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June 20, 2019

*Via Electronic Submission*

Robert E. Feldman, Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, D.C. 20249

***Re: Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets – RIN 3064-AF05***

Discover Bank (“Discover”) appreciates the opportunity to provide input to the Federal Deposit Insurance Corporation (“FDIC”) in connection with its advanced notice of proposed rulemaking on Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets (the “IDI ANPR”).<sup>1</sup> As described in the notice, the FDIC is inviting input on how to tailor and improve its rule requiring certain insured depository institutions to submit resolution plans (the “IDI Rule”). Discover supports the FDIC’s efforts to appropriately tailor and refine certain aspects of its IDI Rule and we agree that a fresh look at the scope and requirements of resolution planning is particularly appropriate given the Economic Growth, Regulatory Relief and Consumer Protection Act (“EGRRCPA”), which among other things amended the resolution planning requirements applicable to bank holding companies under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In response to EGRRCPA, the FDIC and the Board of Governors of the Federal Reserve System (the “Federal Reserve”) have issued a joint Notice of Proposed Rulemaking to revise the final rule that implements Section 165(d) applicable to bank holding companies (the “165(d) NPR”).<sup>2</sup> The tailoring approach proposed by the FDIC in the IDI ANPR is consistent with the direction taken by the FDIC and FRB in the 165(d) NPR.

Since implementation of the final rules for both 165(d) and IDI resolution plans beginning with initial plan submissions due in December 2013, Discover Financial Services and Discover Bank, respectively, have made their required 165(d) and IDI resolution plan filings, none of which have been deemed informationally incomplete or non-credible. Discover has been committed to the resolution planning process throughout, dedicating significant time and resources to develop a fulsome, top-down resolution planning program, maintaining a resolution planning project management office, developing and enhancing resolutions plans and responding to guidance and

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<sup>1</sup> FDIC, *Resolution Plans Required for Insured Depository Institutions With \$50 Billion or More in Total Assets* (advance notice of proposed rulemaking, Apr. 22, 2019) (to be codified at 12 C.F.R. pt. 360).

<sup>2</sup> Federal Reserve, *Regulation QQ: Resolution Plans Required* (notice of proposed rulemaking, Apr. 8, 2019) (to be codified at 12 C.F.R. pt. 243) and FDIC, *Regulation QQ: Resolution Plans Required* (notice of proposed rulemaking, April 16, 2019) (to be codified at 12 C.F.R. pt. 381).

questions from the FDIC and Federal Reserve. Both the 165(d) and IDI resolution planning exercises led Discover to incorporate best practices and implement structural and operational enhancements in order to eliminate obstacles to an orderly resolution. Plan submissions and related discussions have further provided the FDIC with a thorough understanding of Discover's structure in the context of a prospective receivership scenario. These enhancements have been incorporated into business-as-usual processes to maintain the benefits of resolution planning going forward without the need for additional formalized resolution plan submissions.

Discover's recommendations below in response to the IDI ANPR include several ways we believe the FDIC can appropriately tailor and refine IDI resolution planning requirements and provide clear and predictable expectations going forward. Specifically, Discover recommends the following in response to requests for comment in the IDI ANPR:

- I. Utilize the tiered approach described in the IDI ANPR with the same category approach used in the 165(d) NPR in order to maintain consistency in resolution planning requirements between bank holding companies and IDIs; and
- II. Establish clear and transparent expectations and timelines for engagement, informational requests and capabilities testing for Group C IDIs.

We address each of these recommendations in more detail below.

**I. The FDIC should utilize the tiered approach described in the IDI ANPR and follow the same category approach used in the 165(d) NPR**

Discover strongly supports the FDIC's suggested tiered approach to resolution planning requirements in the IDI ANPR, and further believes the revised IDI Rule should incorporate the same category approach that the FDIC and Federal Reserve utilize in the 165(d) NPR. EGRRCPA amended Section 165(d) of the Dodd-Frank Act to raise the minimum asset threshold for automatic application of the requirement to \$250 billion in total consolidated assets ("TCAs"). Further, EGRRCPA provided the Federal Reserve and FDIC with the authority to apply the resolution planning requirements to firms between \$100 billion and \$250 billion in TCAs. Consistent with EGRRCPA, the 165(d) NPR provides for ongoing resolution planning requirements for firms between \$100 billion and \$250 billion in TCAs only to the extent those firms that also meet one or more of the risk-based indicators described in the 165(d) NPR: nonbank assets, weighted short-term wholesale funding or off-balance sheet exposure. Under the 165(d) NPR, firms with between \$100 billion and \$250 billion in TCAs that do not have these risk based indicators are considered Category IV firms and are no longer required to submit resolution plans going forward. Discover Financial Services is a Category IV bank under the 165(d) NPR.

