Federal Deposit Insurance Corporation
Board of Governors of the Federal Reserve System

Guidance for 2017 §165(d) Annual Resolution Plan Submissions By Domestic Covered Companies that Submitted Resolution Plans in July 2015

I. INTRODUCTION

This document is intended to assist all domestic Covered Companies[1] (firms) that filed resolution plans in July 2015 in further developing their preferred resolution strategies. The document describes the expectations of the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC, and, together with the Board, the Agencies) regarding these firms' 2017 resolution plans (2017 Plan),[2] and highlights specific areas where additional detail should be provided and where certain capabilities or optionality should be developed to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of the preferred strategy.[3]

This document is organized around a number of key vulnerabilities in resolution (e.g., capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; and derivatives and trading activities) that apply across resolution plans. Additional vulnerabilities or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its 2017 Plan — e.g., by developing sensitivity analysis for certain underlying assumptions, enhancing capabilities, providing detailed analysis, or increasing optionality development, as indicated below.

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[1] The jointly issued resolution plan implementing regulation, 12 CFR Part 243 and 12 CFR Part 381 (the Resolution Plan Rule), defines "covered company" to include any nonbank financial company supervised by the Board and any bank holding company with total consolidated assets of $50 billion or more.

[2] In the event impediments arise that are outside the firm's control (e.g., regulatory approvals) and a firm believes a different schedule for completion is necessary for one or more current or planned future actions, the firm should provide detailed support for that schedule, and the Agencies will determine on a case-by-case basis whether a different schedule is consistent with the requirements of the implementing rules.

[3] The 2013 Guidance, the 2014 Letter, and the 2015 Communication, as described in the letters to the firms, continue to be applicable (relevant dates should be updated appropriately), except to the extent superseded or supplemented by the provisions of this document.

The Agencies will review the 2017 Plan to determine if it satisfactorily addresses key potential vulnerabilities, including those detailed below. If the Agencies jointly decide that these matters are not satisfactorily addressed in the 2017 Plan, the Agencies may determine jointly that the 2017 Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

II. CAPITAL

Resolution Capital Adequacy and Positioning: In order to help ensure that a firm's material entities[4] could operate while the parent company is in bankruptcy, the firm should have an adequate amount of loss-absorbing capacity to recapitalize those material entities. Thus, a firm should hold a minimum amount of total loss-absorbing capital, as well as a minimum amount of long-term debt, to help ensure that the firm has adequate capacity to meet that need at a consolidated level (external TLAC).[5]

A firm's external TLAC should be complemented by appropriate positioning of additional loss-absorbing capacity within the firm (internal TLAC). The positioning of a firm's internal TLAC should balance the certainty associated with pre-positioning internal TLAC directly at material entities with the flexibility provided by holding recapitalization resources at the parent (contributable resources) to meet unanticipated losses at material entities. That balance should take account of both pre-positioning at material entities and holding resources at the parent, and the obstacles associated with each. Accordingly, the firm should not rely exclusively on either full pre-positioning or parent contributable resources to recapitalize any material entity.

[4] The terms "material entities," "critical operations," and "core business lines" have the same meaning as in the Agencies' Resolution Plan Rule.
[5] 80 FR 74925 (November 30, 2015).

The plan should describe the positioning of internal TLAC within the firm, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned internal TLAC at a material entity is in the form of intercompany debt and there are one or more entities between that material entity and the parent, the firm should mitigate uncertainty related to potential creditor challenge; for example, by ensuring that the seniority and tenor of the intercompany debt is the same between all entities in the chain.

Resolution Capital Execution Need (RCEN): To support the execution of the firm's resolution strategy, material entities need to be recapitalized to a level that allows them to operate or be wound down in an orderly manner following the parent company's bankruptcy filing. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (RCEN). The firm's positioning of internal TLAC should be able to support the RCEN estimates. In addition, the RCEN estimates should be incorporated into the firm's governance framework to ensure that the parent company files for bankruptcy at a time that enables execution of the preferred strategy.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period, consistent with the firm's resolution strategy. However, the methodology is not required to produce aggregate losses that are greater than the amount of external TLAC that would be required for the firm under the Board's proposed rule.[6] The RCEN methodology should be calibrated such that recapitalized material entities have sufficient capital to maintain

[6] 80 FR 74925 (November 30, 2015).

market confidence as required under the preferred resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for “well-capitalized” status and meet estimated additional capital needs throughout resolution. Material entities that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm’s corporate governance processes and controls for the use of models and methodologies.

