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By Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Notice of Proposed Rulemaking, Guidance for Resolution Plan Submissions of Certain Foreign-based Covered Companies, Federal Reserve Docket No. OP-1699, FDIC RIN 3064-ZA15

Ladies and Gentlemen:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve") and Federal Deposit Insurance Corporation (the "FDIC") regarding the proposed guidance for U.S. resolution planning for certain foreign banks (the "Covered FBOs") pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States ("foreign banks").

The IIB commends the Agencies' efforts to consolidate prior resolution planning guidance for the Covered FBOs and the Agencies' continued efforts to incorporate past experience gained by the Agencies and filers into consolidated resolution plan guidance. However, we are concerned that: (1) the Proposed Guidance uses a flawed and misleading scoping methodology to group FBOs for enhanced expectations, and (2) the Proposed Guidance

[1] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 15,449 (Mar. 18, 2020) (the "Proposed Guidance"). In this letter, we refer to the Federal Reserve and the FDIC collectively as the "Agencies."

does not recognize the dramatically reduced risk of the Covered FBOs and the wide differential between them and the U.S. global systemically important banks ("U.S. GSIBs").

The Proposed Guidance would revise the resolution plan guidance previously provided to the largest foreign bank filers (the "2018 FBO Guidance") and impose expectations on the Covered FBOs that are substantially similar to, and in some circumstances exceed, those applied to U.S. GSIBs in the 2019 revisions to resolution plan guidance (the "2019 Domestic Guidance"). The proposed revisions to the 2018 FBO Guidance would impose substantial new and extraterritorial expectations in relation to payment, clearing, and settlement ("PCS") services and derivatives and trading ("DER") activities. In this regard, the Proposed Guidance effectively treats the Covered FBOs as if they were as systemically important as the U.S. GSIBs, both in terms of legacy expectations and new expectations that go beyond the unwind of U.S. operations. This approach is not justified given the dramatic simplification and reduction of the Covered FBOs' U.S. operations. Today these firms pose far less risk to U.S. financial stability, especially in comparison to the U.S. GSIBs. Indeed, the three intermediate holding companies ("IHCs") that would be Covered FBOs have shrunk by a further 38% on average over the last three years since the 2018 FBO Guidance was issued; they are now 93% smaller than the average size of the six non-processing U.S. GSIBs.[2] This reduction in size and risk was recognized by Vice Chair Randal Quarles when he publicly supported the removal of the three Covered FBOs from the Large Institution Supervision Coordinating Committee ("LISCC") portfolio in January.[3] The Proposed Guidance is inconsistent with additional tailoring and burden reduction advocated by Vice Chair Quarles in public comments that acknowledged the reduced risk posed by the Covered FBOs.

The imposition of new expectations comparable to those for U.S. GSIBs is also contrary to the approach employed by the Agencies in the final tailoring rule for enhanced prudential standards ("EPS Tailoring Rule").[4] In that rulemaking, the Agencies confirmed after extensive review that the Covered FBOs pose less risk to U.S. financial stability as compared to

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[2] See National Information Center, https://www.ffiec.gov/NPW (total asset data for the Covered FBOs and the non-processing U.S. GSIBs pulled from Form FR Y-9Cs filed for fourth quarter 2016 through fourth quarter 2019).

[3] Randal K. Quarles, Vice Chair for Supervision, Federal Reserve, Spontaneity and Order: Transparency, Accountability, and Fairness in Bank Supervision (Jan. 17, 2020) ("Spontaneity and Order") (noting that the Covered FBOs had "significantly shrunk their U.S. footprint" and pose a much smaller systemic impact than the non-processing U.S. GSIBs). Consistent with the framing of Vice Chair Quarles, we use the six non-processing U.S. GSIBs (JP Morgan, Bank of America, Citibank, Wells Fargo, Goldman Sachs and Morgan Stanley) as our benchmark throughout this letter.

[4] Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59,032 (Nov. 1, 2019).

the U.S. GSIBs, and lessened resolution planning burdens in order to better streamline and tailor resolution planning expectations. Unfortunately, the Proposed Guidance represents a step back from the carefully considered approach and the progress made in the EPS Tailoring Rule (both in terms of the measures of risk and the tailoring of supervisory and regulatory regimes) and it proposes a new scoping mechanism that obscures the wide disparity in risk profile between the Covered FBOs and U.S. GSIBs. It also creates an additional, duplicative categorization framework that is unnecessarily inconsistent with the objectives of regulatory simplicity advocated by the Agencies.

Accordingly, we urge the Agencies to revise the Proposed Guidance to better tailor it to the U.S. operations of the Covered FBOs. Specifically, our key recommendations include the following:

- **Do not impose new additional requirements, in light of the Covered FBOs' reduced systemic risk and improved resolvability.** The reduction in the systemic risk of the Covered FBOs since 2017 should merit additional reductions in the requirements from the 2018 FBO Guidance, not an expansion. There is no justification for imposing additional requirements around PCS services and DER activities, some of which extend beyond the expectations for U.S. GSIBs.
    - The Covered FBOs are not systemically important to U.S. financial stability. The Covered FBOs are simply not comparable to the U.S. GSIBs and should not be subject to substantially similar expectations. Despite this disparity, the Proposed Guidance incorporates new expectations that are in some cases broader than those required of the U.S. GSIBs, such as by extending the scope of DER guidance to include non-derivatives trading activities (e.g., account balances and securities financing transactions related to prime brokerage services and other derivatives trading businesses).
    - The Covered FBOs have substantially reduced and simplified their U.S. operations. Efforts to enhance resolvability (both within the United States and internationally) and the existence of the foreign parent as a source of strength further reduce the risk to U.S. financial stability posed by the Covered FBOs as compared to the U.S. GSIBs.
    - The Covered FBOs have also become subject to additional post-crisis host country resolution requirements and other enhanced requirements, such as Total Loss Absorbing Capacity ("TLAC"), which comparably categorized U.S. domestic banks are not subject to. The addition of new U.S. resolution plan requirements, rather than further tailoring and moderation of existing expectations, is inconsistent with these developments and contrary to the approach the Agencies took in drafting the EPS Tailoring Rule. It is also contrary

to Congress' intent in passing the Economic Growth, Regulatory Relief, and Consumer Protection Act to reduce unnecessary burdens under the enhanced prudential standards ("EPS").

- **Do not adopt a new scoping mechanism based on GSIB method 2.** The use of methodology 2 of the U.S. GSIB surcharge framework ("method 2") does not provide an accurate or reasonable measure of the systemic risk of the Covered FBOs or their resolvability. The method 2 framework is not recognized globally and it should not be utilized as the basis for scoping foreign banks into additional resolution planning expectations.
- **Remove the extraterritorial components of the new PCS and DER expectations.** The Agencies should not impose the enhanced expectations around PCS services and DER activities. If the Agencies do choose to apply the new expectations, the scope of the PCS and DER guidance should only apply to U.S. material entities, critical business lines ("CBLs") and critical operations domiciled in the United States and resolved under the U.S. Bankruptcy Code. At a minimum, the expectations should not require the identification, assessment or reporting on indirect relationships through non-U.S. affiliates or risk transfer arrangements with non-U.S. affiliates that do not support U.S. material entities, critical operations or CBLs.
- **Maintain flexibility regarding contractually binding mechanisms ("CBMs").** The Agencies should provide confirmation that a Covered FBO has the flexibility to choose an effective CBM framework appropriate for its global capital and liquidity management.

