institutions has been modified to include only insured depository institutions with \$50 billion or more in total assets. Currently, with the exception of three thrifts covered by the IFR, the parent holding company of each insured depository institution covered by the IFR is expected to file a DFA Resolution Plan.

## **II. Authority for the IFR**

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the IFR. The FDIC's roles as insurer and receiver require a distinct focus on potential loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the Deposit Insurance Fund and the ability of the FDIC to conduct an orderly resolution. The authority to issue the IFR is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. § 1819(a) Tenth, which authorizes the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or enforcing. The FDIC also has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act. 12 U.S.C. § 1821(d)(1). Collection of the information required by the IFR is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the IDI, including special examinations, 12 U.S.C § 1820(b)(3).

Based upon the FDIC's experience resolving failed insured depository institutions (and in particular, large and complex insured depository institutions), staff has concluded that resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. Because recent experience shows that the risk

of insolvency can arise quickly, the process of developing such plans needs to begin promptly. Indeed, since the financial crisis began in late 2008, financial authorities throughout the world have recognized and agreed that advance planning for the resolution of large, complex financial institutions is critical to minimizing the disruption that a failure of such an institution may have as well as the costs of its resolution. At the 2009 Pittsburgh Summit, and in response to the recent financial crisis, the G20 Leaders called on the Financial Stability Board (“FSB”) to propose by the end of October 2010, possible measures to address the “too big to fail” and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of “internationally-consistent firm-specific contingency and resolution plans.” More recently, the FSB has issued a consultative document that provides a proposed recommended framework and specifications for recovery and resolution plans by home-country authorities for systemically important financial institutions.<sup>3</sup> This IFR supports this international effort. In addition and as previously noted, this IFR is intended to complement the resolution plan and credit exposure reporting requirements of Section 165(d) of the Dodd-Frank Act.

### **III. The Notice of Proposed Rulemaking: Comment Summary and Discussion**

As previously discussed, a NPR was published in the *Federal Register* on May 17, 2010. The NPR solicited public comment on all aspects of the Proposed Rule. The comment period ended on July 16, 2010, and eight comments were received. A full

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<sup>3</sup> See Financial Stability Board, “Consultative Document: Effective Resolution of Systemically Important Financial Institutions—Recommendations and Timelines,” (July 19, 2011). Annex 5 of the Document sets out a comprehensive proposed framework and content for resolution plans.

discussion of those comments is provided in the preamble to the attached IFR.

Comments that resulted in material changes to the Proposed Rule are discussed below.

Most of the commenters suggested that the FDIC withdraw, or delay the implementation of, the Proposed Rule in anticipation of Section 165(d) of the Dodd-Frank Act, which was signed into law on July 21, 2010, as well as ongoing international efforts related to contingent resolution planning. As previously discussed, action on the NPR was delayed in order to make the IFR complementary with requirements of the Section 165(d) rule.

Several commenters felt the informational requirements of the Proposed Rule were unclear and requested clarification or made suggestions for improvement in the Proposed Rule's informational requirements. Some commenters suggested that the FDIC provide a template for the Resolution Plan. In response to these comments, the IFR provides more detailed descriptions of the elements. One commenter suggested that the FDIC take a risk-based approach to the plan requirements, i.e., the scope and timing of the requirements and degree of planning and reporting should not be as high for well-managed and well-capitalized institutions. Another commenter suggested an exemption for institutions that are not interconnected with affiliates in operations and contracts. Several commenters requested that multiple insured depository institutions within a holding company group be permitted to file a single plan. Several commenters requested clarification of the Proposed Rule's application to an institution owned by foreign parent. In light of these concerns, as well as to align the IFR more closely with the Section 165(d) rule with respect to institutional groups filing plans, the minimum asset size for a CIDI was increased from \$10 billion to \$50 billion and the requirement that the CIDI be

owned or controlled by a parent company with \$100 billion in assets or more was eliminated. This change means that insured depository institutions between \$10 billion and \$50 billion in total assets no longer need to file Resolution Plans. Staff believes that change reduces the burden of the IFR on certain multiple bank holding companies because their insured depository institutions with assets under \$50 billion will not need to file plans under the IFR. While this change means that some insured depository institutions not previously covered are now required to file Resolution Plans (currently estimated at 14 institutions), staff felt that obtaining Resolution Plans under the IFR from such institutions would be consistent with its desire to coordinate the efforts under the IFR with the Section 165(d) planning process and would also assist the FDIC in meeting its objectives and goals in issuing the IFR.<sup>4</sup> Staff does not believe that the quality of a firm's management or level of capital should bear on whether it must prepare a plan.

Several commenters felt that the Resolution Plan and related analysis and information submitted should be treated as confidential supervisory or examination information exempt from public disclosure. Given the comments on confidentiality, the confidentiality provision has been revised to provide that the Resolution Plan be divided into a public section and a confidential section. In addition, the IFR provides that, to the extent permitted by law, the information comprising the confidential section of a Resolution Plan will be treated as confidential.