III. LIQUIDITY

The firm should have the liquidity capabilities necessary to execute its preferred resolution strategy, including those described in SR Letter 14-1.[7] For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at or readily available to material entities and a methodology for estimating the liquidity needed to successfully execute the resolution strategy, as described below.

Resolution Liquidity Adequacy and Positioning (RLAP): With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each material entity (including material entities that are non-U.S. branches) — i.e., the high-quality liquid assets (HQLA) at the material entity less net outflows to third parties and affiliates — and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile and risk of the firm. The model should balance the

[7] SR Letter 14-1, “Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies – Supplemental Guidance on Consolidated Supervision Framework for Large Financial Institutions” (Jan. 24, 2014), available at http://www.federalreserve.gov/bankinforeg/srletters/sr1401.pdf.

reduction in frictions associated with holding liquidity directly at material entities with the flexibility provided by holding HQLA at the parent available to meet unanticipated outflows at material entities. Thus, the firm should not rely exclusively on either full pre-positioning or the parent. The model[8] should ensure that the parent holding company holds sufficient HQLA (inclusive of its deposits at the U.S. branch of the lead bank subsidiary) to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity position of each material entity (HQLA less net outflows) should be measured using the firm's internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to an affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at one material entity could be moved to meet net liquidity deficits at other material entities or to augment parent resources.

Additionally, the RLAP methodology should take into account (A) the daily contractual mismatches between inflows and outflows; (B) the daily flows from movement of cash and collateral for all inter-affiliate transactions; and (C) the daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key financial market utilities (FMUs), and foreign supervisors, among others.

Resolution Liquidity Execution Need (RLEN): The firm should have a methodology for estimating the liquidity needed after the parent's bankruptcy filing to stabilize the surviving material entities and to allow those entities to operate post-filing. The RLEN estimate should be

[8] "Model" refers to the set of calculations estimating the net liquidity surplus/deficit at each legal entity and for the firm in aggregate based on assumptions regarding available liquidity, e.g., HQLA, and third party and interaffiliate net outflows.

incorporated into the firm's governance framework to ensure that the firm files for bankruptcy in a timely way, i.e., prior to the firm's HQLA falling below the RLEN estimate.

The firm's RLEN methodology should:

(A) Estimate the minimum operating liquidity (MOL) needed at each material entity to ensure those entities could continue to operate post-parent's bankruptcy filing and/or to support a wind-down strategy;

(B) Provide daily cash flow forecasts by material entity to support estimation of peak funding needs to stabilize each entity under resolution;

(C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates; and

(D) Estimate the minimum amount of liquidity required at each material entity to meet the MOL and peak needs noted above, which would inform the firm's board(s) of directors of when they need to take resolution-related actions.

The MOL estimates should capture material entities' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that material entities could operate without disruption during the resolution.

The peak funding needs estimates should be projected for each material entity and cover the length of time the firm expects it would take to stabilize that material entity. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that material entities could operate post-filing consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, i.e., the minimum amount of HQLA required to facilitate the execution of the firm's strategy. The RLEN estimate should be tied to the firm's governance mechanisms and be incorporated into the playbooks as discussed below to assist the board of directors in taking timely resolution-related actions.

IV. GOVERNANCE MECHANISMS

Playbooks and Triggers: A firm should identify the governance mechanisms that would ensure execution of required board actions at the appropriate time (as anticipated under the firm's preferred strategy) and include pre-action triggers and existing agreements for such actions. Governance playbooks should detail the board and senior management actions necessary to facilitate the firm's preferred strategy and to mitigate vulnerabilities, and should incorporate the triggers identified below. The governance playbooks should also include a discussion of (A) the firm's proposed communications strategy, both internal and external; (B) the boards of directors' fiduciary responsibilities and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; and (D) any employee retention policy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for all entities whose boards of directors would need to act in advance of the commencement of resolution proceedings under the firm's preferred strategy.