I. Expectations Beyond the 2018 FBO Guidance are Inappropriate Given Covered FBOs' Reduced Systemic Risk and Improved Resolvability

We welcome the Agencies' recognition that resolution plan guidance for the Covered FBOs should be tailored to the scope of their U.S. operations. However, the imposition of new expectations substantially similar to the 2019 Domestic Guidance applicable to the U.S. GSIBs is not appropriately tailored to the Covered FBO's U.S. operations. These enhanced expectations should only apply to the U.S. GSIBs.

Any revisions to the 2018 FBO Guidance should instead appropriately tailor its expectations to the current risk posed by the U.S. operations of the Covered FBOs. As noted below, reductions in the size and complexity of the Covered FBOs' U.S. operations and improvements in resolvability have left Covered FBOs with a much smaller systemic risk profile, which has declined even further since issuance of the 2018 FBO Guidance.

Certain of the revisions in the Proposed Guidance would provide such tailoring, such as the elimination of expectations for separate passive and active wind-down scenario analyses, the agency-specified data templates and rating agency playbooks. We appreciate the Agencies' appropriate revisions to these expectations.

A. The Covered FBOs have Reduced and Simplified Their U.S. Operations

The Covered FBOs' U.S. operations are smaller, simpler and less systemically important than those of the U.S. GSIBs. Since 2011, foreign banks operating in the United States in the aggregate have significantly reduced the size of their combined U.S. operations' balance sheets, primarily through a substantial reduction in broker-dealer assets.[5] The three Covered FBOs have similarly reduced their aggregate broker-dealer assets by 72% from $930 billion to $262 billion from 2011 to 2019.[6] In addition, since the development of the 2018 FBO Guidance, the Covered FBOs have:

- reduced the aggregate size of their IHCs by 38% from approximately $605 billion to $374 billion,[7] and
- reduced their aggregate broker-dealer assets by 45% from approximately $475 billion to $262 billion.[8]

Conversely, the U.S. GSIBs have continued to grow in size and have contributed to a growth of broker-dealer activity in the United States.[9] The aggregate size of the

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[5] Securities and Exchange Commission ("SEC") data indicate that, from 2011 to 2019, aggregate U.S. broker-dealer assets of foreign banks with IHCs decreased by 56% overall (from $1.48 trillion to $648 billion). See Securities and Exchange Commission, Company Filings, https://www.sec.gov/edgar/searchedgar/companysearch.html (data provided in "Form X-17A-5" hyperlinks and based on available filings for year end 2010 and 2019). During this same period, the aggregate branch/agency assets of this same set of institutions increased from $696 billion to $905 billion, offsetting only 25% of the dramatic decrease in broker-dealer assets. See Federal Reserve, Structure and Share Data for U.S. Banking Offices of Foreign Entities, https://www.federalreserve.gov/releases/iba/ (follow "December 2011" and "December 2019" hyperlinks).

[6] See Securities and Exchange Commission, Company Filings, supra note 5 (total broker-dealer assets calculated based on the data reported in "Form X-17A-5" reports filed for the broker-dealer subsidiaries of the three Covered FBOs).

[7] See National Information Center, Form FR Y-9C Filings, supra note 2.

[8] See Securities and Exchange Commission, Company Filings, supra note 5.

[9] See Financial Stability Oversight Council, 2019 Annual Report 84 (Dec. 4, 2019), https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf (noting that while aggregate assets for

non-processing U.S. GSIBs has increased approximately 10% from 2014 to 2019 (from approximately $9.87 trillion to $10.89 trillion).[10] According to SEC data, the same six U.S. GSIBs have increased the aggregate size of their broker-dealers by approximately 6% from 2011 to 2018 (from approximately $1.94 trillion to $2.06 trillion).[11] Most of this growth occurred since the issuance of the 2017 resolution planning guidance applicable to the U.S. GSIBs.[12]

The average derivatives exposures of the Covered FBOs is also 94% smaller than the non-processing U.S. GSIBs.[13] The Covered FBOs have also cut their total derivative exposures from 2016 to 2019 roughly 39% (from $26 billion to $16 billion), whereas the U.S. GSIBs only decreased their average derivative exposure by 11% over the same time.[14] Accordingly, the imposition of enhanced resolution planning expectations, particularly those focused on PCS and DER, may be appropriate for the U.S. GSIBs. However, these expansions are not warranted for the Covered FBOs given their far smaller and declining footprint. Figure 1 below displays a variety of risk indicators that show clearly and consistently that the Covered FBOs are far smaller on every relevant risk measure than the U.S. GSIBs.

broker-dealers affiliated with bank holding companies has increased steadily since 2015, aggregate assets for broker-dealers affiliated with foreign banks have continued to significantly decrease since 2010).

[10] See National Information Center, Form FR Y-9C Filings, supra note 2.

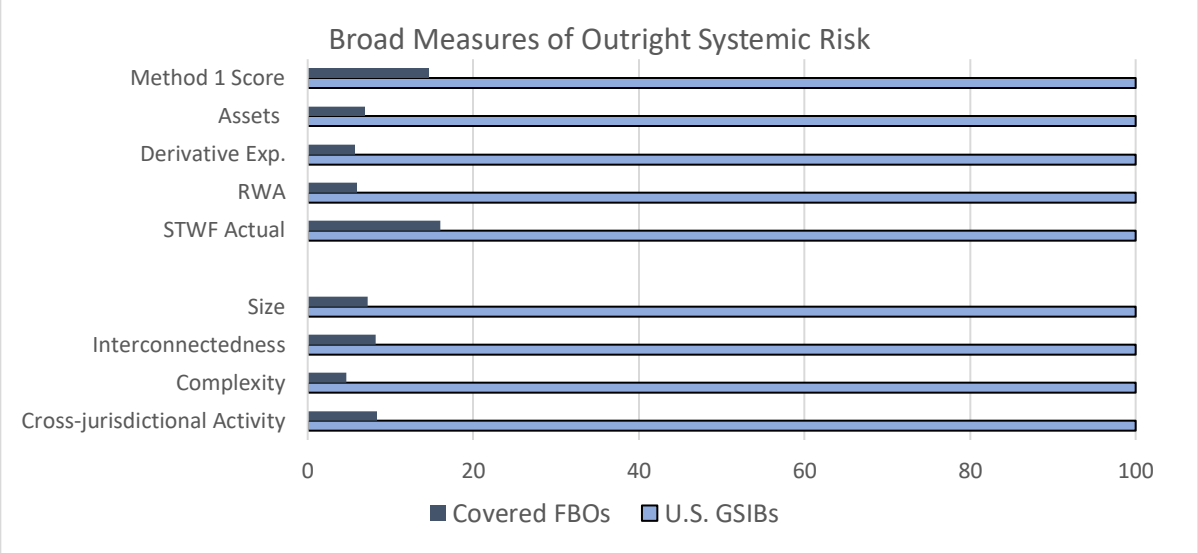
[11] See Securities and Exchange Commission, Company Filings, supra note 5. Publicly available year end data for 2019 for the U.S. GSIB broker-dealer subsidiaries was not yet available as of the date of this letter.