Several commenters requested that an appeals process be provided in the Proposed Rule, as well as a clarification of what standard will be used to evaluate

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<sup>4</sup> Three of the newly covered institutions currently will not be covered by DFA Resolution Plans because their parent companies are thrift holding companies, not bank holding companies. Nevertheless, staff believes that the \$50 billion asset threshold used in the Dodd-Frank Act is also an appropriate threshold to apply to these thrifts to enable the FDIC to meet its objectives and goals in issuing this IFR.



compliance with the Proposed Rule. In response to these concerns, the IFR now defines what constitutes a credible plan and provides for a multi-step review process that affords the covered institutions the opportunity to correct deficiencies in their Resolution Plans.

#### **IV. Summary of Changes to the Text of the Proposed Rule**

The text of the Proposed Rule was changed in various respects for the IFR. The material changes are summarized as follows:

- The minimum asset size for a CIDI was increased from \$10 billion to \$50 billion and the requirement that the CIDI be owned or controlled by a parent company with \$100 billion in assets or more was eliminated.
- The IFR staggers the dates on which the CIDs file their initial Resolution Plan and annual plans. The Proposed Rule required filing of initial plans on the effective date and annually thereafter.
- The IFR provides more detailed descriptions of the elements than the Proposed Rule.
- The IFR defines what constitutes a credible plan and provides for a multi-step review process that affords the CIDs the opportunity to correct deficiencies in their Resolution Plans. The Proposed Rule had more general standards for plan review and acceptability.
- The IFR added a requirement 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 format acceptable to the FDIC, the data underlying the key aspects of Resolution Plan.

- The IFR requires that the CIDI map core business lines and critical services to legal entities. The Proposed Rule requested general information about the CIDI's organizational structure and business lines.
- The IFR expanded the strategic analysis required and added references to least costly resolution methods.
- The IFR requests specific information about asset valuation and sales processes, trading and derivative activities, management information systems and corporate governance policies. The NPR made a more general request for detailed information regarding a CIDI's business, operations and activities.
- The IFR added a provision to make clear that the 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.

#### **V. Nature of Action: Interim Final Rule**

The IFR provides a 60-day comment period to allow the public the opportunity to participate in the rulemaking prior to the rule becoming effective. At the close of the comment period, the comments will be promptly and carefully considered by staff and recommendations with respect thereto will be presented to the Board to enable the Board to take appropriate action, if necessary, before the IFR becomes effective.

Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. Staff believes good cause exists for issuing the IFR as an interim final rule and that its issuance is in the public interest. While the FDIC issued the NPR on the Proposed Rule last year, many commenters

recommended that the FDIC defer final action until the companion Section 165(d) rule was finalized. Concurrent with the issuance of the IFR, the FDIC and the Federal Reserve Board are issuing a final rule requiring the preparation of resolution plans pursuant to the Section 165(d) rule. It is imperative that the two companion rules incorporate coordinated requirements and for CIDI's to initiate preparatory work for their resolution plans in concert with the related plans of their holding companies.

Furthermore, the IFR will support the FDIC's ongoing resolution planning activities as those insured institutions will be best positioned to understand the most effective and efficient manner for their resolution under their existing holding company structure.

Issuance of the resolution plan requirements for CIDI's through the IFR also will facilitate the development of such plans at an earlier date. The initiation of the CIDI resolution planning processes under the IFR along with the related holding company resolution planning process under the Section 165(d) rule will facilitate more effective planning, reduce the risks of inconsistent plan development, and materially assist the FDIC's planning efforts and evaluation of the development of the companion resolution plans under the Section 165(d) rule. Finally, it is in the public interest to issue the IFR as an interim final rule in order to coordinate with the finalization of the Section 165(d) rule, which is subject to a Congressional deadline. The issuance of the IFR as an interim final rule outlining the requirements for a CIDI's Resolution Plan enables a holding company to consider these requirements in preparing its DFA Resolution Plan.

## **VI. Summary of the IFR**

The IFR requires a CIDI to file with the FDIC its initial Resolution Plan. Initial filings are staggered. In order to reduce the burden on CIDI's 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 DFA Resolution Plans. The schedule of filings also allows the FDIC to focus on the most complex or largest institutions first. The IFR requires the first filing group, which consists of each CIDI whose parent company, as of the effective date of the IFR, 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 IFR requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of the effective date of the IFR, 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 IFR 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.

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 IFR. The IFR 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 IFR 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.<sup>5</sup>
- 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.

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<sup>5</sup> "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.

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

The IFR 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 IFR includes a provision regarding access to information that parallels the access to information provision in the Section 165(d) rule. The IFR 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 IFR 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 format acceptable to the FDIC, the data underlying the key aspects of the Resolution Plan.

The IFR 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 IFR 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 IFR 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 IFR and authorize its publication in the *Federal Register* with a comment period of 60 days and an effective date of January 1, 2012.

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