The firm should demonstrate that key actions will be taken at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To ensure that these actions will occur, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to senior management and the board(s) to potentially take the corresponding actions at each stage of distress post-recovery leading eventually to the decision to file for bankruptcy;

(B) Successful recapitalization of subsidiaries prior to the parent's filing for bankruptcy and funding of such entities during the parent company's bankruptcy to the extent the preferred strategy relies on such actions or support; and

(C) The timely execution of a bankruptcy filing and related pre-filing actions.[9]

These triggers should be based, at a minimum, on capital, liquidity, and market metrics, and should incorporate the firm's methodologies for forecasting the liquidity and capital needed to operate as required by the preferred strategy following a parent company's bankruptcy filing. Additionally, the triggers and related actions should be specific.

Triggers linked to firm actions as contemplated by the firm's preferred strategy should identify when and under what conditions the firm, including the parent company and its material entities, would transition from business-as-usual conditions to a stress period and from a stress period to the runway and recapitalization/resolution periods. Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to ensure that resources are available and can be downstreamed, if anticipated by the firm's strategy, and with adequate time for the preparation of the bankruptcy petition and first-day motions, necessary stakeholder communications, and requisite board actions. Triggers identifying the onset of the runway and recapitalization/resolution periods, and the associated escalation procedures and actions, should be discussed directly in the governance playbooks.

Pre-Bankruptcy Parent Support: The resolution plan should include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to planned provision of capital and liquidity to the subsidiaries prior to the parent's bankruptcy filing (Support). Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles

[9] Key pre-filing actions include the preparation of any emergency motion required to be decided on the first day of the firm's bankruptcy. *See "OPERATIONAL – Legal Obstacles Associated with Emergency Motions*," below.

include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (e.g., imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's preferred resolution strategy.

As noted, the analysis should include mitigants to the potential challenges to the planned Support. The plan should include the mitigant(s) to such challenges that the firm considers most effective. In identifying appropriate mitigants, the firm should consider the effectiveness of a contractually binding mechanism (CBM), pre-positioning of financial resources in material entities, and the creation of an intermediate holding company. Moreover, if the plan includes a CBM, the firm should consider whether it is appropriate that the CBM should have the following: (A) clearly defined triggers; (B) triggers that are synchronized to the firm's liquidity and capital methodologies; (C) perfected security interests in specified collateral sufficient to fully secure all Support obligations on a continuous basis (including mechanisms for adjusting the amount of collateral as the value of obligations under the agreement or collateral assets fluctuates); and (D) liquidated damages provisions or other features designed to make the CBM more enforceable. The firm also should consider related actions or agreements that may enhance the effectiveness of a CBM. A copy of any agreement and documents referenced therein (e.g., evidence of security interest perfection) should be included in the resolution plan.

The governance playbooks included in the resolution plan should incorporate any developments from the firm's analysis of potential legal challenges regarding the Support, including any Support approach(es) the firm has implemented. If the firm analyzed and addressed an issue noted in this section in a prior plan submission, the plan may reproduce that analysis and arguments and should build upon it to at least the extent described above. In preparing the analysis of these issues, firms may consult with law firms and other experts on these matters. The Agencies do not object to appropriate collaboration between firms, including through trade organizations and with the academic community, to develop analysis of common legal challenges and available mitigants.

V. OPERATIONAL

Payment, Clearing, and Settlement Activities: The firm should continue to develop its playbooks related to continued access to payment, clearing, and settlement activities in a manner that would support an orderly resolution. The firm should quantify and explain how it would satisfy its obligations and exposures associated with payment, clearing, and settlement activities. The firm should use volume and value data for each FMU involved in cash, securities, and derivatives markets to identify its key FMUs and describe this analysis in its plan. The firm should describe arrangements to facilitate continued access to all of these key FMUs, including operational and liquidity considerations such as increased margin and collateral requirements and contingency arrangements. Bearing in mind the objective of an orderly resolution, the firm's analysis of contingency arrangements should include, but not be limited to, pre-positioning of additional liquidity at FMUs, limiting intraday credit provisions to clients, and requiring clients to pre-fund settlement activity. Accordingly, firms should provide clients with transparency into the potential impacts from implementation of the contingency arrangements and consider whether additional actions are appropriate.