[12] The non-processing U.S. GSIBs have increased the aggregate size of their broker-dealers by approximately 10% from 2016 to 2018 (from approximately $1.86 trillion to $2.06 trillion). Id.

[13] The non-processing U.S. GSIBs reported average total derivatives exposures of $262 billion in fourth quarter 2019, compared to just $16 billion for the Covered FBOs. National Information Center, Form FR Y-15 Filings, supra note 2 (total derivative exposure data for the Covered FBOs and the non-processing U.S. GSIBs pulled from Form FR Y-15 filed for fourth quarter 2019).

[14] Id. (total derivative exposure data for the Covered FBOs and non-processing U.S. GSIBs pulled from Form FR Y-15 for fourth quarter 2019 and 2016).

Figure 1[15]



The Covered FBOs' efforts to simplify and de-risk their U.S. operations were recognized by Vice Chair Quarles in remarks earlier this year. Vice Chair Quarles noted that the composition of the LISCC portfolio had "not yet been aligned with [the] recent tailoring rules" and continued to include certain Category II and III foreign banks, despite such firms being "less systemic" than the U.S. GSIBs.[16]

> Since 2010, [Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG and UBS AG (the "LISCC FBOs")] have significantly shrunk their U.S. footprint, and their U.S. operations are much less risky than they used to be. Since 2008, the size of the LISCC FBOs' combined U.S. assets has shrunk by about 50 percent, and they have reduced the assets at their broker-dealers from a peak of $1.9 trillion in 2008 to $340 billion today, a reduction of over 80%. In addition, the estimated systemic impact of the LISCC FBOs today is much smaller than the U.S. GSIBs. The average method 1 GSIB score of the combined U.S. operations of the LISCC FBOs is less than a

[15] Figure 1 reflects the relative size of the method 2 indicators based on data filed by the non-processing U.S. GSIBs and Covered FBOs as of fourth quarter 2019. See National Information Center, Form FR Y-15 Filings, supra note 2 (data based on indicators reported in fourth quarter 2019 Form FR Y-15 filings). Other data reflected in the chart is based on the figures included in Table A, infra.

[16] Spontaneity and Order, supra note 3.

quarter of the average GSIB score of the six non-processing U.S. GSIBs.[17]

Indeed, based on final data for year-end 2019, the LISCC FBOs produce a GSIB method 1 score that is only 12% of the non-processing U.S. GSIBs.[18] Given the "significant decrease in size and risk profile of the foreign firms in the LISCC portfolio over the past decade," Vice Chair Quarles rightly acknowledged that "there is a compelling justification" to remove the LISCC FBOs (which include the three Covered FBOs) from the LISCC portfolio.[19] Only the U.S. GSIBs would remain in the LISCC portfolio. Such changes to the LISCC portfolio are well justified, and Barclays, Credit Suisse and Deutsche Bank should be removed from the LISCC portfolio immediately (just as UBS was removed in March 2020). The Federal Reserve also acknowledged this difference in risk profiles in the EPS Tailoring Rule, which did not group the Covered FBOs with the U.S. GSIBs. Regrouping the Covered FBOs utilizing the scoping methodology proposed, rather than building on the categorization work done in connection with the EPS Tailoring Rule, would be a fundamental mistake and mis-categorization of the risk profiles of the Covered FBOs, both for the Proposed Guidance and for any possible future use as a precedent.

Consistent with available economic data and Vice Chair Quarles' remarks, the Proposed Guidance should recognize that the U.S. operations of the Covered FBOs have become smaller and less systemically risky, and thus their resolution planning expectations should be further tailored, not expanded to be comparable to, and in some instances "larger and broader" than, those applied to the U.S. GSIBs.[20]

B. Increased Resolvability and Foreign Parent Support

The Proposed Guidance should also take into account the steps taken by the Covered FBOs and their parent companies to significantly enhance their ability to withstand losses and improve their resolvability, which together support tailoring of resolution planning requirements, not expansion. These efforts have continued to reduce risks posed to the U.S.

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17 Id.

18 See Deloitte, US Banking Legal Entity Analytics 84 (2020).

19 Spontaneity and Order, supra note 3.

20 The Proposed Guidance states that the scope of the guidance for DER activities is larger and broader for a Covered FBO relative to the 2019 Domestic Guidance and includes, for example, account balances and securities financing transactions related to prime brokerage services and other derivatives trading businesses. Proposed Guidance, 85 Fed. Reg. at 15,457–58.

financial system by the Covered FBOs. Specific efforts include (1) significantly increasing capitalization levels and liquidity resources, (2) simplifying organizational structures, (3) streamlining business mixes, (4) improving risk systems, including robust stress testing capabilities, and (5) enhancing affiliate and third-party service arrangements to ensure continued operations in stress and resolution (e.g., resolution resilient service level agreements). The Proposed Guidance should also recognize that foreign parents serve as a source of strength for the U.S. operations of foreign banks, and that home and host-country regulators must cooperate effectively and recognize the primary importance of the home country resolution plan.

Foreign banks and regulators have also developed new strategies for resolution and implemented structural, capital, debt, and liquidity measures to facilitate resolution, transfer losses to the home parent company, and help ensure the recapitalization of the U.S. operations of foreign banks. These initiatives have included, among others: (1) the development and widespread adoption of the Single Point of Entry and enhanced Multiple Point of Entry resolution strategies, (2) the U.S. IHC requirement (which includes stand-alone EPS beyond parent-level requirements), and (3) external and internal TLAC requirements. The home countries of foreign banks have similarly undertaken significant reforms in capital, liquidity, bail-inable resources, corporate structures, and resolution frameworks and strategies to implement both domestic and international standards, such as those adopted by the Financial Stability Board, that have greatly improved the capabilities of home countries to resolve their banking organizations that have operations in the United States. As a result, the largest Covered FBOs are supported by both (i) significant local bail-inable resources (i.e., internal TLAC) for the recapitalization of their U.S. operations (a resolvability advantage compared to similarly-sized U.S. domestic banks), as well as (ii) strong home country resources, which can provide parent support that is not available to a standalone U.S. bank.

The Agencies have recognized these important advancements elsewhere. As the Federal Reserve has stated, the imposition of TLAC and IHC requirements has "increase[d] the likelihood that a failed foreign bank with significant U.S. operations could be successfully resolved without the failure of the U.S. subsidiaries or, failing that, that the U.S. operations could be separately resolved in an orderly manner."[21] The Federal Reserve has also noted, given the additional resources for recapitalization provided through TLAC, a foreign bank's IHC should be

[21] Federal Reserve, Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8266, 8268 (Jan. 24, 2017).

able to "avoid entering resolution and would continue as a going concern" without entering bankruptcy or resolution proceedings at all.[22]

Central to many of these efforts is the recognition of the foreign parent as a source of support. Foreign parents historically, and continue to, serve as a source of strength for their U.S. subsidiaries by providing an added layer of capital and liquidity in the event of stress. In fact, the U.S. statutory and regulatory requirements were designed by the Agencies to transfer any losses to the home country financial institution and achieve the resolution of the U.S. operations in a manner that dramatically minimizes, or virtually eliminates, material risk to the U.S. financial system. The capacity for parent support in a stressed scenario has been strengthened by the introduction of post-crisis reforms with respect to global capital and liquidity requirements, internal TLAC, resolution planning guidance that pre-positions capital and liquidity in U.S. subsidiaries (or that requires contractual means to ensure appropriate distribution of liquidity in stress), improved risk management requirements, and other enhanced standards.[23]

Rather than recognize the foreign parent as a source of added support unavailable to the U.S. GSIBs, the Proposed Guidance appears to only treat the non-U.S. parent and affiliates as third-party sources of risk for the U.S. material entities.