Discover believes the revised IDI Rule should incorporate the same category approach that the FDIC and Federal Reserve utilize in the 165(d) NPR such that the IDIs in Groups A, B and C described in the IDI ANPR would be the same as the firms in Categories I, II and III, respectively, under the 165(d) NPR. Specifically, Group C described in the IDI ANPR should consist of those banks that qualify as Category III under the 165(d) NPR, meaning banks between \$100 billion and \$250 billion in TCAs that have additional risk-based indicators. IDIs with under \$250 billion in

TCAAs that do not have the identified risk-based indicators would not be subject to resolution planning requirements going forward under the IDI Rule.

Another possible approach would be to clarify in the revised IDI Rule that any IDI that is a subsidiary of a Category IV bank holding company under the 165(d) Rule is not subject to IDI Rule resolution planning requirements. Maintaining consistency in application between the 165(d) Rule and the IDI Rule would be appropriate from a staffing and internal resource perspective by removing an IDI whose parent bank holding company is now exempt from resolution planning requirements under the 165(d) Rule from under the IDI Rule as well. This approach would also be consistent with the spirit of EGRRCPA, which was intended to eliminate unduly burdensome resolution planning requirements for firms with under \$250 billion in TCAs.

Alternatively, in the event the FDIC desires to maintain separate, lower TCA thresholds for categorization from the 165(d) Rule, Discover feels strongly that IDIs with under \$250 billion in TCAs that have no risk-based indicators should be included in Group C as described in the IDI ANPR. The smaller, less complex nature of these IDIs greatly reduces receivership risk for such institutions such that the FDIC's desire to maintain ongoing resolution planning engagement can be sufficiently settled through the ongoing information requests, engagement and capabilities testing described within the IDI ANPR, without the need for submission of full, formal resolution plans.

## **II. The FDIC should provide for clear and transparent timelines and expectations for engagement, informational requests and capabilities testing for Group C IDIs**

In both Alternative One and Alternative Two described in the IDI ANPR, Group C IDIs would be required to periodically engage with FDIC resolution staff on certain specified resolution planning matters and would continue to be subject to information requests and capabilities testing. The ANPR provides examples on expected information requests on core business lines, critical services and management information systems. For capabilities testing, the ANPR references liabilities data, operational continuity, bridge bank management and franchise value.

Discover supports the streamlined approach to expected engagement, information requests and capabilities testing going forward for Group C IDIs in lieu of formal resolution plan submissions as described in the ANPR, but believes the final revised IDI Rule should contain clear and transparent timelines and expectations for these processes. For information requests, the rule should provide a clear structure for submission of requests to IDIs and timelines for responses thereto. The revised rule should establish a set frequency for such information requests (e.g., would occur no more frequently than on an annual basis) and should require consistency in requests made to similarly situated institutions. This will enable sufficient time to gather resources and respond to requests, particularly for IDIs that may be scoped into the IDI Rule as a Group C institutions but are no longer required to submit 165(d) plans.

For engagement and capabilities testing, Discover believes that the IDI Rule should establish clear and transparent parameters, which should include establishing a set frequency for such a

process (e.g., would occur no more frequently than on an annual basis) and sufficient advance notice to the IDIs of areas of focus for such engagement and capabilities testing. The areas of focus should be limited in scope to information that the FDIC believes would be most critical to the resolvability in the event that a CIDI fails, including information on critical services and operational continuity, determination of franchise value, management information systems or its material entities/core business lines. Providing advance notice and utilizing a clear and transparent framework would allow Group C IDIs to more effectively plan and manage internal resources throughout the engagement and capabilities testing cycle. The revised rule should also provide a clear structure for providing consistent and transparent feedback from the FDIC to IDIs, including the format for feedback and whether such feedback will be public or private. Ultimately, the revised IDI Rule should provide for a clear, structured approach to engagement that maintains consistency and transparency among IDIs within a particular tiering group, rather than a program that varies among similarly situated institutions.

Discover appreciates the FDIC's intent to tailor and refine IDI resolution planning requirements, and we are grateful for the opportunity to comment on the advanced notice of proposed rulemaking. We respectfully request that the FDIC consider the recommendations in this letter and we would welcome further dialogue on any of the topics discussed herein.

Sincerely,



David Sutter  
Vice President  
Finance Risk and Regulatory Programs