Managing, Identifying, and Valuing Collateral: The firm should have the capabilities described in SR Letter 14-1 related to managing, identifying, and valuing the collateral that it receives from and posts to external parties and its affiliates. Specifically, at the time of the submission of the 2017 Plan, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms — not just those terms that may be impacted in an adverse economic environment — across contract types, business lines, legal entities, and jurisdictions;
- Be able to track both firm collateral sources (i.e., counterparties that have pledged collateral) and uses (i.e., counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;
- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;
- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;
- Be able to track and report on interbranch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and
- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.[10]

Management Information Systems: The firm should have the management information systems (MIS) capabilities to readily produce data on a legal entity basis and have controls to ensure data integrity and reliability, as described in SR Letter 14-1. The firm should allocate the requisite technical and project management resources to complete MIS infrastructure projects by July 2017, including instituting a robust governance and accountability framework and executing detailed project plans, evaluating project interdependencies and prioritization among projects.

[10] The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the preferred resolution strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity.

Shared and Outsourced Services: The firm should continue developing a fully actionable implementation plan to ensure the continuity of shared services that support critical operations and robust arrangements to support the continuity of shared and outsourced services. By the submission of the plan, the firm should (A) identify all shared services that support critical operations (critical services); (B) maintain a mapping of how/where these services support its core business lines and critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all critical shared services. These SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution. The firm should also store SLAs in a central repository or repositories in a searchable format, develop and document contingency strategies and arrangements for replacement of critical shared services, and complete re-alignment or restructuring of activities within its corporate structure. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's preferred strategy) in such entities sufficient to cover contract costs, consistent with the preferred resolution strategy.

The firm should identify all critical outsourced services that support critical operations and could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated despite continued performance upon the parent's bankruptcy filing; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of such services during resolution. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the plan, the firm should document the amendment of any such agreements governing these services.

Legal Obstacles Associated with Emergency Motions: The plans should address legal issues associated with the implementation of the stay on cross-default rights described in Section 2 of the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol (Protocol) to the extent relevant. Generally, the Protocol provides two primary methods of satisfying the stay conditions for covered agreements for which the affiliate in Chapter 11 proceedings has provided a credit enhancement (A) transferring all such credit enhancements to a Bankruptcy Bridge Company (as defined in the Protocol) (bridge transfer); or (B) having such affiliate remain obligated with respect to such credit enhancements in the Chapter 11 proceeding (elevation).[11] A firm must file a motion for emergency relief (emergency motion) seeking approval of an order to effect either of these alternatives on the first day of its bankruptcy case.

First-day Issues – For each alternative the firm selects, the resolution plan should present the firm's analysis of issues that are likely to be raised at the hearing on the emergency motion and its best arguments in support of the emergency motion. A firm should include supporting legal precedent and describe the evidentiary support that the firm would anticipate presenting to the bankruptcy court — e.g., declarations or other expert

[11] Under its terms, the Protocol also provides for the transfer of credit enhancements to transferees other than a Bankruptcy Bridge Company.

testimony evidencing the solvency of transferred subsidiaries and that recapitalized entities have sufficient liquidity to perform their ongoing obligations.

For either alternative, the firm should address all potential significant legal obstacles identified by the firm. For example, the firm should address due process arguments likely to be made by creditors asserting that they have not had sufficient opportunity to respond to the emergency motion given the likelihood that a creditors' committee will not yet have been appointed. The firm also should consider, and discuss in its plan, whether it would enhance the successful implementation of its preferred strategy to conduct outreach to interested parties, such as potential creditors of the holding company and the bankruptcy bar, regarding the strategy.

If the firm chooses the bridge transfer alternative, its analysis and arguments should address at a minimum the following potential issues: (A) the legal basis for transferring the parent holding company's equity interests in certain subsidiaries (transferred subsidiaries) to a Bankruptcy Bridge Company including the basis upon which the Bankruptcy Bridge Company would remain obligated for credit enhancements; (B) the ability of the bankruptcy court to retain jurisdiction, issue injunctions, or take other actions to prevent third parties from interfering with, or making collateral attacks on (i) a Bankruptcy Bridge Company, (ii) its transferred subsidiaries, or (iii) a trust or other legal entity designed to hold all ownership interests in a Bankruptcy Bridge Company (new ownership entity); and (C) the role of the bankruptcy court in granting the emergency motion due to public policy concerns — e.g., to preserve financial stability. The firm should also provide a draft agreement (e.g., trust agreement) detailing the preferred post-transfer governance relationships between the bankruptcy estate, the new ownership entity, and the Bankruptcy Bridge Company, including the proposed role and powers of the bankruptcy court and creditors' committee. Alternative approaches to these proposed post-transfer governance relationships should also be described, particularly given the strong interest that parties will have in the ongoing operations of the Bankruptcy Bridge Company and the likely absence of an appointed creditors' committee at the time of the hearing.