This approach gainsays the more forward thinking views and balanced regulatory approach introduced by Vice Chair Quarles in his "Brand Your Cattle" speech.[24] That speech described the sizeable benefits of a balanced approach for home-host relationships, which aimed at balancing the goals of host "certainty" with home flexibility. Such a balance would improve outcomes for bank resilience, and benefit both home and host jurisdictions. However, the Proposed Guidance co-opts these concepts, and applies them only for domestic entities in a single jurisdiction. That misuse ignores the overarching international context in which they were originally made. The Proposed Guidance therefore retains the current expectations for heavy resource pre-placement in the United States, which effectively exceeds requirements for similarly sized U.S. firms. The high effective level of U.S. pre-placement requirements have created an imbalanced result, which corrodes flexibility at the international level, and sets a poor precedent for resource trapping in other jurisdictions. We urge the Agencies to reconsider their

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[22] Id. at 8291.

[23] Vice Chair Quarles has similarly acknowledged these efforts around the pre-positioning of capital and liquidity, noting they "increase[ed] the resiliency of the U.S. operations of foreign banks." Randal K. Quarles, Vice Chair for Supervision, Federal Reserve, Trust Everyone—But Brand Your Cattle: Finding the Right Balance in Cross-Border Resolution (May 16, 2018).

[24] Id.

position on these topics in line with the thoughtful and balanced arguments of "Brand Your Cattle" logic. Progressive U.S. leadership on this issue could help improve international bank resilience more generally, which could be especially important if the stress of the COVID-19 pandemic continues.

C. The Lower Risk Profile of Covered FBOs is Reflected in the EPS Tailoring Rule

Imposition of additional expectations comparable to those applied to the U.S. GSIBs would also be inconsistent with the approach taken by the Agencies in the EPS Tailoring Rule. There, the Agencies created a framework that placed the U.S. GSIBs in Category I and made them subject to the most rigorous requirements and placed the IHCs of the largest foreign banks, including the three that would be Covered FBOs, in the lower risk Category III and made them subject to less rigorous requirements.[25] The Agencies noted this "better align[ed] the prudential standards applicable to large banking organizations with their risk profiles, taking into account the size and complexity of these banking organizations as well as their potential to pose systemic risk."[26]

The Agencies' approach to the EPS Tailoring Rule lessened unnecessary burdens on the Covered FBOs and properly recognized that the Covered FBOs pose far less systemic risk to the U.S. financial system than the U.S. GSIBs. This conclusion was consistent with a broad range of systemic risk indicators, which clearly show a vast difference between the two groups, as reflected in Table A.[27]

[25] EPS Tailoring Rule, 84 Fed. Reg. at 59,050-51.

[26] Id. at 59,033–34.

[27] This chart does not show the anomalous and misleading method 2 score, which based on fourth quarter 2019 data would show an average method 2 score of 345 for the Covered FBOs compared to 548 for the non-processing U.S. GSIBs. See National Information Center, FR Y-15 Filings, supra note 2 (the average method 2 scores presented here were calculated using data in the fourth quarter 2019 filings of forms FR Y-15). As discussed further below, this figure is driven by a flawed and hugely inflated short-term wholesale funding ("STWF") calculation that is built from a ratio derived from two components in the chart: STWF and risk-weighted assets ("RWA"). This anomalous calculation drives 92% of the cumulative method 2 scores for the Covered FBOs.

Table A

	Non-processing U.S. GSIBs	Covered FBOs	Percentage Difference
Average Method 1 Score[28]	308	45	-85%
Average Total Assets ($bn)[29]	$1,814	$125	-93%
Average Derivatives Exposure ($bn)[30]	$262	$15	-94%
Average RWA[31]	$1,064	$64	-94%
Average STWF ($bn)[32]	$343	$55	-84%
Tailoring Category	I	III	

Conversely, the Proposed Guidance would subject the Covered FBOs, which are all Category III firms at the IHC level, to additional expectations that are substantially similar to those currently only applied to the Category I firms (and it would appear that no other U.S. firms in Categories II or III will be subjected to these enhanced expectations). The Agencies state that many of the revisions are to "more closely align" the Agencies' expectations for the Covered FBOs with their expectations for the U.S. GSIBs without providing a rationale for why the expectations for Covered FBOs should be aligned with those for U.S. GSIBs.[33] As described above, the Covered FBOs pose far less risk today to U.S. financial stability, both as compared to the U.S. GSIBs and their historical footprint when the more onerous original resolution planning expectations were set. There is even less reason now to impose additional expectations on the Covered FBOs, let alone expectations to "align" resolution planning guidance between the Covered FBOs and U.S. GSIBs. Such expectations should only apply to the Category I firms, i.e., the U.S. GSIBs. Any guidance imposed on the Covered FBOs should be tailored to reflect the reduced risk profile of the Covered FBOs.

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[28] See Deloitte, supra note 18, at 84.

[29] See National Information Center, supra note 2 (total asset data for the Covered FBOs and the non-processing U.S. GSIBs pulled from Form FR Y-9Cs filed for fourth quarter 2019).

[30] See supra note 13.

[31] See National Information Center, Form FR Y-15 Filings, supra note 2 (data based on average RWA reported in fourth quarter 2019 Form FR Y-15 filings).

[32] See id. (data based on average STWF reported in fourth quarter 2019 Form FR Y-15 filings).

[33] Proposed Guidance, 85 Fed. Reg. at 15,450.

D. Utilizing the Method 2 Framework to Impose Expectations Comparable to the U.S. GSIBs is Not Appropriate

The use of method 2 falsely categorizes the level of risk posed by the Covered FBOs to U.S. financial stability and their resolvability. Method 2 is not recognized globally and does not work effectively when applied outside its original target group (the U.S. GSIBs). Method 2 is currently only used in the context of the U.S. GSIB capital surcharge framework, and not to scope institutions but rather to calculate the appropriate GSIB surcharge. In that context, it is only applied to institutions that have already been scoped in as U.S. GSIBs due to a method 1 score of 130 or more.[34] The Proposed Guidance would utilize method 2 as the initial scoping mechanism, regardless of an FBO's method 1 score. Method 2 was only designed to be used with respect to institutions large enough to be designated as a U.S. GSIB in the context of applying a surcharge requirement to RWA and calibrated for them; it only produces reasonable results in such context.[35]

When used outside of its intended purpose, and in particular with respect to smaller institutions, it obscures the distinction between the Covered FBOs and U.S. GSIBs and misleadingly suggests the Covered FBOs are as systemically important. In support of using method 2 to provide the scope of application for the Proposed Guidance and its new expectations, the Agencies noted that reliance on STWF could indicate the potential for significant liquidity outflows during financial distress and that the three foreign banks expected

[34] 12 C.F.R. § 217.403.