If the firm chooses the elevation alternative, the analysis and arguments should address at a minimum the following potential issues: (A) the legal basis upon which the parent company would seek to remain obligated for credit enhancements; (B) the ability of the bankruptcy court to retain jurisdiction, issue injunctions, or take other actions to prevent third parties from interfering with, or making collateral attacks on, the parent in bankruptcy or its subsidiaries; and (C) the role of the bankruptcy court in granting the emergency motion due to public policy concerns — e.g., to preserve financial stability.

Regulatory Implications – The plan should include a detailed explanation of the steps the firm would take to ensure that key domestic and foreign authorities would support, or not object to, the emergency motion (including specifying the expected approvals or forbearances and the requisite format — i.e., formal, affirmative statements of support or, alternatively, "non-objections"). The potential impact on the firm's preferred resolution strategy if a specific approval or forbearance cannot be timely obtained should also be detailed.

Contingencies if Preferred Structure Fails – The plan should consider contingency arrangements in the event the bankruptcy court does not grant the emergency motion — e.g., whether alternative relief could satisfy the Transfer Conditions and/or U.S. Parent debtor-inpossession (DIP) Conditions of the Protocol;[12] the extent to which action upon certain aspects of the emergency motion may be deferred by the bankruptcy court without interfering with the resolution; and whether, if the credit-enhancement-related protections are not satisfied, there are alternative strategies to prevent the closeout of qualified financial contracts with credit enhancements (or reduce such counterparties' incentives to closeout) and the feasibility of the alternative(s).

Format – If the firm analyzed and addressed an issue noted in this section in a prior plan submission, the plan may incorporate this analysis and arguments and should build upon it to at least the extent required above. A bankruptcy playbook, which includes a sample emergency motion and draft documents setting forth the post-transfer governance terms substantially in the form they would be presented to the bankruptcy court, is an appropriate vehicle for detailing the issues outlined in this section. In preparing analysis of these issues, the firm may consult with law firms and other experts on these matters. The Agencies do not object to appropriate collaboration among firms, including through trade organizations and with the academic community and bankruptcy bar, to develop analysis of common legal challenges and available mitigants.

VI. LEGAL ENTITY RATIONALIZATION AND SEPARABILITY

Legal Entity Rationalization Criteria (LER Criteria): A firm should develop and implement legal entity rationalization criteria that support the firm's preferred resolution strategy and minimize risk to U.S. financial stability in the event of the firm's failure. LER Criteria should consider the best alignment of legal entities and business lines to improve the firm's resolvability under different market conditions. LER Criteria should govern the firm's corporate

[12] *See* Protocol sections 2(b)(ii) and (iii) and related definitions.

structure and arrangements between legal entities in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

Specifically, application of the criteria should:

(A) Facilitate the recapitalization and liquidity support of material entities, as required by the firm's resolution strategy. Such criteria should include clean lines of ownership, minimal use of multiple intermediate holding companies, and clean funding pathways between the parent and material operating entities;

(B) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution of the firm, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(C) Adequately protect the subsidiary insured depository institutions from risks arising from the activities of any nonbank subsidiaries of the firm (other than those that are subsidiaries of an insured depository institution); and

(D) Minimize complexity that could impede an orderly resolution and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing its structure and operations on a continuous basis.

Separability: The firm should identify discrete operations that could be sold or transferred in resolution, which individually or in the aggregate would provide meaningful optionality in resolution under different market conditions. The actionability of those options should be supported by the firm's criteria and analysis required by SR Letter 14-8. Additionally, this analysis should facilitate buyer due diligence and include carve-out financial statements, valuation analysis, and a legal risk assessment. Further, the firm should establish a data room to collect and refresh annually the analyses above, as well as other information pertinent to a potential divestiture of the business.