[35] The Federal Reserve acknowledged that using RWA in the denominator of the STWF calculation could lead to increases in method 2 scores when a firm maintains the same level of STWF but otherwise reduces its RWA. However, the Federal Reserve noted that such increases should be offset by the application of the surcharge requirement to RWA. Board of Governors of the Federal Reserve System, Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 Fed. Reg. 49,082, 49,100 (Aug. 14, 2015) ("GSIB Surcharge Rule") ("While a firm that simultaneously reduces its short-term wholesale funding and risk-weighted assets may not see changes in its surcharge requirement, the same surcharge requirements as a percentage of risk weighted assets would require the firm to hold a lower dollar amount of additional capital because the firm's risk weighted assets would also be lower. Similarly, while a firm that reduces its risk-weighted assets but uses the same amount of short-term wholesale funding could see an increase in its surcharge requirement, the dollar amount of capital the firm would have to hold would be reduced because of its lower risk-weighted assets. Thus, these outcomes are consistent with the view that the dollar amount of capital that a firm should be required to hold because of the short-term wholesale funding component of the surcharge should be independent of that firm's risk-weighted assets characteristics.").

to be Covered FBOs have had consistently high method 2 scores as compared to the U.S. GSIBs and other foreign banks.[36]

The Agencies believe that the high scores under method 2 have "largely been driven by a reliance on short term wholesale funding."[37] However, the Covered FBOs have established conservative funding profiles and have not shown an undue reliance on STWF. This can be shown by the relatively low absolute STWF levels as compared to the non-processing U.S. GSIBs and that the publicly available liquidity coverage ratios ("LCR") for the covered FBOs are well in excess of the required thresholds. As we show below, the "comparably high method 2 scores" identified by the Agencies are driven by shortcomings in the method 2 methodology and do not properly reflect the modest systemic risk of the three Covered FBO IHCs.

Notably, the Agencies previously decided against using the U.S. GSIB capital surcharge framework for determining the scoping of the non-Category I firms under the EPS Tailoring Rule after commentators pointed out that the surcharge framework, and method 2 in particular, was inappropriate for categorizing banking organizations that were not U.S. GSIBs.[38] The Agencies noted that the adopted tailoring criteria better supported "the objectives of risk sensitivity and transparency."[39] Departing from that framework and relying instead on method 2 would create a very concerning precedent given the flaws in that method, as discussed below.

The STWF indicator under Regulation Q[40] is fundamentally flawed for two primary reasons. First, it fails to consider the maturity and types of assets funded by STWF. Liquidity itself is a net concept; however, the STWF indicator fails to consider the amount of high quality liquid assets ("HQLA") that could be liquidated to meet STWF liabilities without triggering a fire sale. A bank that uses STWF to invest in HQLA or that otherwise maintains adequate amounts of HQLA does not lead to the kinds of liquidity concerns meant to be captured

[36] Id. at 15,452. The Agencies do not justify how the method 2 score of 250, which appears to have been chosen to capture the three Covered FBOs, was determined.

[37] Id.

[38] EPS Tailoring Rule, 84 Fed. Reg. at 59,036.

[39] Id.

[40] 12 C.F.R. § 217.406.

by the STWF metric.[41] A bank with high amounts of HQLA can easily liquidate these assets to pay short term creditors. In fact, measures of net liquidity like the LCR show that the three Covered FBOs actually run a more conservative funding profile than the non-processing U.S. GSIBs.[42]

Moreover, the absolute amount of STWF is also small relative to the U.S. GSIB group – the Covered FBO's outright STWF is only 16% of the average non-processing U.S. GSIB.[43] Existing liquidity guidance sufficiently addresses how the Covered FBO would meet cash outflows during financial distress. Accordingly, high STWF indicator scores do not indicate the Covered FBOs face liquidity mismatches or that they are as systemically risky as the U.S. GSIBs.

Second, the STWF indicator calculation leads to illogical outcomes when applied to smaller and lower risk groups like the Covered FBOs. This occurs because of the unique weighting ratio, which divides a fixed scalar by average RWA, and then multiplies this against outright STWF. As the Covered FBOs have reduced RWA, their weighting factor has increased, causing the STWF indicator to increase under method 2. Because of this effect, the weighting factor is over 16x larger for the Covered FBO group, compared to an equivalent amount of STWF risk at the average non-processing U.S. GSIB. In short, the indicator penalizes an institution for reducing its overall risk. For example, if a Covered FBO's IHC reduced its risk density by shifting to higher-rated assets such as U.S. treasuries, its total RWA would decrease, causing its STWF indicator and method 2 score, in turn, to increase. Despite having reduced its true underlying risk, the method 2 score would perversely suggest that the IHC actually increased in systemic risk.

Perhaps this is most easily understood by considering an extreme case, such as a very small entity that invested in only low or zero risk assets (e.g., U.S. treasury bills). This firm

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[41] See, e.g., Arantxa Jarque, John R. Walter, Jackson Evert, On the Measurement of Large Financial Firm Resolvability, WP18-06R 23 (Federal Reserve Bank of Richmond, 2018) ("In fact, a high proportion of short-term funding is less troublesome if the GSIB matches this funding with an equivalent portion of liquid assets.").

[42] Based on publicly available data from LCR disclosures, the average LCRs for Barclays' and Deutsche Bank's IHCs is 160% as compared to 121% for the non-processing U.S. GSIBs. Credit Suisse is scheduled to release its LCR disclosures at year end, but we note that the group ratios for Credit Suisse are conservative, with a group LCR of 198% at year-end 2019.

[43] Based on fourth quarter 2019 data, the average amount of weighted STWF for the non-processing U.S. GSIBs is approximately 6.3 times the average amount of the Covered FBOs ($343 billion compared to $55 billion). See Office of Financial Research, Bank Systemic Risk Monitor, https://www.financialresearch.gov/bank-systemic-risk-monitor/ (values calculated based on data compiled by the Office of Financial Research and retrieved from the Federal Reserve's FR Y-15 Snapshot Reports).

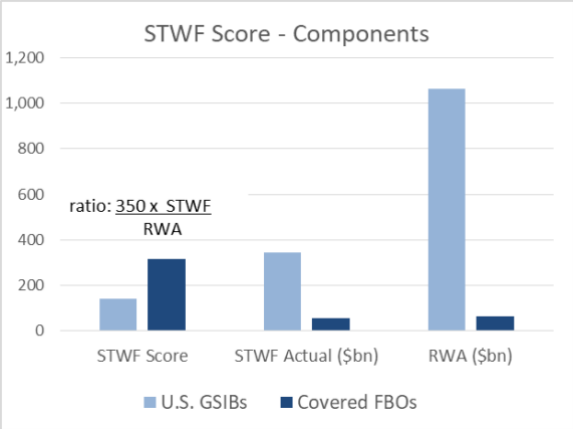
would have an exceptionally large STWF indicator because it would be dividing any STWF by a near zero RWA. The small and low-risk bank could even have a method 2 score higher than the largest U.S. GSIB.

This effect is particularly acute with respect to the Covered FBOs, whose IHCs often invest in low or zero risk assets due to regulatory pressures such as the LCR and capital rules. The asset base of the Covered FBOs' IHCs is primarily made up of U.S. capital market subsidiaries and is typically composed of smaller and lower-risk assets. On average the IHCs' RWA footprint is 94% smaller than the average of the RWA held by the non-processing U.S. GSIBs, as shown Figure 2 below.[44] This low risk footprint leads to severely inflated STWF scores. It suggests that the liquidity risk posed by the three IHCs is far greater than the cumulative liquidity risk of all the non-processing U.S. GSIBs, despite the IHCs each having stronger LCRs and dramatically smaller amounts of STWF.[45]

[44] The non-processing U.S. GSIBs reported an average RWA of $1.06 trillion as compared to average RWA of $64 billion by the Covered FBOs in fourth quarter 2019. See National Information Center, Form FR Y-15 Filings, supra note 2 (data based on average RWA reported in fourth quarter 2019 Form FR Y-15 filings).

[45] If the method 2 score was amended to reflect actual STWF size, the STWF component of the method 2 score would shift from its oversized current level into a proper proportion, and reflect that the STWF footprint of the Covered FBOs is only 16% of the STWF amounts of the non-processing U.S. GSIBs. Based on fourth quarter 2019 data, scaling the STWF score in this manner would reduce the average STWF score for the Covered FBOs from the misleading 317 to 22, calculated as 16% of the average STWF score of 140 for the non-processing U.S. GSIBs. See National Information Center, Form FR Y-15 Filings, supra note 2. This would reduce the average method 2 score to 51 for the Covered FBOs, a far more reasonable estimate, and one that is consistent with the low systemic footprint of the Covered FBOs and aligned with the other ratios in Table A above.

Figure 2[46]



- This chart show that outright risks used in the STWF calculation are far lower for the Covered FBOs vs the U.S. GSIBs.
- However, the STWF score is built on a ratio (350 x STWF / RWA), because it is intended for a different purpose (calculating the appropriate GSIB surcharge).
- Because the Covered FBOs have reduced their RWA by even more than STWF, the ratio used for this score appears artificially high.

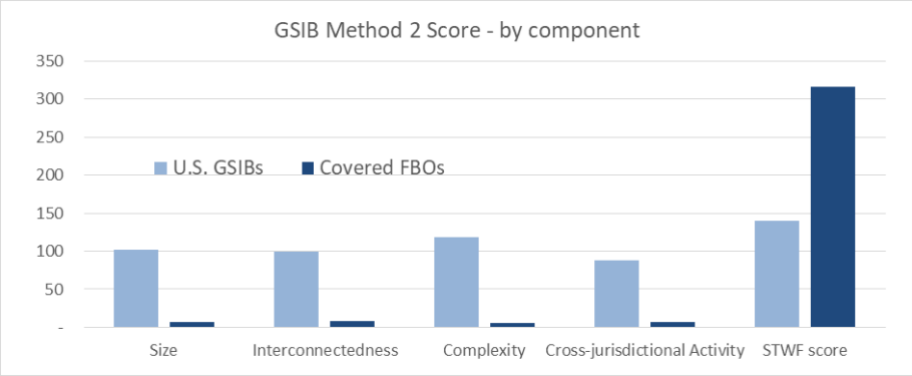
As shown in Figure 3 below, these spurious effects overwhelm the other four indicators used in the method 2 calculation, all of which properly show the average IHC risk as less than 10% of the risk of the average non-processing U.S. GSIBs.[47] The misleading STWF score makes up over 90% of the IHCs' method 2 scores,[48] wrongly suggesting the IHCs are as systemically important as the U.S. GSIBs that are more than ten times their size and risk.

[46] Figure 2 reflects information filed by the non-processing U.S. GSIBs and Covered FBOs as of fourth quarter 2019. See National Information Center, Form FR Y-15 Filings, supra note 2 (data based on STWF score components reported in fourth quarter 2019 Form FR Y-15 filings).

[47] The average Total Exposure Score for the Covered FBOs is approximately 7.7% of the average score for the non-processing U.S. GSIBs (7.6 compared to 98). The average Interconnectedness Score for the Covered FBOs is approximately 9.85% of the average score for the same six U.S. GSIBs (9 compared to 92). The average Complexity Score for the Covered FBOs is approximately 6.47% of the average score for the same six U.S. GSIBs (7.9 compared to 121). The average Cross-Jurisdictional Activity Score is approximately 8.8% of the average score for the same six U.S. GSIBs (7.8 compared to 88). See Office of Financial Research, supra note 43 (values calculated based on fourth quarter 2019 data).

[48] For example, based on the 2019 method 2 scores for the Covered FBOs, the STWF score for Deutsche Bank (442) makes up 95% of its total method 2 score (463), the STWF score for Credit Suisse (313) makes up 89% of its total method 2 score (351) and the STWF score for Barclays (299) makes up 89% of its total method 2 score (337). Office of Financial Research, supra note 43.

Figure 3[49]



The STWF component was designed by the Agencies specifically for the U.S. GSIBs, and for the specific purpose of sizing a capital buffer. In the preamble to the U.S. GSIB surcharge final rule, the Agencies state that the STWF "conversion factor was intended to weight the STWF amount such that the short-term wholesale funding score receives an equal weight as the other systemic indicators within method 2 (i.e., 20 percent), and is based upon estimates of short-term wholesale funding levels at the eight bank holding companies currently identified as GSIBs."[50] Indeed, the weighting of this factor is relatively balanced for the U.S. GSIB group that it was calibrated against. However, a naïve application of the U.S. GSIB calibrated weightings to a new set of banks like the Covered FBOs fails the stated intent of a balanced scorecard; the STWF score comprises over 92% of the total method 2 scores of the Covered FBOs, dominating all the other factors, as illustrated in Figure 4 below.[51]

[49] Figure 3 reflects information filed by the non-processing U.S. GSIBs and Covered FBOs as of fourth quarter 2019. See National Information Center, Form FR Y-15 Filings, supra note 2 (data based on indicators reported in fourth quarter 2019 Form FR Y-15 filings).

[50] GSIB Surcharge Rule, 80 Fed. Reg. at 49,100 (emphasis added). Under the proposal, to arrive at its STWF score, a U.S. GSIB would have multiplied the ratio of its weighted STWF amount over its average RWA by a fixed conversion factor (175). The conversion factor accounted for the fact that, in contrast to the other systemic indicators that comprise a U.S. GSIB's method 2 score, the STWF score does not have an associated aggregate global indicator. The conversion factor was intended to weight the STWF amount such that the STWF score receives an equal weight as the other systemic indicators within method 2 (i.e., 20%), and is based upon estimates of STWF funding levels at the eight bank holding companies currently identified as U.S. GSIBs.

[51] Furthermore, the original purpose of the method 2 calculation was to establish a capital surcharge methodology, the result of which would be multiplied against RWA in further calculations. In this case, the problematic use of RWA in the denominator would be cancelled out in the ultimate usage, mitigating the problems of a ratio-based

Figure 4[52]

GSIB Method 2 Score – by component

The outsized impact of STWF scoring distorts the relative systemic risk and resolvability of the Covered FBOs. It does not reflect the significant reduction by foreign banks of their U.S. operations and risk profiles and efforts to enhance resolvability described above. As a result, the method 2 simply does not work as a scoping tool when applied directly to a new group of entities with a different business model; it should not be relied on to trigger the imposition of additional expectations around resolution planning or for any other purpose.