Within the plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts meet the guidance above. The plan should also provide the separability analysis noted above. Finally, the plan should include a description of the firm's legal entity rationalization governance process.

VII. DERIVATIVES AND TRADING ACTIVITIES

A dealer firm's[13] plan to stabilize, wind down, and/or novate large derivative portfolios in an orderly manner following the parent's bankruptcy filing raises a number of significant issues. A dealer firm's plan should address the following areas.

Capabilities: A dealer firm should have the ability to provide timely transparency into the risks associated with derivatives trading, including on a legal entity basis, by broker-dealers, banks, and other derivatives trading entities. Specifically, a dealer firm should have well-developed derivatives booking practices with strong systems capabilities to track and monitor market, credit, and liquidity risk transfers between legal entities.

In addition, a dealer firm should have the operational capacity to facilitate the orderly transfer of prime brokerage accounts to peer prime brokers. The firm should include an assessment of how it would transfer such accounts. This assessment should be informed by clients' relationships with other prime brokers, use of automated and manual transaction processes, clients' overall long and short positions facilitated by the firm, and the liquidity of clients' portfolios. The assessment should also analyze the risks of and mitigants to asymmetric unwinding of positions, operational challenges, and insufficient staffing to effectuate the scale and speed of prime brokerage account transfers envisioned under the firm's preferred strategy.

[13] This section applies to Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase, and Morgan Stanley.

Stabilization: A dealer firm should have well-developed rating agency playbooks to facilitate the stabilization of each trading entity, following the bankruptcy filing of the parent company. The playbooks should include maintaining, reestablishing, or establishing investment grade ratings or the equivalent for each trading entity. In addition, the firm should have communication playbooks for clients, regulators, key FMUs, and clearing and settlement agent banks.

Passive Wind-Down Analysis: A dealer firm should estimate the financial resources required to support a passive run-off of the trading book in the event that investment-grade ratings for the trading entities are not maintained or reestablished following the bankruptcy filing. The firm should assume that entities cannot access bilateral over-the-counter (OTC) markets and that hedging is limited to exchange-traded and centrally-cleared instruments. A firm's estimates should be sensitive to the magnitude and nature of basis risks that would result from hedging with only exchange-traded and centrally-cleared instruments in a severely adverse stress environment. The analysis should include estimated resource needs over time, until the point of total run-off or when resources are depleted. If resources are depleted before total run-off, the firm should analyze the systemic risk profile of the portfolio that remains at the end of the passive wind-down period (i.e., the residual portfolio), including its size, composition, complexity, and potential counterparties. The losses and liquidity required to support the passive wind-down analysis should be incorporated into the firm's resolution capital and liquidity execution needs estimates.

Active Wind-Down Analysis: In addition to the passive wind-down analysis, a dealer firm should estimate the financial resources required to support an orderly and active wind-down of the derivatives portfolio. A dealer firm should provide detailed active wind-down estimates as per the tables in the Appendix, along with an accompanying narrative describing at least one pathway for segmenting, packaging, and winding down the derivatives portfolio. The pathway and data should take into account:

- The nature, concentration, maturity, and liquidity of derivatives positions;
- The proportion of centrally-cleared versus uncleared derivatives;
- The anticipated size, composition, and complexity of the portfolio at the end of the wind-down period (i.e., the residual portfolio);
- Challenges with novating less liquid, longer-dated derivatives; and
- The costs and challenges of obtaining timely consents from counterparties and potential acquirers (step-in banks).

The losses and liquidity required to support the active wind-down analysis should be incorporated into the firm's resolution capital and liquidity execution needs estimates.

Residual Derivatives Portfolio: Bearing in mind the objective of an orderly resolution, dealer firms' plans should include analysis of the risk profile of the portfolio that remains at the end of the active wind-down period and that the firm would cease performing on (i.e., the residual portfolio), including its size, composition, complexity, and potential counterparties. The firm should assume that under an active wind-down scenario, material entities would have access only to listed and centrally-cleared financial instruments to manage the trading portfolio through the wind-down process.

VIII. PUBLIC SECTION

The purpose of the public section is to inform the public's understanding of the firm's resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy). There should also be a high-level discussion of the liquidity resources and loss-absorbing capacity of the firm.

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the Agencies have identified in the 2015 Plan. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the resolution plan is not binding on a bankruptcy court or other resolution authority and that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.