II. Any New Guidance Should Moderate the 2018 FBO Guidance and Use an Appropriate Scoping Methodology

The most significant revisions in the Proposed Guidance would add new required capabilities and processes with respect to PCS services and DER activities that mirror those imposed on the U.S. GSIBs. In light of the reduction in overall U.S. operations and broker-dealer operations in particular by the Covered FBOs, such revisions are unwarranted. Instead, the Agencies should consolidate prior resolution planning guidance in a single place. Such guidance should eliminate expectations of the 2018 FBO Guidance related to passive and active wind-down scenario analyses, agency-specified data templates, and rating agency

weighting factor. That mitigating effect is not present when a method 2 calculation is used on a standalone basis, for the purpose of scoring.

[52] See id. (data based on indicators reported in fourth quarter 2019 Form FR Y-15 filings).

playbooks, which the Agencies recognized were unnecessary and struck from the Proposed Guidance.

A. The Agencies Should Tailor Expectations for Information Already Available Through Existing Supervisory Mechanisms

The Agencies should also consider eliminating or streamlining existing requirements to avoid the Covered FBOs having to produce information that is otherwise available to the Agencies through existing supervisory mechanisms.

For instance, expectations for financial market utility ("FMU") playbooks should only require the Covered FBO to provide critical information required to execute the U.S. resolution strategy. The FMU playbooks created in accordance with the 2018 FBO Guidance included significant amounts of information specific to FMU Membership Agreements, which is already available to the Federal Reserve through existing supervision, and required the Covered FBOs to speculate on expected behaviors of FMUs. Information about FMU rules and their behaviors in a resolution scenario should be provided by FMUs themselves. Guidance on FMU playbooks for the Covered FBOs should be reduced to institution-specific information, such as providing critical data related to the volumes and values of business, key management information, key personnel responsible for managing the relationship with the FMU and key governance procedures.

The Agencies should also reduce the redundancies around providing information relating to business as usual that is already provided to the Agencies through existing supervision, such as general operational overviews, collateral and vendor management, amongst others. Rather than expect the Covered FBOs to re-package these documents, the Agencies should permit them to reference policies, portals or other documents provided through prior exam processes.

B. RLAP and RCAP Should Be Eliminated As They Are Duplicative with Existing Liquidity and Capital Requirements

In line with the principles of tailoring, the Agencies should tailor several expectations in the 2018 FBO Guidance, given the reduction in risk posed by the U.S. operations of the Covered FBOs and the enhanced capital and liquidity support now available. The Agencies should remove from the specifications resolution liquidity adequacy and positioning ("RLAP") and resolution capital adequacy and positioning ("RCAP") as they are redundant given other regulatory requirements (e.g., internal liquidity stress testing and TLAC, respectively). Standardized liquidity requirements set forth in rulemakings, and not RLAP, should set the binding constraint. Additionally, RCAP is duplicative of TLAC and should be removed because TLAC separately requires significant local bail-inable resources for the

recapitalization of the Covered FBOs' U.S. operations. Clearly articulating unique constraints for these entities will enable a more efficient process in evaluating and managing their businesses.

C. Any Scoping Mechanism Should Leverage the EPS Framework and Accurately Consider Relative Risk to U.S. Financial Stability

Any scoping methodology for the consolidated guidance should not be based on method 2 for all of the reasons discussed above. Rather, the Agencies should consider how to best leverage the considerations and important work undertaken in developing the EPS categories. Those categories better recognize the relative risk profiles of the Category I, II and III firms. This approach would also be consistent with the emphasis by Vice Chair Quarles on aligning the LISCC portfolio with the EPS categories.

Regardless of the scoping methodology the Agencies ultimately decide to use, it would be helpful if the Agencies provided a reasonable transition period for foreign banks that become Covered FBOs so that newly subject firms have sufficient time to comply. In addition, the Agencies should provide a clear exit process for foreign banks that no longer meet the requirements to be a Covered FBO.

III. If New PCS and DER Requirements are Imposed, they Should not Apply Outside the United States, Exceeding the Scope of Title I and Regulation QQ

If the Agencies do choose to apply the enhanced PCS and DER expectations to certain foreign banks, the Agencies should limit the extraterritorial application of those expectations. Significantly, the enhanced expectations inappropriately extend beyond the orderly resolvability of a Covered FBO's U.S. material entities in a Title I resolution under the U.S. Bankruptcy Code to out-of-scope activities (e.g., prime brokerage positions) booked directly in non-U.S. affiliates.

Title I explicitly limits the scope of a foreign bank's U.S. resolution plan to its "United States activities and subsidiaries," unless otherwise provided. Similarly, Regulation QQ generally only requires reporting on a foreign bank's U.S. entities, critical operations and CBLs domiciled or conducted in whole or material part in the United States and not the activities of non-U.S. affiliates.[53] Specifically, Regulation QQ only requires information on the interconnections and interdependencies between the U.S. entities, critical operations or CBLs

[53] See 12 C.F.R. § 243.5(a)(2)(i).

and a non-U.S. affiliate if disruption of such relationship would materially affect the funding and operations of the U.S. material entities, critical operations or CBLs.[54] As described below, the new PCS and DER expectations would require information on non-U.S. affiliate activities in excess of the requirements in Regulation QQ. At minimum, such expectations should not apply beyond relationships with non-U.S. affiliates that support a U.S. material entity, critical operation, or CBL that, if interrupted, would affect such U.S. entities and operations.

A. DER

These new expectations would require reporting on certain DER activities and unwinding of customer positions booked into non-U.S. affiliates that fall well outside the purview of a Title I resolution plan and do not relate in whole or in material part to a Covered FBO's U.S. operations. For instance, the resolution of the U.S. prime broker would not require a Covered FBO to unwind customer positions booked into a non-U.S. affiliate.[55] Such positions do not necessarily need to be unwound in the case that the U.S. prime broker experiences financial distress. Any action by the non-U.S. affiliate is more appropriately addressed in the global resolution plan, and such positions would typically be unwound under the foreign jurisdiction's bankruptcy or resolution regime. Requiring these strategies in the U.S. resolution plan extends well outside the purview of a Title I resolution plan.

The revisions to the DER guidance would also cover derivatives and non-derivatives trading activities (e.g., securities financing transactions), which extends further than the expectations imposed on the U.S. GSIBs. This is unwarranted, especially considering that total exposure to securities financing transactions has decreased by 48% for the Covered FBOs from 2016 to 2019 (from $120 billion to $63 billion) while total exposure for the non-processing U.S. GSIBs has increased 11% over the same period (from $244 billion to $272 billion).[56] The scope of DER activities should not be larger and broader for the Covered FBOs than the U.S. GSIBs.

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[54] Id.

[55] The Proposed Guidance would significantly expand existing operational capabilities for the transfer of U.S. prime brokerage accounts to peer prime brokers to include client account positions booked directly into a non-U.S. affiliate and require the Covered FBOs develop capabilities to segment U.S. prime brokerage accounts based on characteristics that determine the speed at which accounts could be transferred.

[56] See National Information Center, Form FR Y-15 Filings, supra note 2 (total securities financing exposure data for the Covered FBOs and the non-processing U.S. GSIBs was pulled from Form FR Y-15 filed for fourth quarter 2019 and fourth quarter 2016).

The Proposed Guidance would apply the expanded DER expectations to DER activity related to the Covered FBO's critical operations or core business lines, regardless of whether such activities are booked in a U.S. entity or directly into a non-U.S. affiliate, and to DER activities that are originated from, traded through or otherwise conducted in whole or in material part by a U.S. entity.

The Proposed Guidance would require the Covered FBOs to enhance booking frameworks and reporting capabilities to cover DER activities "conducted on behalf of the firm, its clients or counterparties that are originated from" or "traded through" a U.S. entity, even if booked into a non-U.S. affiliate. This would appear to capture all transactions originated by or traded through any U.S. entity (including entities that are not material to the Covered FBO's U.S. operations), even though the U.S. entity may have only a minor involvement in the transaction and may only have limited credit or counterparty exposure under the transaction once booked into a non-U.S. affiliate.

In justifying this broad application to activities booked outside the United States, the Agencies argue the information is needed in part because U.S. entities that originate U.S. DER activities booked in non-U.S. affiliates could continue to have ongoing responsibilities in relation to such U.S. DER activities.[57] They also note that the interconnections and interdependencies that result from booking into non-U.S. entities can create uncertainty about execution risk, loss allocation, and impact on U.S. entities' clients and counterparties, which could in turn contribute to a loss of confidence in the firm's U.S. resolution strategy.

However, as alluded to above, the expanded focus on U.S. DER activities booked into a non-U.S. affiliate represent minimal risk to the U.S. entity and operations. Activities booked in non-U.S. affiliates would not be unwound due to the U.S. IHC's bankruptcy (i.e., the main focus of Title I) and would instead be subject to the foreign jurisdiction's bankruptcy or resolution regime. The risk of activity booked to non-U.S. entities is borne by those non-U.S. entities, and management of those activities in a resolution scenario is addressed in Covered FBOs' home country parent resolution plans. The U.S. entity plays a minor administrative role in the arrangement, with the non-U.S. affiliate providing the actual DER services. Given the limited role of the U.S. entity, such DER activities are not taking place in whole or material part in the United States. Requiring reporting on these limited activities exceeds the scope of Regulation QQ and therefore should be removed from the Proposed Guidance. The DER

[57] Proposed Guidance, 85 Fed. Reg. at 15,457 (noting such activities could include "management of client relationships, transaction settlement, management of risk limits, and maintenance of access to U.S. FMUs, in the period leading up to and during execution of the U.S. resolution strategy").

guidance should be limited to only U.S. material entities, CBLs and critical operations domiciled in the United States and liquidated under the U.S. Bankruptcy Code.

The Agencies' statements on the interconnections between the U.S. entities and non-U.S. affiliates that certain DER positions are booked into also mischaracterize the relationship between the two. Where a Covered FBO books a position for a U.S. customer, as well as the respective roles, obligations and liabilities of the U.S. entity and non-U.S. affiliate are set forth in agreements with the customer. The customer is fully aware of the arrangement. In the event the Covered FBO experiences financial distress, the firm's global resolution plan would provide for the unwinding of customer positions within the non-U.S. affiliate, while the U.S. resolution plan would address the wind down of any continuing obligations of the U.S. entity to the customer. The Agencies should consider the relationship between the U.S. and non-U.S. entity within the broader global resolution planning framework. Such arrangements do not pose uncertainty for U.S. resolvability.

B. PCS

The Proposed Guidance would require the Covered FBOs to map U.S. material entities, critical operations, core business lines and key clients of the firm's U.S. operations to key FMUs and key agent banks, including FMUs and agent banks that are accessed indirectly[58] through a non-U.S. affiliate, and provide a playbook for each such FMU and agent bank. In support of this expectation, the Agencies state they "are not proposing to limit the framework to direct relationships and non-affiliates, since continuity of access in a resolution scenario to directly accessed and indirectly accessed PCS activities, including through affiliates, is likely to be essential to the rapid and orderly resolution of a [Covered] FBO."[59]

While requiring a Covered FBO's U.S. resolution plan to identify a non-U.S. affiliate that provides indirect access to an FMU or key agent bank that supports U.S. material entities, critical operations or CBLs is within the scope of Regulation QQ, requiring the U.S. resolution plan to further address the non-U.S. affiliate's ability to maintain access to key FMUs and key agent banks to support those relationships imposes overly broad expectations with respect to a foreign bank's non-U.S. activities and is outside the scope of Regulation QQ. The access of non-U.S. affiliates to FMUs and agent banks is appropriately addressed in the home country group resolution plan. In addition, most of the U.S. clients that receive indirect access to FMU services through a Covered FBO also maintain relationships for those same services with

[58] E.g., a firm indirectly accesses PCS services through its relationship with another entity, including a non-U.S. affiliate, that provides the firm with PCS services on an agency basis.

[59] Proposed Guidance, 85 Fed. Reg. at 15,455.

the U.S. GSIBs. If the service was disrupted due to the Covered FBO experiencing distress, these clients would continue to have access to the FMU through their other relationships. The Covered FBO's role simply is not material to maintaining access to these FMU services. The Agencies also already expect this analysis from the U.S. GSIBs, which makes further mapping by the Covered FBOs largely irrelevant to analyzing the continuation of FMU services to U.S. clientele.

At a minimum, any additional expectations with respect to continuity of indirect access through non-U.S. affiliates should be limited to the relationship between the U.S. material entity, critical operation and CBL and the non-U.S. affiliate.

IV. Contractually Binding Mechanisms

The Proposed Guidance notes that certain Covered FBOs have adopted CBMs to ensure sufficient and timely capital and liquidity to material entity subsidiaries prior to a U.S. IHC entering bankruptcy. The Agencies note two different approaches to such mechanisms, and the fact that neither the Proposed Guidance nor the resolution planning rules recommend or mandate a specific strategy to ensure such timely support and reduce the risk of a successful legal challenge to pre-bankruptcy resolution actions. The Agencies requested feedback on the two CBM approaches they describe, potential alternative CBM approaches, and whether the Agencies should endorse or require a specific CBM approach.

We appreciate the Agencies' recognition that foreign banks take different approaches to achieving the goal of ensuring timely capital and liquidity support and minimizing the risk that legal challenges could interfere with such support. So long as foreign banks maintain capital and liquidity levels in line with their resolution capital and liquidity execution need, there is no reason for the Agencies to adopt prescriptive requirements with respect to such arrangements. Prescriptive jurisdiction-specific requirements may discourage the parent entity from deploying capital and liquidity to U.S. operations in a business as usual setting or in times of stress (prior to any U.S. bankruptcy). Foreign banks should retain the flexibility to design CBMs that meet the needs of their global home country resolution strategies as well as U.S. resolution planning expectations. Each foreign bank has adopted an approach that aligns with its global strategy for managing capital and liquidity and its particular circumstances. The Agencies have the ability to provide particularized feedback to the foreign banks about their individual arrangements, which preserves the ability to take into account a firm's global resolution plan, its strategy and particular circumstances, and also the ability for such approaches to evolve and potentially improve over time.

* * *

We appreciate your consideration of our comments on the Proposed Guidance. If we can answer any questions or provide any further information, please contact me (646-213-1147, bpolichene@iib.org) or our General Counsel, Stephanie Webster (646-213-1149, swebster@iib.org).

Very truly yours,

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Chief Executive Officer